

FIFTY SEVENTH DAY

MORNING SESSION

Senate Chamber, Olympia, Monday, March 8, 2010

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, Holmquist and McCaslin.

The Sergeant at Arms Color Guard consisting of Pages Miranda Barkley and Kade Wilford, presented the Colors. Reverend Jim Erlandson of Community of Christ Church of Olympia 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 eighth order of business.

MOTION

Senator Becker moved adoption of the following resolution:

SENATE RESOLUTION  
8679

By Senators Becker, Haugen, Hatfield, Berkey, Swecker, Morton, Marr, King, Sheldon, Kauffman, Shin, and Ranker

WHEREAS, It is a tradition of the Washington State Senate to honor the towns of Washington State; and

WHEREAS, The Town of Eatonville celebrated its 100th birthday, its centennial, on October 28, 2009; and

WHEREAS, The Town of Eatonville was founded by Thomas Cobb (T.C.) Van Eaton after being led to the present site fifty miles south of Seattle and thirty-one miles southeast of Tacoma by a Nisqually Indian named Soo-too-lik; and

WHEREAS, The major industry that fed Eatonville's growth was logging; the town was officially incorporated after Eatonville Lumber Company brought more people to work at its mill; and

WHEREAS, In 1924 the Town of Eatonville barely escaped catastrophe after a huge forest fire surrounded the town; and

WHEREAS, The 1954 closure of the Eatonville Lumber Company threatened to devastate the Town of Eatonville, but has since grown stronger by community spirit and good will; and

WHEREAS, Eatonville is now home to more industries, such as a Concrete manufacturing plant, Nybo Concrete, and other successful companies such as Rainier Connect; and

WHEREAS, Through its long history, Eatonville has steadily prospered, flourished, and overcome disasters and challenges such as fires, earthquakes, and economic recessions; and

WHEREAS, The people of Eatonville and surrounding areas celebrate Eatonville's modern-day role as a thriving town with a high quality of life; and

WHEREAS, Eatonville is recognized as the gateway to Paradise on Mount Rainier and home to the world-famous Northwest Trek; and

WHEREAS, Citizens, elected officials, and community leaders celebrated Eatonville's historic centennial with a weekend-long celebration on October 16, 17, and 18, 2009;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate commemorate the Town of Eatonville and its citizens on the occasion of its centennial; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Secretary of the Senate to Eatonville Mayor Tom Smallwood and to Eatonville Council members Rich Adams, Bruce Rath, Brenden Pierce, Bobbie Allison, and James Valentine.

Senator Becker spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8679.

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

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced the Mayor of Eatonville, The Honorable Ray Harper and town members who were seated in the gallery.

MOTION

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

MESSAGE FROM THE HOUSE

March 2, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6459 with the following amendment(s): 6459-S AMH JUDI BARC 071,

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 59.18.030 and 2008 c 278 s 12 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.

(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.

(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.

(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.

(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.

(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.

(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.

(13) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(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.

(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.

(16) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

(17) "Certificate of inspection" means an unsworn statement, declaration, verification, or certificate made in accordance with the requirements of RCW 9A.72.085 by a qualified inspector that states that the landlord has not failed to fulfill any substantial obligation imposed under RCW 59.18.060 that endangers or impairs the health or safety of a tenant, including (a) structural members that are of insufficient size or strength to carry imposed loads with safety, (b) exposure of the occupants to the weather, (c) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (d) not providing facilities adequate to supply heat and water and hot water as reasonably required by the tenant, (e) providing heating or ventilation systems that are not functional or

are hazardous, (f) defective, hazardous, or missing electrical wiring or electrical service, (g) defective or hazardous exits that increase the risk of injury to occupants, and (h) conditions that increase the risk of fire.

(18) "Property" or "rental property" means all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex.

(19) "Qualified inspector" means a United States department of housing and urban development certified inspector; a Washington state licensed home inspector; an American society of home inspectors certified inspector; a private inspector certified by the national association of housing and redevelopment officials, the American association of code enforcement, or other comparable professional association as approved by the local municipality; a municipal code enforcement officer; a Washington licensed structural engineer; or a Washington licensed architect.

NEW SECTION. Sec. 2. A new section is added to chapter 59.18 RCW to read as follows:

(1) Local municipalities may require that landlords provide a certificate of inspection as a business license condition. A local municipality does not need to have a business license or registration program in order to require that landlords provide a certificate of inspection. A certificate of inspection does not preclude or limit inspections conducted pursuant to the tenant remedy as provided for in RCW 59.18.115, at the request or consent of the tenant, or pursuant to a warrant.

(2) A qualified inspector who is conducting an inspection under this section may only investigate a rental property as needed to provide a certificate of inspection.

(3) A local municipality may only require a certificate of inspection on a rental property once every three years.

(4)(a) A rental property that has received a certificate of occupancy within the last four years and has had no code violations reported on the property during that period is exempt from inspection under this section.

(b) A rental property inspected by a government agency or other qualified inspector within the previous twenty-four months may provide proof of that inspection which the local municipality may accept in lieu of a certificate of inspection. If any additional inspections of the rental property are conducted, a copy of the findings of these inspections may also be required by the local municipality.

(5) A rental property owner may choose to inspect one hundred percent of the units on the rental property and provide only the certificate of inspection for all units to the local municipality. However, if a rental property owner chooses to inspect only a sampling of the units, the owner must send written notice of the inspection to all units at the property. The notice must advise tenants that some of the units at the property will be inspected and that the tenants whose units need repairs or maintenance should send written notification to the landlord as provided in RCW 59.18.070. The notice must also advise tenants that if the landlord fails to adequately respond to the request for repairs or maintenance, the tenants may contact local municipality officials. A copy of the notice must be provided to the inspector upon request on the day of inspection.

(6)(a) If a rental property has twenty or fewer dwelling units, no more than four dwelling units at the rental property may be selected by the local municipality to provide a certificate of inspection as long as the initial inspection reveals that no conditions exist that endanger or impair the health or safety of a tenant.

(b) If a rental property has twenty-one or more units, no more than twenty percent of the units, rounded up to the next whole number, on the rental property, and up to a maximum of fifty units at any one property, may be selected by the local municipality to provide a certificate of inspection as long as the initial inspection

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reveals that no conditions exist that endanger or impair the health or safety of a tenant.

(c) If a rental property is asked to provide a certificate of inspection for a sample of units on the property and a selected unit fails the initial inspection, the local municipality may require up to one hundred percent of the units on the rental property to provide a certificate of inspection.

(d) If a rental property has had conditions that endanger or impair the health or safety of a tenant reported since the last required inspection, the local municipality may require one hundred percent of the units on the rental property to provide a certificate of inspection.

(e) If a rental property owner chooses to hire a qualified inspector other than a municipal housing code enforcement officer, and a selected unit of the rental property fails the initial inspection, both the results of the initial inspection and any certificate of inspection must be provided to the local municipality.

(7)(a) The landlord shall provide written notification of his or her intent to enter an individual unit for the purposes of providing a local municipality with a certificate of inspection in accordance with RCW 59.18.150(6). The written notice must indicate the date and approximate time of the inspection and the company or person performing the inspection, and that the tenant has the right to see the inspector's identification before the inspector enters the individual unit. A copy of this notice must be provided to the inspector upon request on the day of inspection.

(b) A tenant who continues to deny access to his or her unit is subject to RCW 59.18.150(8).

(8) If a rental property owner does not agree with the findings of an inspection performed by a local municipality under this section, the local municipality shall offer an appeals process.

(9) A penalty for noncompliance under this section may be assessed by a local municipality. A local municipality may also notify the landlord that until a certificate of inspection is provided, it is unlawful to rent or to allow a tenant to continue to occupy the dwelling unit.

(10) Any person who knowingly submits or assists in the submission of a falsified certificate of inspection, or knowingly submits falsified information upon which a certificate of inspection is issued, is, in addition to the penalties provided for in subsection (9) of this section, guilty of a gross misdemeanor and must be punished by a fine of not more than five thousand dollars.

(11) As of the effective date of this section, a local municipality may not enact an ordinance requiring a certificate of inspection unless the ordinance complies with this section. This prohibition does not preclude any amendments made to ordinances adopted before the effective date of this section.

**Sec. 3.** RCW 59.18.150 and 2002 c 263 s 1 are each amended to read as follows:

(1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) Upon written notice of intent to seek a search warrant, when a tenant or landlord denies a fire official the right to search a dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the dwelling unit sought to be searched that criminal fire code violations exist in the dwelling unit, a court of competent jurisdiction shall issue a warrant allowing a search of the dwelling unit.

Upon written notice of intent to seek a search warrant, when a landlord denies a fire official the right to search the common areas of the rental building other than the dwelling unit, a fire official may

immediately seek a search warrant and, upon a showing of probable cause specific to the common area sought to be searched that a criminal fire code violation exists in those areas, a court of competent jurisdiction shall issue a warrant allowing a search of the common areas in which the violation is alleged.

The superior court and courts of limited jurisdiction organized under Titles 3, 35, and 35A RCW have jurisdiction to issue such search warrants. Evidence obtained pursuant to any such search may be used in a civil or administrative enforcement action.

(3) As used in this section:

(a) "Common areas" means a common area or those areas that contain electrical, plumbing, and mechanical equipment and facilities used for the operation of the rental building.

(b) "Fire official" means any fire official authorized to enforce the state or local fire code.

(4)(a) A search warrant may be issued by a judge of a superior court or a court of limited jurisdiction under Titles 3, 35, and 35A RCW to a code enforcement official of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified dwelling unit and premises to determine the presence of an unsafe building condition or a violation of any building regulation, statute, or ordinance.

(b) A search warrant must only be issued upon application of a designated officer or employee of a county or city prosecuting or regulatory authority supported by an affidavit or declaration made under oath or upon sworn testimony before the judge, establishing probable cause that a violation of a state or local law, regulation, or ordinance regarding rental housing exists and endangers the health or safety of the tenant or adjoining neighbors. In addition, the affidavit must contain a statement that consent to inspect has been sought from the owner and the tenant but could not be obtained because the owner or the tenant either refused or failed to respond within five days, or a statement setting forth facts or circumstances reasonably justifying the failure to seek such consent. A landlord may not take or threaten to take reprisals or retaliatory action as defined in RCW 59.18.240 against a tenant who gives consent to a code enforcement official of the state or of any county, city, or other political subdivision to inspect his or her dwelling unit to determine the presence of an unsafe building condition or a violation of any building regulation, statute, or ordinance.

(c) In determining probable cause, the judge is not limited to evidence of specific knowledge, but may also consider any of the following:

(i) The age and general condition of the premises;

(ii) Previous violations or hazards found present in the premises;

(iii) The type of premises;

(iv) The purposes for which the premises are used; or

(v) The presence of hazards or violations in and the general condition of premises near the premises sought to be inspected.

(d) Before issuing an inspection warrant, the judge shall find that the applicant has: (i) Provided written notice of the date, approximate time, and court in which the applicant will be seeking the warrant to the owner and, if the applicant reasonably believes the dwelling unit or rental property to be inspected is in the lawful possession of a tenant, to the tenant; and (ii) posted a copy of the notice on the exterior of the dwelling unit or rental property to be inspected. The judge shall also allow the owner and any tenant who appears during consideration of the application for the warrant to defend against or in support of the issuance of the warrant.

(e) All warrants must include at least the following:

(i) The name of the agency and building official requesting the warrant and authorized to conduct an inspection pursuant to the warrant;

(ii) A reasonable description of the premises and items to be inspected; and

(iii) A brief description of the purposes of the inspection.

(f) An inspection warrant is effective for the time specified in the warrant, but not for a period of more than ten days unless it is extended or renewed by the judge who signed and issued the original warrant upon satisfying himself or herself that the extension or renewal is in the public interest. The inspection warrant must be executed and returned to the judge by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of the time specified in the warrant, the warrant, unless executed, is void.

(g) An inspection pursuant to a warrant must not be made:

(i) Between 7:00 p.m. of any day and 8:00 a.m. of the succeeding day, on Saturday or Sunday, or on any legal holiday, unless the owner or, if occupied, the tenant specifies a preference for inspection during such hours or on such a day;

(ii) Without the presence of an owner or occupant over the age of eighteen years or a person designated by the owner or occupant unless specifically authorized by a judge upon a showing that the authority is reasonably necessary to effectuate the purpose of the search warrant; or

(iii) By means of forcible entry, except that a judge may expressly authorize a forcible entry when:

(A) Facts are shown that are sufficient to create a reasonable suspicion of a violation of a state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards that, if the violation existed, would be an immediate threat to the health or safety of the tenant; or

(B) Facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful.

(h) Immediate execution of a warrant is prohibited, except when necessary to prevent loss of life or property.

(i) Any person who willfully refuses to permit inspection, obstructs inspection, or aids in the obstruction of an inspection of property authorized by warrant issued pursuant to this section is subject to remedial and punitive sanctions for contempt of court under chapter 7.21 RCW. Such conduct may also be subject to a civil penalty imposed by local ordinance that takes into consideration the facts and circumstances and the severity of the violation.

(5) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

~~((5))~~ (6) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his or her intent to enter and shall enter only at reasonable times. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.

~~((6))~~ (7) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

~~((7))~~ (8) A landlord or tenant who continues to violate the rights of the tenant or landlord with respect to the duties imposed on the other as set forth in this section after being served with one written notification alleging in good faith violations of this section listing the date and time of the violation shall be liable for up to one hundred dollars for each violation after receipt of the notice. The prevailing landlord or tenant may recover costs of the suit or arbitration under this section, and may also recover reasonable attorneys' fees.

~~((8))~~ (9) Nothing in this section is intended to (a) abrogate or modify in any way any common law right or privilege or (b) affect

the common law as it relates to a local municipality's right of entry under emergency or exigent circumstances.

**NEW SECTION. Sec. 4.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hobbs moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6459.

Senator Hobbs spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hobbs that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6459.

The motion by Senator Hobbs carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6459 by voice vote.

MOTION

On motion of Senator Brandland, Senators Holmquist and McCaslin were excused.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6459, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6459, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 38; Nays, 8; Absent, 1; Excused, 2.

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

Absent: Senator Fairley

Excused: Senators Holmquist and McCaslin

SUBSTITUTE SENATE BILL NO. 6459, as amended by the House, 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 Marr, Senator Fairley was excused.

MESSAGE FROM THE HOUSE

March 3, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6207 with the following amendment(s): 6207-S AMH TR H5457.1,

Strike everything after the enacting clause and insert the following:

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**Sec. 1.** RCW 46.04.320 and 2007 c 510 s 1 are each amended to read as follows:

"Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. "Motor vehicle" includes a neighborhood electric vehicle as defined in RCW 46.04.357. "Motor vehicle" includes a medium-speed electric vehicle as defined in RCW 46.04.295. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. A golf cart is not considered a motor vehicle, except for the purposes of chapter 46.61 RCW.

**Sec. 2.** RCW 46.04.670 and 2003 c 141 s 6 are each amended to read as follows:

"Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles. The term does not include power wheelchairs or devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks. Mopeds shall not be considered vehicles or motor vehicles for the purposes of chapter 46.70 RCW. Bicycles shall not be considered vehicles for the purposes of chapter 46.12, 46.16, or 46.70 RCW. Electric personal assistive mobility devices are not considered vehicles or motor vehicles for the purposes of chapter 46.12, 46.16, 46.29, 46.37, or 46.70 RCW. A golf cart is not considered a vehicle, except for the purposes of chapter 46.61 RCW.

**NEW SECTION. Sec. 3.** A new section is added to chapter 46.04 RCW to read as follows:

"Golf cart" means a gas-powered or electric-powered four-wheeled vehicle originally designed and manufactured for operation on a golf course for sporting purposes and has a speed attainable in one mile of not more than twenty miles per hour. A golf cart is not a nonhighway vehicle or off-road vehicle as defined in RCW 46.09.020.

**NEW SECTION. Sec. 4.** A new section is added to chapter 46.08 RCW to read as follows:

(1) The legislative authority of a city or county may by ordinance or resolution create a golf cart zone, for the purposes of permitting the incidental operation of golf carts, as defined in section 3 of this act, upon a street or highway of this state having a speed limit of twenty-five miles per hour or less.

(2) Every person operating a golf cart as authorized under this section is granted all rights and is subject to all duties applicable to the driver of a vehicle under chapter 46.61 RCW.

(3) Every person operating a golf cart as authorized under this section must be at least sixteen years of age and must have completed a driver education course or have previous experience driving as a licensed driver.

(4) A person who has a revoked license under RCW 46.20.285 may not operate a golf cart as authorized under this section.

(5) The legislative authority of a city or county may prohibit any person from operating a golf cart as authorized under this section at any time from a half hour after sunset to a half hour before sunrise.

(6) The legislative authority of a city or county may require a decal or other identifying device to be displayed on golf carts authorized on the streets and highways of this state under this section. The city or county may charge a fee for the decal or other identifying device.

(7) The legislative authority of a city or county may prohibit the operation of golf carts in designated bicycle lanes that are within a golf cart zone.

(8) Golf carts must be equipped with reflectors, seat belts, and rearview mirrors when operated upon streets and highways as authorized under this section.

(9) A city or county that creates a golf cart zone under this section must clearly identify the zone by placing signage at the beginning and end of the golf cart zone on a street or road that is part of the golf cart zone. The signage must be in compliance with the department of transportation's manual on uniform traffic control devices for streets and highways.

(10) Accidents that involve golf carts operated upon streets and highways as authorized under this section must be recorded and tracked in compliance with chapter 46.52 RCW. The accident report must indicate that a golf cart operating within a golf cart zone is involved in the accident.

**Sec. 5.** RCW 46.16.010 and 2007 c 242 s 2 are each amended to read as follows:

(1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided.

(2) Failure to make initial registration before operation on the highways of this state is a traffic infraction, and any person committing this infraction shall pay a penalty of five hundred twenty-nine dollars, no part of which may be suspended or deferred.

(3) Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(4) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, evading the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed will be deposited in the vehicle licensing fraud account created in the state treasury;

(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

(5) These provisions shall not apply to the following vehicles:

(a) Motorized foot scooters;

(b) Electric-assisted bicycles;

(c) Off-road vehicles operating on nonhighway roads under RCW 46.09.115;

(d) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

(e) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(f) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation

commission exclusively for park maintenance and operations upon public highways within state parks;

(g) "Trams" used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from end to end, the public rights-of-way over which the tram operates have an average daily traffic of not more than 15,000 vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another;

(h) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached; and

(i) Golf carts, as defined in section 3 of this act, operating within a designated golf cart zone as described in section 4 of this act.

(6) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar.

(c) An off-road vehicle operated on a street, road, or highway as authorized under RCW 46.09.180.

(7)(a) A motor vehicle subject to initial or renewal registration under this section shall not be registered to a natural person unless the person at time of application:

- (i) Presents an unexpired Washington state driver's license; or
- (ii) Certifies that he or she is:

(A) A Washington resident who does not operate a motor vehicle on public roads; or

(B) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.

(b) For shared or joint ownership, the department will set up procedures to verify that all owners meet the requirements of this subsection.

(c) A person falsifying residency is guilty of a gross misdemeanor punishable only by a fine of five hundred twenty-nine dollars.

(d) The department may adopt rules necessary to implement this subsection, including rules under which a natural person applying for registration may be exempt from the requirements of this subsection where the person provides evidence satisfactory to the department that he or she has a valid and compelling reason for not being able to meet the requirements of this subsection.

(8) A vehicle with an expired registration of more than forty-five days parked on a public street may be impounded by a police officer under RCW 46.55.113(2).

**Sec. 6.** RCW 46.37.010 and 2006 c 306 s 1 and 2006 c 212 s 5 are each reenacted and amended to read as follows:

(1) It is a traffic infraction for any person to drive or move, or for a vehicle owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles that:

- (a) Is in such unsafe condition as to endanger any person;
- (b) Is not at all times equipped with such lamps and other equipment in proper working condition and adjustment as required by this chapter or by rules issued by the Washington state patrol;
- (c) Contains any parts in violation of this chapter or rules issued by the Washington state patrol.

(2) It is a traffic infraction for any person to do any act forbidden or fail to perform any act required under this chapter or rules issued by the Washington state patrol.

(3) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

(4) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(5) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(6) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(7) The provisions of this chapter with respect to equipment required on vehicles shall not apply to:

(a) Motorcycles or motor-driven cycles except as herein made applicable;

(b) Golf carts, as defined in section 3 of this act, operating within a designated golf cart zone as described in section 4 of this act, except as provided in section 4(8) of this act.

(8) This chapter does not apply to off-road vehicles used on nonhighway roads or used on streets, roads, or highways as authorized under RCW 46.09.180.

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(9) This chapter does not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks.

(10) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(11) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

(12) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee.

**Sec. 7.** RCW 46.61.687 and 2007 c 510 s 4 are each amended to read as follows:

(1) Whenever a child who is less than sixteen years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, or is being transported in a neighborhood electric vehicle or medium-speed electric vehicle that is in operation, the driver of the vehicle shall keep the child properly restrained as follows:

(a) A child must be restrained in a child restraint system, if the passenger seating position equipped with a safety belt system allows sufficient space for installation, until the child is eight years old, unless the child is four feet nine inches or taller. The child restraint system must comply with standards of the United States department of transportation and must be secured in the vehicle in accordance with instructions of the vehicle manufacturer and the child restraint system manufacturer.

(b) A child who is eight years of age or older or four feet nine inches or taller shall be properly restrained with the motor vehicle's safety belt properly adjusted and fastened around the child's body or an appropriately fitting child restraint system.

(c) The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(2) Enforcement of subsection (1) of this section is subject to a visual inspection by law enforcement to determine if the child restraint system in use is appropriate for the child's individual height, weight, and age. The visual inspection for usage of a child restraint system must ensure that the child restraint system is being used in accordance with the instruction of the vehicle and the child restraint system manufacturers. The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(3) A person violating subsection (1) of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint system or a child booster seat, as appropriate, within seven days to the jurisdiction issuing the notice and the person has not previously had a violation of this section dismissed, the jurisdiction shall dismiss the notice of traffic infraction.

(4) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian. Failure to

use a child restraint system shall not be admissible as evidence of negligence in any civil action.

(5) This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or less passengers, including the driver, operated by auto transportation companies, as defined in RCW 81.68.010, (c) vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals, ~~(and)~~ (d) golf carts, as defined in section 3 of this act, operating within a designated golf cart zone as described in section 4 of this act, and (e) school buses.

(6) As used in this section, "child restraint system" means a child passenger restraint system that meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213.

(7) The requirements of subsection (1) of this section do not apply in any seating position where there is only a lap belt available and the child weighs more than forty pounds.

(8)(a) Except as provided in (b) of this subsection, a person who has a current national certification as a child passenger safety technician and who in good faith provides inspection, adjustment, or educational services regarding child passenger restraint systems is not liable for civil damages resulting from any act or omission in providing the services, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

(b) The immunity provided in this subsection does not apply to a certified child passenger safety technician who is employed by a retailer of child passenger restraint systems and who, during his or her hours of employment and while being compensated, provides inspection, adjustment, or educational services regarding child passenger restraint systems."

Correct the title, and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Haugen moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6207.

Senator Haugen spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Haugen that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6207.

The motion by Senator Haugen carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6207 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6207, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6207, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 44; Nays, 1; Absent, 1; Excused, 3.

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

Voting nay: Senator Eide

Absent: Senator Regala

Excused: Senators Fairley, Holmquist and McCaslin

SUBSTITUTE SENATE BILL NO. 6207, as amended by the House, 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.

MESSAGE FROM THE HOUSE

March 3, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6373 with the following amendment(s): 6373-S AMH UPTH H5528.2;

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 70.235.010 and 2008 c 14 s 2 are each amended to read as follows:

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

(1) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(2) "Climate advisory team" means the stakeholder group formed in response to executive order 07-02.

(3) "Climate impacts group" means the University of Washington's climate impacts group.

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

(5) (~~"Direct emissions" means emissions of greenhouse gases from sources of emissions, including stationary combustion sources, mobile combustion emissions, process emissions, and fugitive emissions.~~

~~—(6))~~ (6) "Director" means the director of the department.

~~((7))~~ (7) "Greenhouse gas" and "greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, ~~((and))~~ sulfur hexafluoride, and any other gas or gases designated by the department by rule.

~~((8))~~ (8) "Indirect emissions" means emissions of greenhouse gases associated with the purchase of electricity, heating, cooling, or steam.

~~—(9))~~ (9) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.

~~((10))~~ (10) "Program" means the department's climate change program.

~~((11))~~ (11) "Total emissions of greenhouse gases" means all direct emissions and all indirect emissions.

~~—(12))~~ (12) "Western climate initiative" means the collaboration of states, Canadian provinces, Mexican states, and tribes to design a multisector market-based mechanism as directed under the western regional climate action initiative signed by the governor on February 22, 2007.

**Sec. 2.** RCW 70.94.151 and 2008 c 14 s 5 are each amended to read as follows:

(1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or

regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70.235.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required under subsection (5) of this section.

All registration program and reporting fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually.

(4) For the purposes of subsection (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain;

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW; and

(c) "Grain" means a grain or a pulse.



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(5)(a) The department shall adopt rules requiring ~~((the reporting of))~~ persons to report emissions of greenhouse gases as defined in RCW 70.235.010 ~~((The rules must include a de minimis amount of emissions below which reporting will not be required for both indirect and direct emissions. The rules must require that emissions of greenhouse gases resulting from the burning of fossil fuels be reported separately from emissions of greenhouse gases resulting from the burning of biomass. Except as provided in (b) of this subsection, the department shall, under the authority granted in subsection (1) of this section, adopt rules requiring any owner or operator: (i) Of a fleet of on road motor vehicles that as a fleet emit at least twenty five hundred metric tons of greenhouse gas annually in the state to report the emissions of greenhouse gases generated from or emitted by that fleet; or (ii) of a source or combination of sources that emit at least ten thousand metric tons of greenhouse gas annually in the state to report their total annual emissions of greenhouse gases. In calculating emissions of greenhouse gases for purposes of determining whether or not reporting is required, only direct emissions shall be included. For purposes of reporting emissions of greenhouse gases in chapter 14, Laws of 2008, "source" means any stationary source as defined in RCW 70.94.030, or mobile source used for transportation of people or cargo. The emissions of greenhouse gases must be reported as carbon dioxide equivalents. The rules must require that persons report 2009 emissions starting in 2010. The rules must establish an annual reporting schedule that takes into account the time needed to allow the owner or operator reporting emissions of greenhouse gases to gather the information needed and to verify the emissions being reported. However, in no event may reports be submitted later than October 31st of the year in which the report is due. The department may phase in the reporting requirements for sources or combinations of sources under (a)(ii) of this subsection until the reporting threshold is met, which must be met by January 1, 2012. The department may from time to time amend the rules to include other persons that emit less than the annual greenhouse gas emissions levels set out in this subsection if necessary to comply with any federal reporting requirements for emissions of greenhouse gases.~~

~~((b) In its rules, the department may defer the reporting requirement under (a) of this subsection for emissions associated with interstate and international commercial aircraft, rail, truck, or marine vessels until (i) there is a federal requirement to report these emissions; or (ii) the department finds that there is a generally accepted reporting protocol for determining interstate emissions from these sources.))~~ where those emissions from a single facility, source, or site, or from fossil fuels sold in Washington by a single supplier meet or exceed ten thousand metric tons of carbon dioxide equivalent annually. The department may phase in the requirement to report greenhouse gas emissions until the reporting threshold in this subsection is met, which must occur by January 1, 2012. In addition, the rules must require that:

(i) Emissions of greenhouse gases resulting from the combustion of fossil fuels be reported separately from emissions of greenhouse gases resulting from the combustion of biomass;

(ii) Reporting will start in 2010 for 2009 emissions. Each annual report must include emissions data for the preceding calendar year and must be submitted to the department by October 31st of the year in which the report is due. However, starting in 2011, a person who is required to report greenhouse gas emissions to the United States environmental protection agency under 40 C.F.R. Part 98, as adopted on September 22, 2009, must submit the report required under this section to the department concurrent with the submission to the United States environmental protection agency. Except as otherwise provided in this section, the data for emissions in Washington and any corrections thereto that are

reported to the United States environmental protection agency must be the emissions data reported to the department; and

(iii) Emissions of carbon dioxide associated with the complete combustion or oxidation of liquid motor vehicle fuel, special fuel, or aircraft fuel that is sold in Washington where the annual emissions associated with that combustion or oxidation equal or exceed ten thousand metric tons be reported to the department. Each person who is required to file periodic tax reports of motor vehicle fuel sales under RCW 82.36.031 or special fuel sales under RCW 82.38.150, or each distributor of aircraft fuel required to file periodic tax reports under RCW 82.42.040 must report to the department the annual emissions of carbon dioxide from the complete combustion or oxidation of the fuels listed in those reports as sold in the state of Washington. The department shall not require suppliers to use additional data to calculate greenhouse gas emissions other than the data the suppliers report to the department of licensing. The rules may allow this information to be aggregated when reported to the department. The department and the department of licensing shall enter into an interagency agreement to ensure proprietary and confidential information is protected if the departments share reported information. Any proprietary or confidential information exempt from disclosure when reported to the department of licensing is exempt from disclosure when shared by the department of licensing with the department under this provision.

(b)(i) Except as otherwise provided in this subsection, the rules adopted by the department under (a) of this subsection must be consistent with the regulations adopted by the United States environmental protection agency in 40 C.F.R. Part 98 on September 22, 2009.

(ii) The department may by rule include additional gases to the definition of "greenhouse gas" in RCW 70.235.010 only if the gas has been designated as a greenhouse gas by the United States congress or by the United States environmental protection agency. Prior to including additional gases to the definition of "greenhouse gas" in RCW 70.235.010, the department shall notify the appropriate committees of the legislature. Decisions to amend the rule to include additional gases must be made prior to December 1st of any year and the amended rule may not take effect before the end of the regular legislative session in the next year.

(iii) The department may by rule exempt persons who are required to report greenhouse gas emissions to the United States environmental protection agency and who emit less than ten thousand metric tons carbon dioxide equivalent annually.

(iv) The department must establish a methodology for persons who are not required to report under this section to voluntarily report their greenhouse gas emissions.

(c) The department shall review and if necessary update its rules whenever the United States environmental protection agency adopts final amendments to 40 C.F.R. Part 98 to ensure consistency with federal reporting requirements for emissions of greenhouse gases. However, the department shall not amend its rules in a manner that conflicts with (a) of this subsection.

(d) The department shall share any reporting information reported to it with the local air authority in which the ~~((owner or operator))~~ person reporting under the rules adopted by the department operates.

~~((d))~~ (e) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. ~~((Owners and operators))~~ Persons required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements unless it approves a local air authority's request to enforce the requirements for ~~((sources))~~ persons operating within the authority's jurisdiction. However, neither the department nor a local air authority approved

under this section are authorized to assess enforcement penalties on persons required to report under (a) of this subsection until six months after the department adopts its reporting rule in 2010.

~~((e))~~ (f) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

~~((f) In developing its rules, the department shall, with the assistance of the department of transportation, identify a mechanism to report an aggregate estimate of the annual emissions of greenhouse gases generated from or emitted by otherwise unreported on road motor vehicles.))~~

(g) The inclusion or failure to include any person, source, classes of persons or sources, or types of emissions of greenhouse gases into the department's rules for reporting under this section does not indicate whether such a person, source, or category is appropriate for inclusion in ~~((the multisector market-based system designed under RCW 70.235.020))~~ state, regional, or national greenhouse gas reduction programs or strategies. Furthermore, aircraft fuel purchased in the state may not be considered equivalent to aircraft fuel combusted in the state.

(h) ~~((Should the federal government adopt rules sufficient to track progress toward the emissions reductions required by chapter 14, Laws of 2008 governing the reporting of greenhouse gases, the department shall amend its rules, as necessary, to seek consistency with the federal rules to ensure duplicate reporting is not required. Nothing in this section requires the department to increase the reporting threshold established in (a) of this subsection or otherwise require the department's rules be identical to the federal rules in scope.))~~ (i) The definitions in RCW 70.235.010 apply throughout this subsection (5) unless the context clearly requires otherwise.

(ii) For the purpose of this subsection (5), the term "supplier" includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel importer, as those terms are defined in RCW 82.36.010; (B) a special fuel supplier or a special fuel importer, as those terms are defined in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those terms are defined in RCW 82.42.010.

(iii) For the purpose of this subsection (5), the term "person" includes: (A) An owner or operator, as those terms are defined by the United States environmental protection agency in its mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted on September 22, 2009; and (B) a supplier."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Ranker moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6373.

Senators Ranker and Honeyford spoke in favor of the motion.

#### MOTION

On motion of Senator Marr, Senators Brown, Gordon, Regala and Rockefeller were excused.

The President declared the question before the Senate to be the motion by Senator Ranker that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6373.

The motion by Senator Ranker carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6373 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6373, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6373, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 41; Nays, 4; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Eide, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Carrell, Delvin, King and Morton

Excused: Senators Brown, Fairley, Holmquist and McCaslin  
SUBSTITUTE SENATE BILL NO. 6373, as amended by the House, 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.

#### MESSAGE FROM THE HOUSE

March 4, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6557 with the following amendment(s): 6557-S AMH ENGR H5436.E,

Strike everything after the enacting clause and insert the following:

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

(1) Brake friction material is an essential component of motor vehicle brakes and is critically important to transportation safety and public safety in general;

(2) Debris from brake friction material containing copper and its compounds is generated and released to the environment during normal operation of motor vehicle brakes;

(3) Thousands of pounds of copper and other substances released from brake friction material enter Washington state's streams, rivers, and marine environment every year; and

(4) Copper is toxic to many aquatic organisms, including salmon.

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

(1) "Accredited laboratory" means a laboratory that is:

(a) Qualified and equipped for testing of products, materials, equipment, and installations in accordance with national or international standards; and

(b) Accredited by a third-party organization approved by the department to accredit laboratories for purposes of this chapter.

(2) "Alternative brake friction material" means brake friction material that:

(a) Does not contain:

(i) More than 0.5 percent copper or its compounds by weight;

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(ii) The constituents identified in section 3 of this act at or above the concentrations specified; and

(iii) Other materials determined by the department to be more harmful to human health or the environment than existing brake friction material;

(b) Enables motor vehicle brakes to meet applicable federal safety standards, or if no federal safety standard exists, a widely accepted industry standard;

(c) Is available at a cost and quantity that does not cause significant financial hardship across the majority of brake friction material and vehicle manufacturing industries; and

(d) Is available to enable brake friction material and vehicle manufacturers to produce viable products meeting consumer expectations regarding braking noise, shuddering, and durability.

(3) "Brake friction material" means that part of a motor vehicle brake designed to retard or stop the movement of a motor vehicle through friction against a rotor made of more durable material.

(4) "Committee" means the brake friction material advisory committee.

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

(6)(a) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 that are subject to licensing requirements under RCW 46.16.010.

(b) "Motor vehicle" does not include:

(i) Motorcycles as defined in RCW 46.04.330;

(ii) Motor vehicles employing internal closed oil immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;

(iii) Military combat vehicles;

(iv) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under RCW 46.16.160; or

(v) Collector vehicles, as defined in RCW 46.04.126.

(7)(a) "Motor vehicle brake" means an energy conversion mechanism used to retard or stop the movement of a motor vehicle.

(b) "Motor vehicle brake" does not include brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(8) "Original equipment service" means brake friction material provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle.

(9) "Small volume motor vehicle manufacturer" means a manufacturer of motor vehicles with Washington annual sales of less than one thousand new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model years.

**NEW SECTION. Sec. 3.** (1) Beginning January 1, 2014, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing any of the following constituents in an amount exceeding the specified concentrations:

(a) Asbestiform fibers, 0.1 percent by weight.

(b) Cadmium and its compounds, 0.01 percent by weight.

(c) Chromium(VI)-salts, 0.1 percent by weight.

(d) Lead and its compounds, 0.1 percent by weight.

(e) Mercury and its compounds, 0.1 percent by weight.

(2) Beginning January 1, 2021, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than five percent copper and its compounds by weight.

(3) Brake friction material manufactured prior to 2015 is exempt from subsection (1) of this section for the purposes of clearing inventory. This exemption expires January 1, 2025.

(4) Brake friction material manufactured prior to 2021 is exempt from subsection (2) of this section for the purposes of clearing inventory. This exemption expires January 1, 2031.

(5) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, is exempt from subsection (1) of this section.

(6) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021, is exempt from subsection (2) of this section.

**NEW SECTION. Sec. 4.** (1) By December 1, 2015, the department shall review risk assessments, scientific studies, and other relevant analyses regarding alternative brake friction material and determine whether the material may be available. The department shall consider any new science with regard to the bioavailability and toxicity of copper.

(2) If the department finds that alternative brake friction material may be available, it shall convene a brake friction material advisory committee. The committee shall include, but is not limited to:

(a) A representative of the department, who will chair the committee;

(b) The chief of the Washington state patrol, or the chief's designee;

(c) A representative of manufacturers of brake friction material;

(d) A representative of manufacturers of motor vehicles;

(e) A representative of a nongovernmental organization concerned with motor vehicle safety;

(f) A representative of the national highway traffic safety administration; and

(g) A representative of a nongovernmental organization concerned with the environment.

(3) If convened pursuant to subsection (2) of this section, the committee shall separately assess alternative brake friction material for passenger vehicles, light-duty vehicles, and heavy-duty vehicles. The committee shall make different recommendations to the department as to whether alternative brake friction material is available or unavailable for passenger vehicles, light-duty vehicles, and heavy-duty vehicles. For purposes of this section, "heavy-duty vehicle" means a vehicle used for commercial purposes with a gross vehicle weight rating above twenty-six thousand pounds. The committee shall also consider appropriate exemptions including original equipment service and brake friction material manufactured prior to the dates specified in section 5 of this act. The department shall consider the committee's recommendations and make a finding as to whether alternative brake friction material is available or unavailable.

(4) If, pursuant to subsection (3) of this section, the department finds that alternative brake friction material:

(a) Is available, it shall comply with section 5 of this act;

(b) Is not available, it shall periodically evaluate the finding and, if it determines that alternative brake friction material may be available, comply with subsections (2) and (3) of this section. If the department finds that alternative brake friction material is available, it shall comply with section 5 of this act.

**NEW SECTION. Sec. 5.** If, pursuant to section 4 of this act, the department finds that alternative brake friction material is available:

(1)(a) By December 31st of the year in which the finding is made, the department shall publish the information required by section 4 of this act in the Washington State Register and present it in a report to the appropriate committees of the legislature; and

(b) The report must include recommendations for exemptions on original equipment service and brake friction material manufactured prior to dates specified in this section and may include recommendations for other exemptions.

(2) Beginning eight years after the report in subsection (1) of this section is published in the Washington State Register, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than 0.5 percent copper and its compounds by weight, as specified in the report.

(3) The department shall adopt rules to implement this section.

**NEW SECTION. Sec. 6.** Any motor vehicle manufacturer or brake friction material manufacturer may apply to the department for an exemption from this chapter for brake friction material intended for a specific motor vehicle model or class of motor vehicles based on special needs or characteristics of the motor vehicles for which the brake friction material is intended. Exemptions may only be issued for small volume motor vehicle manufacturers, specific motor vehicle models, or special classes of vehicles, such as fire trucks, police cars, and heavy or wide-load equipment hauling, provided the manufacturer can demonstrate that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship. Exemptions are valid for no less than one year and may be renewed automatically as needed or the exemption may be permanent for as long as the vehicle is used in the manner described in the application.

**NEW SECTION. Sec. 7.** (1) By January 1, 2013, and at least every three years thereafter, manufacturers of brake friction material sold or offered for sale in Washington state shall provide data to the department adequate to enable the department to determine concentrations of antimony, copper, nickel, and zinc and their compounds in brake friction material sold or offered for sale in Washington state.

(2) Using data provided pursuant to subsection (1) of this section and other data as needed, and in consultation with the brake friction material manufacturing industry, the department must:

(a) By July 1, 2013, establish baseline concentration levels for constituents identified in subsection (1) of this section in brake friction material; and

(b) Track progress toward reducing the use of copper and its compounds and ensure that concentration levels of antimony, nickel, or zinc and their compounds do not increase by more than fifty percent above baseline concentration levels.

(3) If concentration levels of antimony, nickel, or zinc and their compounds in brake friction material increase by more than fifty percent above baseline concentration levels, the department shall review scientific studies to determine the potential impact of the constituent on human health and the environment. If scientific studies demonstrate the need for controlling the use of the constituent in brake friction material, the department may consider recommending limits on concentration levels of the constituent in the material.

(4) Confidential business information otherwise protected under RCW 43.21A.160 or chapter 42.56 RCW is exempt from public disclosure.

**NEW SECTION. Sec. 8.** (1) Manufacturers of brake friction material offered for sale in Washington state must certify compliance with the requirements of this chapter and mark proof of certification on the brake friction material in accordance with criteria developed under this section.

(2) By December 1, 2012, the department must, after consulting with interested parties, develop compliance criteria to meet the requirements of this chapter. Compliance criteria includes, but is not limited to:

(a) Self-certification of compliance by brake friction material manufacturers using accredited laboratories; and

(b) Marked proof of certification, including manufacture date, on brake friction material and product packaging. Marked proof of certification must appear by January 1, 2015. Brake friction

material manufactured or packaged prior to January 1, 2015, is exempt from this subsection (2)(b).

(3) Beginning January 1, 2021, manufacturers of new motor vehicles offered for sale in Washington state must ensure that motor vehicles are equipped with brake friction material certified to be compliant with the requirements of this chapter.

**NEW SECTION. Sec. 9.** (1) The department shall enforce this chapter. The department may periodically purchase and test brake friction material sold or offered for sale in Washington state to verify that the material complies with this chapter.

(2) Enforcement of this chapter by the department must rely on notification and information exchange between the department and manufacturers, distributors, and retailers. The department shall issue one warning letter by certified mail to a manufacturer, distributor, or retailer that sells or offers to sell brake friction material in violation of this chapter, and offer information or other appropriate assistance regarding compliance with this chapter. Once a warning letter has been issued to a distributor or retailer for violations under subsections (3) and (5) of this section, the department need not provide warning letters for subsequent violations by that distributor or retailer. For the purposes of subsection (6) of this section, a warning letter serves as notice of the violation. If compliance is not achieved, the department may assess penalties under this section.

(3) A brake friction material distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. Brake friction material distributors or retailers that sell brake friction material that is packaged consistent with section 8(2)(b) of this act are not in violation of this chapter. However, if the department conclusively proves that the brake friction material distributor or retailer was aware that the brake friction material being sold violates section 3 or 5 of this act, the brake friction material distributor or retailer is subject to civil penalties according to this section.

(4) A brake friction material manufacturer that knowingly violates this chapter shall recall the brake friction material and reimburse the brake friction distributor, retailer, or any other purchaser for the material and any applicable shipping and handling charges for returning the material. A brake friction material manufacturer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation.

(5) A motor vehicle distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. A motor vehicle distributor or retailer is not in violation of this chapter for selling a vehicle that was previously sold at retail and that contains brake friction material failing to meet the requirements of this chapter. However, if the department conclusively proves that the motor vehicle distributor or retailer installed brake friction material that violates section 3, 5, or 8(2)(b) of this act on the vehicle being sold and was aware that the brake friction material violates section 3, 5, or 8(2)(b) of this act, the motor vehicle distributor or retailer is subject to civil penalties under this section.

(6) A motor vehicle manufacturer that violates this chapter must notify the registered owner of the vehicle within six months of knowledge of the violation and must replace at no cost to the owner the noncompliant brake friction material with brake friction material that complies with this chapter. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles within six months of knowledge of the violation is subject to a civil penalty not to exceed one hundred thousand dollars. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles after twelve months of knowledge of the violation is subject to a civil penalty not to exceed ten thousand dollars per vehicle. For purposes of this section, "motor vehicle manufacturer" does not

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include a vehicle dealer defined under RCW 46.70.011 and required to be licensed as a vehicle dealer under chapter 46.70 RCW.

(7) Before the effective date of the prohibitions in section 3 or 5 of this act, the department shall prepare and distribute information about the prohibitions to manufacturers, distributors, and retailers to the maximum extent practicable.

(8) All penalties collected under this chapter must be deposited in the state toxics control account created in RCW 70.105D.070.

**NEW SECTION. Sec. 10.** The department may adopt rules necessary to implement this chapter.

**NEW SECTION. Sec. 11.** Sections 1 through 10 and 12 of this act constitute a new chapter in Title 70 RCW.

**NEW SECTION. Sec. 12.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Correct the title.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Ranker moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6557.

Senator Ranker spoke in favor of the motion.

Senator Honeyford spoke against the motion.

The President declared the question before the Senate to be the motion by Senator Ranker that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6557.

The motion by Senator Ranker carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6557 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6557, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6557, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 40; Nays, 6; Absent, 0; Excused, 3.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Eide, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Carrell, Delvin, Honeyford, Morton, Schoesler and Stevens

Excused: Senators Fairley, Holmquist and McCaslin

SUBSTITUTE SENATE BILL NO. 6557, as amended by the House, 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.

MESSAGE FROM THE HOUSE

February 28, 2010

MR. PRESIDENT:

The House passed ENGROSSED SENATE BILL NO. 6221 with the following amendment(s): 6221.E AMH SGTA MADS 179,

On page 4, line 6, after "designee," strike "authorized officer of a school district."

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Prentice moved that the Senate refuse to concur in the House amendment(s) to Engrossed Senate Bill No. 6221 and ask the House to recede therefrom.

Senators Prentice spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Prentice that the Senate refuse to concur in the House amendment(s) to Engrossed Senate Bill No. 6221 and ask the House to recede therefrom.

The motion by Senator Prentice carried and the Senate refused to concur in the House amendment(s) to Engrossed Senate Bill No. 6221 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

February 28, 2010

MR. PRESIDENT:

The House passed SENATE BILL NO. 6243 with the following amendment(s): 6243 AMH SGTA OBRT 114,

On page 13, after line 4, insert the following:

**"NEW SECTION. Sec. 10.** A new section is added to chapter 42.17 RCW to read as follows: The filing of campaign finance reports required under this chapter with the commission shall be sufficient to satisfy local government requirements where the local government requires the same information from a political committee."

Renumber the sections consecutively and correct any internal references accordingly.

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator McDermott moved that the Senate refuse to concur in the House amendment(s) to Senate Bill No. 6243 and ask the House to recede therefrom.

Senators McDermott spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator McDermott that the Senate refuse to concur in the House amendment(s) to Senate Bill No. 6243 and ask the House to recede therefrom.

The motion by Senator McDermott carried and the Senate refused to concur in the House amendment(s) to Senate Bill No. 6243 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

March 4, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6293 with the following amendment(s): 6293-S AMH OBRI H5566.1,

Strike everything after the enacting clause and insert the following:

**Sec. 1.** RCW 9A.76.060 and 1975 1st ex.s. c 260 s 9A.76.060 are each amended to read as follows:

As used in RCW 9A.76.070 and 9A.76.080, "juvenile relative" means a person:

(1) Who was under the age of eighteen at the time of the offense;

(2) Who is related as husband or wife, brother or sister, parent or grandparent, child or grandchild, stepchild or stepparent to the person to whom criminal assistance is rendered; and

~~((2))~~ (3) Who does not render criminal assistance to another person in one or more of the means defined in ((subsections (4), (5), or (6) of)) RCW 9A.76.050 (4), (5), or (6).

**Sec. 2.** RCW 9A.76.070 and 2003 c 53 s 83 are each amended to read as follows:

(1) A person is guilty of rendering criminal assistance in the first degree if he or she renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any class A felony or equivalent juvenile offense.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the first degree is a class C felony.

(b) Rendering criminal assistance in the first degree is a gross misdemeanor if it is established by a preponderance of the evidence that the actor is a juvenile relative as defined in RCW 9A.76.060.

**Sec. 3.** RCW 9A.76.080 and 2003 c 53 s 84 are each amended to read as follows:

(1) A person is guilty of rendering criminal assistance in the second degree if he or she renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent juvenile offense or to someone being sought for violation of parole, probation, or community supervision.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the second degree is a gross misdemeanor.

(b) Rendering criminal assistance in the second degree is a misdemeanor if it is established by a preponderance of the evidence that the actor is a juvenile relative as defined in RCW 9A.76.060.

NEW SECTION. **Sec. 4.** This act may be known and cited as Randy's law."

Correct the title.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Brandland moved that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 6293 and ask the House to recede therefrom.

Senators Brandland and Kline spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Brandland that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 6293 and ask the House to recede therefrom.

The motion by Senator Brandland carried and the Senate refused to concur in the House amendment(s) to Substitute Senate Bill No. 6293 and asked the House to recede therefrom by voice vote.

#### MESSAGE FROM THE HOUSE

February 28, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5295 with the following amendment: 5295-S AMH SGTA H5213.2,

Strike everything after the enacting clause and insert the following:

**Sec. 1.** RCW 70.05.170 and 2009 c 134 s 1 are each amended to read as follows:

(1)(a) The legislature finds that the mortality rate in Washington state among infants and children less than eighteen years of age is unacceptably high, and that such mortality may be preventable. The legislature further finds that, through the performance of child mortality reviews, preventable causes of child mortality can be identified and addressed, thereby reducing the infant and child mortality in Washington state.

(b) It is the intent of the legislature to encourage the performance of child death reviews by local health departments by providing necessary legal protections to the families of children whose deaths are studied, local health department officials and employees, and health care professionals participating in child mortality review committee activities.

(2) As used in this section, "child mortality review" means a process authorized by a local health department as such department is defined in RCW 70.05.010 for examining factors that contribute to deaths of children less than eighteen years of age. The process may include a systematic review of medical, clinical, and hospital records; home interviews of parents and caretakers of children who have died; analysis of individual case information; and review of this information by a team of professionals in order to identify modifiable medical, socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death.

(3) Local health departments are authorized to conduct child mortality reviews. In conducting such reviews, the following provisions shall apply:

~~(a) ((All medical records, reports, and statements procured by, furnished to, or maintained by a local health department pursuant to chapter 70.02 RCW for purposes of a child mortality review are confidential insofar as the identity of an individual child and his or her adoptive or natural parents is concerned. Such records may be used solely by local health departments for the purposes of the review. This section does not prevent a local health department from publishing statistical compilations and reports related to the child mortality review, if such compilations and reports do not identify individual cases and sources of information.~~

~~(b) Any records or documents supplied or maintained for the purposes of a child mortality review are not subject to discovery or subpoena in any administrative, civil, or criminal proceeding related to the death of a child reviewed. This provision shall not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section.~~

~~(c) Any summaries or analyses of records, documents, or records of interviews prepared exclusively for purposes of a child mortality review are not subject to discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of a child reviewed.)~~ All health care information collected as part of a child mortality review is confidential, subject to the restrictions on disclosure provided for in chapter 70.02 RCW. When documents are collected as part of a child mortality review, the records may be used solely by local health departments for the purposes of the review;

(b) No identifying information related to the deceased child, the child's guardians, or anyone interviewed as part of the child mortality review may be disclosed. Any such information shall be redacted from any records produced as part of the review;

(c) Any witness statements or documents collected from witnesses, or summaries or analyses of those statements or records

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prepared exclusively for purposes of a child mortality review, are not subject to public disclosure, discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of a child reviewed. This provision does not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section. This provision shall not restrict or limit the discovery or subpoena of documents from such witnesses simply because a copy of a document was collected as part of a child mortality review;

(d) No local health department official or employee, and no members of technical committees established to perform case reviews of selected child deaths may be examined in any administrative, civil, or criminal proceeding as to the existence or contents of documents assembled, prepared, or maintained for purposes of a child mortality review.

(e) This section shall not be construed to prohibit or restrict any person from reporting suspected child abuse or neglect under chapter 26.44 RCW nor to limit access to or use of any records, documents, information, or testimony in any civil or criminal action arising out of any report made pursuant to chapter 26.44 RCW.

(4) The department shall assist local health departments to collect the reports of any child mortality reviews conducted by local health departments and assist with entering the reports into a database to the extent that the data is not protected under subsection (3) of this section. Notwithstanding subsection (3) of this section, the department shall respond to any requests for data from the database to the extent permitted for health care information under chapter 70.02 RCW. In addition, the department shall provide technical assistance to local health departments and child death review coordinators conducting child mortality reviews and encourage communication among child death review teams. The department shall conduct these activities using only federal and private funding.

(5) This section does not prevent a local health department from publishing statistical compilations and reports related to the child mortality review. Any portions of such compilations and reports that identify individual cases and sources of information must be redacted.

**Sec. 2.** RCW 42.56.380 and 2009 c 33 s 37 are each amended to read as follows:

The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

- (1) Business-related information under RCW 15.86.110;
- (2) Information provided under RCW 15.54.362;
- (3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;
- (4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under

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chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

~~(6) ((Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer;~~

~~(7) Information that can be identified to a particular business and that is collected under RCW 15.17.140(2) and 15.17.143 for certificates of compliance;~~

~~(8) Financial statements provided under RCW 16.65.030(1)(d);) Information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service under RCW 15.19.080;~~

~~(7) Information collected regarding packers and shippers of fruits and vegetables for the issuance of certificates of compliance under RCW 15.17.140(2) and 15.17.143;~~

~~(8) Financial statements obtained under RCW 16.65.030(1)(d) for the purposes of determining whether or not the applicant meets the minimum net worth requirements to construct or operate a public livestock market;~~

(9) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete; and

(10) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or his or her designee that can be identified to a particular business or individual.

**Sec. 3.** RCW 42.56.360 and 2009 c 1 s 24 (Initiative Measure No. 1000) and 2008 c 136 s 5 are each reenacted and amended to read as follows:

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

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

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

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

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

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

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

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

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

~~((h))~~ (h) Information obtained by the department of health under chapter 70.225 RCW; ~~(and~~

~~(i))~~ (i) Information collected by the department of health under chapter 70.245 RCW except as provided in RCW 70.245.150; and

(i) All documents, including completed forms, received pursuant to a wellness program under RCW 41.04.362, but not statistical reports that do not identify an individual.

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

(3)(a) Documents related to infant mortality reviews conducted pursuant to RCW 70.05.170 are exempt from disclosure as provided for in RCW 70.05.170(3).

(b)(i) If an agency provides copies of public records to another agency that are exempt from public disclosure under this subsection (3), those records remain exempt to the same extent the records were exempt in the possession of the originating entity.

(ii) For notice purposes only, agencies providing exempt records under this subsection (3) to other agencies may mark any exempt records as "exempt" so that the receiving agency is aware of the exemption, however whether or not a record is marked exempt does not affect whether the record is actually exempt from disclosure.

**Sec. 4.** RCW 41.04.362 and 1987 c 248 s 2 are each amended to read as follows:

(1) ~~((The))~~ Directors of ((the department of personnel)) state and local entities, in consultation with applicable state agencies and employee organizations, may develop and administer a voluntary state employee wellness program.

(2) ~~((The))~~ A director may:

(a) Develop and implement state employee wellness policies, procedures, and activities;

(b) Disseminate wellness educational materials to ~~((state))~~ agencies and employees;

(c) Encourage the establishment of wellness activities in ~~((state))~~ agencies;

(d) Provide technical assistance and training to agencies conducting wellness activities for their employees;

(e) Develop standards by which agencies sponsoring specific wellness activities may impose a fee to participating employees to help defray the cost of those activities;

(f) Monitor and evaluate the effectiveness of this program, including the collection, analysis, and publication of relevant statistical information; and

(g) Perform other duties and responsibilities as necessary to carry out the purpose of this section.

(3) No wellness program or activity that involves or requires organized or systematic physical exercise may be implemented or conducted during normal working hours.

**NEW SECTION. Sec. 5.** RCW 41.04.364 (State employee wellness program--Confidentiality of individually identifiable information) and 1987 c 248 s 3 are each repealed.

**Sec. 6.** RCW 28C.18.020 and 1991 c 238 s 3 are each amended to read as follows:

(1) There is hereby created the workforce training and education coordinating board as a state agency and as the successor agency to the state board for vocational education. Once the coordinating board has convened, all references to the state board for vocational education in the Revised Code of Washington shall be construed to mean the workforce training and education coordinating board, except that reference to the state board for vocational education in RCW 49.04.030 shall mean the state board for community and technical colleges.

(2)(a) The board shall consist of nine voting members appointed by the governor with the consent of the senate, as follows: Three representatives of business, three representatives of labor, and, serving as ex officio members, the superintendent of public instruction, the executive director of the state board for community and technical colleges, and the commissioner of the employment security department. The chair of the board shall be a nonvoting member selected by the governor with the consent of the senate, and shall serve at the pleasure of the governor. In selecting the chair, the governor shall seek a person who understands the future economic needs of the state and nation and the role that the state's training system has in meeting those needs. Each voting member of the board may appoint a designee to function in his or her place with the right to vote. In making appointments to the board, the governor shall seek to ensure geographic, ethnic, and gender diversity and balance. The governor shall also seek to ensure diversity and balance by the appointment of persons with disabilities.

(b) The business representatives shall be selected from among nominations provided by a statewide business organization representing a cross-section of industries. However, the governor may request, and the organization shall provide, an additional list or lists from which the governor shall select the business representatives. The nominations and selections shall reflect the cultural diversity of the state, including women, people with disabilities, and racial and ethnic minorities, and diversity in sizes of businesses.

(c) The labor representatives shall be selected from among nominations provided by statewide labor organizations. However, the governor may request, and the organizations shall provide, an additional list or lists from which the governor shall select the labor representatives. The nominations and selections shall reflect the cultural diversity of the state, including women, people with disabilities, and racial and ethnic minorities.

(d) Each business member may cast a proxy vote or votes for any business member who is not present and who authorizes in writing the present member to cast such vote.

(e) Each labor member may cast a proxy vote for any labor member who is not present and who authorizes in writing the present member to cast such vote.

(f) The chair shall appoint to the board one nonvoting member to represent racial and ethnic minorities, women, and people with disabilities. The nonvoting member appointed by the chair shall serve for a term of four years with the term expiring on June 30th of the fourth year of the term.

(g) The business members of the board shall serve for terms of four years, the terms expiring on June 30th of the fourth year of the term except that in the case of initial members, one shall be appointed to a two-year term and one appointed to a three-year term.

(h) The labor members of the board shall serve for terms of four years, the terms expiring on June 30th of the fourth year of the term except that in the case of initial members, one shall be appointed to a two-year term and one appointed to a three-year term.

(i) Any vacancies among board members representing business or labor shall be filled by the governor with nominations provided by statewide organizations representing business or labor, respectively.



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(j) The board shall adopt bylaws and shall meet at least bimonthly and at such other times as determined by the chair who shall give reasonable prior notice to the members or at the request of a majority of the voting members.

(k) Members of the board shall be compensated in accordance with RCW 43.03.040 and shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(l) The board shall be formed and ready to assume its responsibilities under this chapter by October 1, 1991.

(m) The director of the board shall be appointed by the governor from a list of three names submitted by a committee made up of the business and labor members of the board. However, the governor may request, and the committee shall provide, an additional list or lists from which the governor shall select the director. ~~((The lists compiled by the committee shall not be subject to public disclosure.))~~ The governor may dismiss the director only with the approval of a majority vote of the board. The board, by a majority vote, may dismiss the director with the approval of the governor.

(3) The state board for vocational education is hereby abolished and its powers, duties, and functions are hereby transferred to the workforce training and education coordinating board. All references to the director or the state board for vocational education in the Revised Code of Washington shall be construed to mean the director or the workforce training and education coordinating board.

**Sec. 7.** RCW 79A.25.150 and 2007 c 241 s 51 are each amended to read as follows:

When requested by the board, members employed by the state shall furnish assistance to the board from their departments for the analysis and review of proposed plans and projects, and such assistance shall be a proper charge against the appropriations to the several agencies represented on the board. Assistance may be in the form of money, personnel, or equipment and supplies, whichever is most suitable to the needs of the board.

The director of the recreation and conservation office shall be appointed by, and serve at the pleasure of, the governor. The governor shall select the director from a list of three candidates submitted by the board. However, the governor may request and the board shall provide an additional list or lists from which the governor may select the director. ~~((The lists compiled by the board shall not be subject to public disclosure.))~~ The director shall have background and experience in the areas of recreation and conservation management and policy. The director shall be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The director shall appoint such personnel as may be necessary to carry out the duties of the office. Not more than three employees appointed by the director shall be exempt from the provisions of chapter 41.06 RCW.

**Sec. 8.** RCW 42.56.330 and 2008 c 200 s 6 are each amended to read as follows:

The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

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

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

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to

other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

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

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

(a) This information may be disclosed in aggregate form if the data does not contain any personally identifying information.

(b) Personally identifying information may be released to law enforcement agencies if the request is accompanied by a court order;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010;

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order; and

(8) The personally identifying information of persons who acquire and use a driver's license or identocard that includes a radio frequency identification chip or similar technology to facilitate border crossing. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. Personally identifying information may be released to law enforcement agencies only for United States customs and border protection enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

**Sec. 9.** RCW 42.56.250 and 2006 c 209 s 6 are each amended to read as follows:

The following employment and licensing information is exempt from public inspection and copying under this chapter:

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

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

(3) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the

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

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

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

(6) ~~((Except as provided in RCW 47.64.220, salary and employee benefit information collected under RCW 47.64.220(1) and described in RCW 47.64.220(2).))~~ Criminal history records checks for board staff finalist candidates conducted pursuant to RCW 43.33A.025; and

(7) Except as provided in RCW 47.64.220, salary and benefit information for maritime employees collected from private employers under RCW 47.64.220(1) and described in RCW 47.64.220(2)."

Correct the title.  
and the same are herewith transmitted

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Kline moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5295.

Senator Kline spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kline that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5295.

The motion by Senator Kline carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5295 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5295, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5295, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

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

Excused: Senators Fairley and McCaslin

SUBSTITUTE SENATE BILL NO. 5295, as amended by the House, 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.

#### MESSAGE FROM THE HOUSE

March 3, 2010

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5529 with the following amendment(s): 5529-S.E AMH APPG H3086.1,

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 18.08.310 and 1985 c 37 s 2 are each amended to read as follows:

(1) It is unlawful for any person to practice or offer to practice architecture in this state, ((architecture)) or to use in connection with his or her name or otherwise assume, use, or advertise any title or description including the word "architect," "architecture," "architectural," or language tending to imply that he or she is an architect, unless the person is registered or authorized to practice in the state of Washington under this chapter.

(2) An architect or architectural firm registered in any other jurisdiction recognized by the board may offer to practice architecture in this state if:

(a) It is clearly and prominently stated in such an offer that the architect or firm is not registered to practice architecture in the state of Washington; and

(b) Prior to practicing architecture or signing a contract to provide architectural services, the architect or firm must be registered to practice architecture in this state.

(3) A person who has an accredited architectural degree may use the title "intern architect" when enrolled in a structured intern program recognized by the board and working under the direct supervision of an architect.

(4) The provisions of this section shall not affect the use of the words "architect," "architecture," or "architectural" where a person does not practice or offer to practice architecture.

**Sec. 2.** RCW 18.08.320 and 1985 c 37 s 3 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) "Accredited architectural degree" means a professional degree from an institution of higher education accredited by the national architectural accreditation board or an equivalent degree in architecture as determined by the board.

(2) "Administration of the construction contract" means the periodic observation of materials and work to observe the general compliance with the construction contract documents, and does not include responsibility for supervising construction methods and processes, site conditions, equipment operations, personnel, or safety on the work site.

~~((2))~~ (3) "Architect" means an individual who is registered under this chapter to practice architecture.

~~((3))~~ (4) "Board" means the state board ((of registration)) for architects.

~~((4))~~ (5) "Certificate of authorization" means a certificate issued by the director to a ((corporation or partnership)) business entity that authorizes the entity to practice architecture.

~~((5))~~ (6) "Certificate of registration" means the certificate issued by the director to newly registered architects.

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

~~((7))~~ (8) "Director" means the director of licensing.

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~~((8))~~ (9) "Engineer" means an individual who is registered as an engineer under chapter 18.43 RCW.

~~((9))~~ (10) "Person" means any individual, partnership, professional service corporation, corporation, joint stock association, joint venture, or any other entity authorized to do business in the state.

~~((10))~~ (11) "Practice of architecture" means the rendering of services in connection with the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction of alterations or additions to the structures, including but not specifically limited to pre-design services, schematic design, design development, preparation of construction contract documents, and administration of the construction contract.

~~((11))~~ (12) "Prototypical documents" means drawings or specifications, prepared by a person registered as an architect in any state or as otherwise approved by the board, that are not intended as final and complete technical submissions for a building project, but rather are to serve as a prototype for a building or buildings to be adapted by an architect for construction in more than one location.

(13) "Registered" means holding a currently valid certificate of registration or certificate of authorization issued by the director authorizing the practice of architecture.

~~((12))~~ (14) "Structure" means any construction consisting of load-bearing members such as the foundation, roof, floors, walls, columns, girders, and beams or a combination of any number of these parts, with or without other parts or appurtenances.

(15) "Review" means a process of examination and evaluation, of the documents, for compliance with applicable laws, codes, and regulations affecting the built environment that includes the ability to control the final product.

(16) "Registered professional design firm" means a business entity registered in Washington to offer and provide architectural services under RCW 18.08.420.

(17) "Managers" means the members of a limited liability company in which management of its business is vested in the members, and the managers of a limited liability company in which management of its business is vested in one or more managers.

**Sec. 3.** RCW 18.08.330 and 1985 c 37 s 4 are each amended to read as follows:

There is ~~(hereby)~~ created a state board ~~(of registration)~~ for architects consisting of seven members who shall be appointed by the governor. Six members shall be registered architects who are residents of the state and have at least eight years' experience in the practice of architecture as registered architects in responsible charge of architectural work or responsible charge of architectural teaching. One member shall be a public member, who is not and has never been a registered architect and who does not employ and is not employed by or professionally or financially associated with an architect.

The terms of each newly appointed member shall be six years. ~~((The members of the board of registration for architects serving on July 28, 1985, shall serve out the remainders of their existing five-year terms. The term of the public member shall coincide with the term of an architect.))~~

Every member of the board shall receive a certificate of appointment from the governor. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of six years or until the next successor has been appointed.

The governor may remove any member of the board for cause. Vacancies in the board for any reason shall be filled by appointment for the unexpired term.

The board shall elect a ~~(chairman)~~ chair, a ~~(vice-chairman)~~ vice-chair, and a secretary. The secretary may delegate his or her authority to the executive ~~(secretary)~~ director.

Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

**Sec. 4.** RCW 18.08.340 and 2002 c 86 s 201 are each amended to read as follows:

(1) The board may adopt such rules under chapter 34.05 RCW as are necessary for the proper performance of its duties under this chapter.

(2) The director shall employ an executive ~~(secretary)~~ director subject to approval by the board.

**Sec. 5.** RCW 18.08.350 and 1997 c 169 s 1 are each amended to read as follows:

(1) A certificate of registration shall be granted by the director to all qualified applicants who are certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required experience.

(2) Applications for examination shall be filed as the board prescribes by rule. The application and examination fees shall be determined by the director under RCW 43.24.086.

(3) An applicant for registration as an architect shall be of a good moral character, at least eighteen years of age, and shall possess ~~(either)~~ one of the following qualifications:

(a) Have an accredited architectural degree and at least three years' practical architectural work experience ~~(and have completed the requirements of)~~ in a structured intern training program approved by the board; or

(b) Have ~~(eight years' practical architectural work experience, which may include designing buildings as a principal activity, and have completed the requirements of a structured intern training program approved by the board. Each year spent in an accredited architectural education program approved by the board shall be considered one year of practical experience. At least four years' practical work experience shall be under the direct supervision of an architect)~~ a high school diploma or equivalent and at least nine years of practical architectural work experience, including the completion of a structured intern training program under the direct supervision of an architect as determined by the board. Prior to applying to enroll in a structured intern training program, the applicant must have at least six years of work experience, of which three years must be under the direct supervision of an architect. This work experience may include designing buildings as a principal activity and postsecondary education as determined by the board. The board may approve up to four years of practical architectural work experience for postsecondary education courses in architecture, architectural technology, or a related field, as determined by the board, including courses completed in a community or technical college if the courses are equivalent to courses in an accredited architectural degree program.

**Sec. 6.** RCW 18.08.360 and 1985 c 37 s 7 are each amended to read as follows:

(1) The examination for an architect's certificate of registration shall be held at least annually at such time and place as the board determines.

(2) The board shall determine the content, scope, and grading process of the examination. The board may adopt an appropriate national examination and grading procedure.

(3) Applicants who fail to pass any section of the examination shall be permitted to retake the parts failed as prescribed by the board. Applicants have five years from the date of the first passed examination section to pass all remaining sections. If the entire examination is not successfully completed within five years, ~~((a retake of the entire examination shall be required))~~ any sections that were passed more than five years prior must be retaken. If a candidate fails to pass all remaining sections within the initial five-year period, the candidate is given a new five-year period from

the date of the second oldest passed section. All sections of the examination must be passed within a single five-year period for the applicant to be deemed to have passed the complete examination.

(4) Applicants for registration who have an accredited architectural degree may begin taking the examination upon enrollment in a structured intern training program as approved by the board. Applicants who do not possess an accredited architectural degree may take the examination only after completing the experience and intern training requirements of this chapter.

**Sec. 7.** RCW 18.08.370 and 1985 c 37 s 8 are each amended to read as follows:

(1) The director shall issue a certificate of registration to any applicant who has, to the satisfaction of the board, met all the requirements for registration upon payment of the registration fee as provided in this chapter. All certificates of registration shall show the full name of the registrant, have the registration number, and shall be signed by the ~~((chairman))~~ chair of the board and by the director. The issuance of a certificate of registration by the director is prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered architect.

(2) Each registrant shall obtain a seal of the design authorized by the board bearing the architect's name, registration number, the legend "Registered Architect," and the name of this state. ~~((Drawings prepared by the registrant shall be sealed and signed by the registrant when filed with public authorities.))~~ All technical submissions prepared by an architect and filed with public authorities must be sealed and signed by the architect. It is unlawful to seal and sign a document after a registrant's certificate of registration or authorization has expired, been revoked, or is suspended.

(3) An architect may seal and sign technical submissions under the following conditions:

(a) An architect may seal and sign technical submissions that are: Prepared by the architect; prepared by the architect's regularly employed subordinates; prepared in part by an individual or firm under a direct subcontract with the architect; or prepared in collaboration with an architect who is licensed in a jurisdiction recognized by the board, provided there is a contractual agreement between the architects.

(b) An architect may seal and sign technical submissions based on prototypical documents provided: The architect obtains written permission from the architect who prepared or sealed the prototypical documents, and from the legal owner to adapt the prototypical documents; the architect thoroughly analyzes the prototypical documents, makes necessary revisions, and adds all required elements and design information, including the design services of engineering consultants, if warranted, so that the prototypical documents become suitable complete technical submissions, in compliance with applicable codes, regulations, and site-specific requirements.

(c) An architect who seals and signs the technical submissions under this subsection (3) is responsible to the same extent as if the technical submissions were prepared by the architect.

**Sec. 8.** RCW 18.08.410 and 1985 c 37 s 12 are each amended to read as follows:

This chapter shall not affect or prevent:

(1) The practice of naval architecture, landscape architecture as authorized in chapter 18.96 RCW, engineering as authorized in chapter 18.43 RCW, or the provision of space planning~~((s))~~ or interior design~~((, or any legally recognized profession or trade by persons not registered as architects))~~ services not affecting public health or safety;

(2) Drafters, clerks, project managers, superintendents, and other employees of architects~~((, engineers, naval architects, or landscape architects))~~ from acting under the instructions, control, or supervision of ~~((their employers))~~ an architect;

(3) The construction, alteration, or supervision of construction of buildings or structures by contractors registered under chapter 18.27 RCW or superintendents employed by contractors or the preparation of shop drawings in connection therewith;

(4) Owners or contractors registered under chapter 18.27 RCW from engaging persons who are not architects to observe and supervise construction of a project;

(5) Any person from doing design work including preparing construction contract documents and administration of the construction contract for the erection, enlargement, repair, or alteration of a structure or any appurtenance to a structure regardless of size, if the structure is to be used for a residential building of up to and including four dwelling units or a farm building or is a structure used in connection with or auxiliary to such residential building or farm building such as a garage, barn, shed, or shelter for animals or machinery;

(6) Except as otherwise provided in this section, any person from doing design work including preparing construction contract documents and administering the contract for construction, erection, enlargement, alteration, or repairs of or to a building of any occupancy up to a total building size of four thousand square feet ~~((of construction)); or~~

~~((Design-build construction by registered general contractors if the structural design services are performed by a registered engineer;~~

~~—(8) Any person from designing buildings or doing other design work for any structure prior to the time of filing for a building permit; or~~

~~—(9) Any person from designing buildings or doing other design work for structures larger than those exempted under subsections (5) and (6) of this section, if the plans, which may include such design work, are stamped by a registered engineer or architect)~~ Any person from doing design work, including preparing construction contract documents and administration of the contract, for alteration of or repairs to a building where the project size is not more than four thousand square feet in a building greater than four thousand square feet and when the work contemplated by the design does not affect the life safety or structural systems of the building. The combined square footage of simultaneous projects allowed under this subsection (7) may not exceed four thousand square feet .

**Sec. 9.** RCW 18.08.420 and 2002 c 86 s 203 are each amended to read as follows:

(1) ~~((An architect or architects may organize a corporation formed either as a business corporation under the provisions of Title 23B RCW or as a professional corporation under the provisions of chapter 18.100 RCW. For an architect or architects to practice architecture through a corporation or joint stock association organized by any person under Title 23B RCW, the corporation or joint stock association shall file with the board:~~

~~—(a) The application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the corporation is qualified under this chapter to practice architecture in this state;~~

~~—(b) Its notices of incorporation and bylaws and a certified copy of a resolution of the board of directors of the corporation that designates individuals registered under this chapter as responsible for the practice of architecture by the corporation in this state and that provides that full authority to make all final architectural decisions on behalf of the corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the individuals designated in the resolution. The filing of the resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract; and~~

~~—(c) A designation in writing setting forth the name or names of the person or persons registered under this chapter who are~~

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responsible for the architecture of the firm. If there is a change in the person or persons responsible for the architecture of the firm, the changes shall be designated in writing and filed with the board within thirty days after the effective date of the changes.) Any business entity, including a sole proprietorship, offering architecture services in Washington state must register with the board, regardless of its business structure. A business entity shall file with the board a list of individuals registered under this chapter as responsible for the practice of architecture by the business entity in this state and provides that full authority to make all final architectural decisions on behalf of the business entity with respect to work performed by the business entity in this state. Further, the person having the practice of architecture in his/her charge is himself/herself a general partner (if a partnership or limited liability partnership), or a manager (if a limited liability company), or a director (if a business corporation or professional service corporation) and is registered to practice architecture in this state.

(2) The business entity shall furnish the board with such information about its organization and activities as the board shall require by rule.

(3) Upon the filing with the board of the application for certificate of authorization, the certified copy of the resolution, and the information specified in subsection (1) of this section, the board shall authorize the director to issue to the ~~((corporation))~~ business entity a certificate of authorization to practice architecture in this state ~~((upon a determination by the board that:~~

~~— (a) The bylaws of the corporation contain provisions that all architectural decisions pertaining to any project or architectural activities in this state shall be made by the specified architects responsible for the project or architectural activities, or other responsible architects under the direction or supervision of the architects responsible for the project or architectural activities;~~

~~— (b) The applicant corporation has the ability to provide, through qualified personnel, professional services or creative work requiring architectural experience, and with respect to the architectural services that the corporation undertakes or offers to undertake, the personnel have the ability to apply special knowledge to the professional services or creative work such as consultation, investigation, evaluation, planning, design, and administration of the construction contract in connection with any public or private structures, buildings, equipment, processes, works, or projects;~~

~~— (c) The application for certificate of authorization contains the professional records of the designated person or persons who are responsible;~~

~~— (d) The application for certificate of authorization states the experience of the corporation, if any, in furnishing architectural services during the preceding five year period;~~

~~— (e) The applicant corporation meets such other requirements related to professional competence in the furnishing of architectural services as may be established and promulgated by the board in furtherance of the purposes of this chapter; and~~

~~— (f) The applicant corporation is possessed of the ability and competence to furnish architectural services in the public interest.~~

~~— (3) Upon recommendation of the board to impose action as authorized in RCW 18.235.110, the director may impose the recommended action upon a certificate of authorization to a corporation if the board finds that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of the corporation have committed an act prohibited under RCW 18.08.440 or 18.235.130 or have been found personally responsible for misconduct under subsection (6) or (7) of this section.~~

~~— (4) In the event a corporation, organized solely by a group of architects each registered under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to that corporation based on a review of the~~

~~professional records of such incorporators, in lieu of the required qualifications set forth in subsections (1) and (2) of this section. In the event the ownership of such corporation is altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners if exclusively architects, under the qualifications required by subsections (1) and (2) of this section).~~

~~((5))~~ (4) Any ~~((corporation))~~ business entity practicing or offering to practice architecture, whether or not it is authorized to practice architecture under this chapter, ~~((together with its directors and officers for their own individual acts, are))~~ shall be jointly and severally responsible to the same degree as an individual registered architect and shall conduct their business without misconduct or malpractice in the practice of architecture as defined in this chapter.

~~((6))~~ (5) Any ~~((corporation))~~ business entity that has been certified under this chapter and has engaged in the practice of architecture may have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board finds that the ~~((corporation))~~ business entity has committed misconduct or malpractice under RCW 18.08.440 or 18.235.130. In such a case, any individual architect registered under this chapter who is involved in such misconduct or malpractice is also subject to disciplinary measures provided in this chapter and RCW 18.235.110.

~~((7) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the direction of the designated architects and shall be signed by and stamped with the official seal of the designated architects in the corporation authorized under this chapter.~~

~~— (8))~~ (6) For each certificate of authorization issued under this section there shall be paid a certification fee and an annual certification renewal fee as prescribed by the director under RCW 43.24.086.

~~((9) This chapter shall not affect the practice of architecture as a professional service corporation under chapter 18.100 RCW.)~~

**Sec. 10.** RCW 18.08.430 and 1985 c 37 s 14 are each amended to read as follows:

(1) The renewal date for certificates of registration shall be set by the director in accordance with RCW 43.24.086. Registrants who fail to pay the renewal fee within thirty days of the due date shall pay all delinquent fees plus a penalty fee equal to one-third of the renewal fee. A registrant who fails to pay a renewal fee for a period of five years may be reinstated under such circumstances as the board determines. The renewal and penalty fees and the frequency of renewal assessment shall be authorized under this chapter. Renewal date for certificates of authorization shall be the anniversary of the date of authorization.

(2) Any registrant in good standing may withdraw from the practice of architecture by giving written notice to the director, and may within five years thereafter resume active practice upon payment of the then-current renewal fee. A registrant may be reinstated after a withdrawal of more than five years under such circumstances as the board determines.

(3) A registered architect must demonstrate professional development since the architect's last renewal or initial registration, as the case may be. The board shall by rule describe professional development activities acceptable to the board and the form of documentation of the activities required by the board. The board may decline to renew a registration if the architect's professional development activities do not meet the standards set by the board by rule. When adopting rules under the authority of this subsection, the board shall strive to ensure that the rules are consistent with the continuing professional education requirements and systems in use by national professional organizations representing architects and in

use by other states.

(a) A registered architect shall, as part of his or her license renewal, certify that he or she has completed the required continuing professional development required by this section.

(b) The board may adopt reasonable exemptions from the requirements of this section.

**NEW SECTION. Sec. 11.** Sections 7 through 10 of this act take effect July 1, 2011.

**NEW SECTION. Sec. 12.** Section 5 of this act takes effect July 1, 2012, and all persons enrolled in an intern training program as approved by the board before July 1, 2012, shall be governed by the statute in effect at the time of enrollment in the program." and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Kohl-Welles moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5529.

Senators Kohl-Welles and Holmquist spoke in favor of passage of the motion.

The President declared the question before the Senate to be the motion by Senator Kohl-Welles that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5529.

The motion by Senator Kohl-Welles carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5529 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5529, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5529, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 42; Nays, 5; Absent, 0; Excused, 2.

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

Voting nay: Senators Becker, Carrell, Holmquist, Honeyford and Stevens

Excused: Senators Fairley and McCaslin

ENGROSSED SUBSTITUTE SENATE BILL NO. 5529, as amended by the House, 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.

#### MESSAGE FROM THE HOUSE

February 28, 2010

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5704 with the following amendment: 5704-S.E AMH LGH H5379.1,

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 85.38.090 and 1991 c 349 s 12 are each amended to read as follows:

(1) Whenever the governing body of a special district has more than three members, the governing body shall be reduced to three members as of January 1, 1986, by eliminating the positions of those district governing body members with the shortest remaining terms of office. The remaining three governing body members shall have staggered terms with the one having the shortest remaining term having his or her position filled at the 1987 special district general election, the one with the next shortest remaining term having his or her position filled at the 1989 special district general election, and the one with the longest remaining term having his or her position filled at the 1992 special district general election. If any of these remaining three governing body members have identical remaining terms of office, the newly calculated remaining terms of these persons shall be determined by lot with the county auditor who assists the special district in its elections managing such lot procedure. The newly established terms shall be recorded by the county auditor.

(2) However, whenever five or more special districts have consolidated under chapter 85.36 RCW and the consolidated district has five members in its governing body on July 28, 1985, the consolidated district may adopt a resolution retaining a five-member governing body. At any time thereafter, such a district may adopt a resolution and reduce the size of the governing body to three members with the reduction occurring as provided in subsection (1) of this section, but the years of the effective dates shall be extended so that the reduction occurs at the next January 1st occurring after the date of the adoption of the resolution. Whenever a special district is so governed by a five-member governing body, two members shall be elected at each of two consecutive special district general elections, and one member shall be elected at the following special district general election, each to serve a six-year staggered term.

(3) Nothing in this section permits the governing body of a flood control district that is subject to section 2 of this act to reduce the size of its governing body.

**NEW SECTION. Sec. 2.** A new section is added to chapter 85.38 RCW to read as follows:

The following provisions apply to the governing bodies of flood control districts that, upon creation, have territory in three or more counties:

(1) The governing body shall include one member from each county with territory in the district, and two additional members selected as provided by this section. No more than two governing members may be from the same county.

(2) The initial members of the governing body must be chosen by each county legislative authority within which the district resides, with each county choosing one member, and the two counties with the largest populations within the district choosing one additional member each. The initial governing body members shall serve until their successors are elected and qualified at the next special district general election.

(3) At this first election, the members receiving the two greatest number of votes shall serve six-year terms, the members receiving the third and fourth greatest number of votes shall serve four-year terms, and the remaining members shall serve two-year terms of office.

(4) The requirements for the filing period, method for filing declarations of candidacy, and the arrangement of candidate names on the ballot for all special district general elections conducted after the initial election in the district shall be the same as the requirements for the initial election in the district. No primary elections may be held for the governing body of a flood control district that, upon creation, has territory in three or more counties.

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(5) A vacancy occurs upon the death, resignation, or incapacity of a governing body member, or whenever the governing body member ceases to be a registered voter of the district.

(6)(a) Whenever a vacancy occurs in the governing body, the legislative authority of the county within which the largest geographic portion of the district is located shall appoint a registered voter to serve until a person is elected, at the next special district general election occurring sixty or more days after the vacancy has occurred, to serve the remainder of the unexpired term. The person so elected shall take office immediately when qualified as defined in RCW 29A.04.133.

(b) If an election for the position that became vacant would otherwise have been held at this special district general election, only one election shall be held and the person elected to fill the succeeding term for that position shall take office immediately when qualified as defined in RCW 29A.04.133 and shall serve both the remainder of the unexpired term and the succeeding term.

(7) An elected or appointed member of the governing body, or a candidate for the governing body, must be a registered voter of the flood control district who has resided within the district for period of not less than thirty days before the election. In accordance with RCW 85.38.127, land ownership is not a requirement for serving on the governing body of the district." and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Swecker moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5704. Senator Swecker spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Swecker that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5704.

The motion by Senator Swecker carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5704 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5704, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5704, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

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

Excused: Senators Fairley and McCaslin

ENGROSSED SUBSTITUTE SENATE BILL NO. 5704, as amended by the House, 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.

MESSAGE FROM THE HOUSE

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6214 with the following amendment(s): 6214-S AMH LGH H5378,

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 36.70A.110 and 2009 c 342 s 1 and 2009 c 121 s 1 are each reenacted and amended to read as follows:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served

adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and under this section. Such action may be appealed to the ~~((appropriate))~~ growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

(8)(a) Except as provided in (b) of this subsection, the expansion of an urban growth area is prohibited into the one hundred year floodplain of any river or river segment that: (i) Is located west of the crest of the Cascade mountains; and (ii) has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (8)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a floodplain and lack adjacent buildable areas outside the floodplain;

(ii) Urban growth areas where expansions are precluded outside floodplains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the floodplain; or

(B) Expansions outside the floodplain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the floodplain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the floodplain; or

(B) Urban development already exists within a floodplain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects, including but not limited to habitat enhancement or

environmental restoration; storm water facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase storm water runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) For the purposes of this subsection (8), "one hundred year floodplain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

**Sec. 2.** RCW 36.70A.130 and 2009 c 479 s 23 are each amended to read as follows:

(1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section.

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

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

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

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the time periods specified in subsection (4) of this section or in accordance with the provisions of subsections (5) and (8) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea;

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

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

(iv) Until June 30, 2006, the designation of recreational lands under RCW 36.70A.1701. A county amending its comprehensive plan pursuant to this subsection (2)(a)(iv) may not do so more frequently than every eighteen months; and



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

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with ((a)) the growth management hearings board or with the court.

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

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

(4) The department shall establish a schedule for counties and cities to take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter. Except as provided in subsections (5) and (8) of this section, the schedule established by the department shall provide for the reviews and evaluations to be completed as follows:

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

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

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

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

(5)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the time limits established in subsection (4) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a schedule established by the department under subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the date established in the applicable schedule: The county has a

population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the date established in the applicable schedule as of that date.

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

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

(6) A county or city subject to the time periods in subsection (4)(a) of this section that, pursuant to an ordinance adopted by the county or city establishing a schedule for periodic review of its comprehensive plan and development regulations, has conducted a review and evaluation of its comprehensive plan and development regulations and, on or after January 1, 2001, has taken action in response to that review and evaluation shall be deemed to have conducted the first review required by subsection (4)(a) of this section. Subsequent review and evaluation by the county or city of its comprehensive plan and development regulations shall be conducted in accordance with the time periods established under subsection (4)(a) of this section.

(7) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities: (a) Complying with the schedules in this section; (b) demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas; or (c) complying with the extension provisions of subsection (5)(b) or (c) of this section may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW. A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8) Except as provided in subsection (5)(b) and (c) of this section:

(a) Counties and cities required to satisfy the requirements of this section according to the schedule established by subsection (4)(b) through (d) of this section may comply with the requirements of this section for development regulations that protect critical areas one year after the dates established in subsection (4)(b) through (d) of this section;

(b) Counties and cities complying with the requirements of this section one year after the dates established in subsection (4)(b) through (d) of this section for development regulations that protect critical areas shall be deemed in compliance with the requirements of this section; and

(c) This subsection (8) applies only to the counties and cities specified in subsection (4)(b) through (d) of this section, and only to the requirements of this section for development regulations that protect critical areas that must be satisfied by December 1, 2005, December 1, 2006, and December 1, 2007.

(9) Notwithstanding subsection (8) of this section and the substantial progress provisions of subsections (7) and (10) of this section, only those counties and cities complying with the schedule in subsection (4) of this section, or the extension provisions of

subsection (5)(b) or (c) of this section, may receive preferences for grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW.

(10) Until December 1, 2005, and notwithstanding subsection (7) of this section, a county or city subject to the time periods in subsection (4)(a) of this section demonstrating substantial progress towards compliance with the schedules in this section for its comprehensive land use plan and development regulations may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW. A county or city that is fewer than twelve months out of compliance with the schedules in this section for its comprehensive land use plan and development regulations is deemed to be making substantial progress towards compliance.

**Sec. 3.** RCW 36.70A.172 and 1995 c 347 s 105 are each amended to read as follows:

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, ~~((a))~~ the growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas.

**Sec. 4.** RCW 36.70A.250 and 1994 c 249 s 29 are each amended to read as follows:

~~((1))~~ There are hereby created three growth management hearings boards for the state of Washington. The boards shall be established as follows:

~~— (a) An Eastern Washington board with jurisdictional boundaries including all counties that are required to or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains;~~

~~— (b) A Central Puget Sound board with jurisdictional boundaries including King, Pierce, Snohomish, and Kitsap counties; and~~

~~— (c) A Western Washington board with jurisdictional boundaries including all counties that are required or choose to plan under RCW 36.70A.040 and are located west of the crest of the Cascade mountains and are not included in the Central Puget Sound board jurisdictional boundaries. Skamania county, should it be required or choose to plan under RCW 36.70A.040, may elect to be included within the jurisdictional boundaries of either the Western or Eastern board.~~

~~(2) Each board shall only hear matters pertaining to the cities and counties located within its jurisdictional boundaries.)~~ (1) A growth management hearings board for the state of Washington is created. The board shall consist of seven members qualified by experience or training in matters pertaining to land use law or land use planning and who have experience in the practical application of those matters. All seven board members shall be appointed by the governor, two each residing respectively in the Central Puget Sound, Eastern Washington, and Western Washington regions, plus one board member residing within the state of Washington. At least three members of the board shall be admitted to practice law in this state, one each residing respectively in the Central Puget Sound, Eastern Washington, and Western Washington regions. At least three members of the board shall have been a city or county elected official, one each residing respectively in the Central Puget Sound, Eastern Washington, and Western Washington regions. After expiration of the terms of board members on the previously existing three growth management hearings boards, no more than four members of the seven-member board may be members of the same major political party. No more than two members at the time of their appointment or during their term may reside in the same

county.

~~(2) Each member of the board shall be appointed for a term of six years. A vacancy shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs. Members of the previously existing three growth management hearings boards appointed before the effective date of this section shall complete their staggered, six-year terms as members of the growth management hearings board created under subsection (1) of this section. The reduction from nine board members on the previously existing three growth management hearings boards to seven total members on the growth management hearings board shall be made through attrition, voluntary resignation, or retirement.~~

**Sec. 5.** RCW 36.70A.260 and 1994 c 249 s 30 are each amended to read as follows:

~~((1)) Each growth management hearings board shall consist of three members qualified by experience or training in matters pertaining to land use planning and residing within the jurisdictional boundaries of the applicable board. At least one member of each board must be admitted to practice law in this state and at least one member must have been a city or county elected official. Each board shall be appointed by the governor and not more than two members at the time of appointment or during their term shall be members of the same political party. No more than two members at the time of appointment or during their term shall reside in the same county.~~

~~(2) Each member of a board shall be appointed for a term of six years. A vacancy shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs. The terms of the first three members of a board shall be staggered so that one member is appointed to serve until July 1, 1994, one member until July 1, 1996, and one member until July 1, 1998.)~~ (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. Regional panels shall be constituted as follows:

~~(a) Central Puget Sound Region. A three-member Central Puget Sound panel shall be selected to hear matters pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.~~

~~(b) Eastern Washington Region. A three-member Eastern Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.~~

~~(c) Western Washington Region. A three-member Western Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the Central Puget Sound Region. Skamania county, if it is required or chooses to plan under RCW 36.70A.040, may elect to be included within either the Western Washington Region or the Eastern Washington Region.~~

~~(2)(a) Each regional panel selected to hear and decide cases shall consist of three board members, at least a majority of whom shall reside within the region in which the case arose, unless such members cannot sit on a particular case because of recusal or disqualification, or unless the board administrative officer determines that there is an emergency including, but not limited to, the unavailability of a board member due to illness, absence, vacancy, or significant workload imbalance. The presiding officer of each case shall reside within the region in which the case arose, unless the board administrative officer determines that there is an emergency.~~

~~(b) Except as provided otherwise in this subsection (2)(b), each regional panel must: (i) Include one member admitted to practice~~

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law in this state; (ii) include one member who has been a city or county elected official; and (iii) reflect the political composition of the board. The requirements of this subsection (2)(b) may be waived by the board administrative officer due to member unavailability, significant workload imbalances, or other reasons.

**Sec. 6.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to read as follows:

~~(Each)~~ The growth management hearings board shall be governed by the following rules on conduct and procedure:

(1) Any board member may be removed for inefficiency, malfeasance, and misfeasance in office, under specific written charges filed by the governor. The governor shall transmit such written charges to the member accused and the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Removal of any member of ~~((a))~~ the board by the tribunal shall disqualify such member for reappointment.

(2) Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060. ~~((If it is determined that the review boards shall operate on a full-time basis,))~~ Each member shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. ~~((If it is determined that a review board shall operate on a part-time basis, each member shall receive compensation pursuant to RCW 43.03.250, provided such amount shall not exceed the amount that would be set if they were a full-time board member.))~~ The principal office of ~~((each))~~ the board shall be located ~~((by the governor within the jurisdictional boundaries of each board. The boards shall operate on either a part-time or full-time basis, as determined by the governor))~~ in Olympia.

(3) Each board member shall not: (a) Be a candidate for or hold any other public office or trust; (b) engage in any occupation or business interfering with or inconsistent with his or her duty as a board member; and (c) for a period of one year after the termination of his or her board membership, act in a representative capacity before the board on any matter.

(4) A majority of ~~((each))~~ the board shall constitute a quorum for ~~((making orders or decisions,))~~ adopting rules necessary for the conduct of its powers and duties~~((s))~~ or transacting other official business, and may act even though one position of the board is vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

(5) The board may appoint one or more hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact and, if requested by the board, to make recommendations to the board for decisions in cases before the board. Such hearing examiners must have demonstrated knowledge of land use planning and law. The board~~((s))~~ shall specify in ~~((their joint))~~ its rules of practice and procedure, as required by subsection (7) of this section, the procedure and criteria to be employed for designating hearing examiners as a presiding officer. Hearing examiners selected by ~~((a))~~ the board shall meet the requirements of subsection (3) of this section. The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the board. This authorization to use hearing examiners does not waive the requirement of RCW 36.70A.300 that final orders be issued within one hundred eighty days of board receipt of a petition.

(6) ~~((Each))~~ The board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the ~~((board))~~ regional panel deciding the particular case

and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

(7) All proceedings before the board, any of its members, or a hearing examiner appointed by the board shall be conducted in accordance with such administrative rules of practice and procedure as the board~~((s jointly))~~ prescribes. ~~((All three))~~ The board~~((s))~~ shall ~~((jointly meet to))~~ develop and adopt ~~((joint))~~ rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals and the assignment of cases to regional panels. The board~~((s))~~ shall publish such rules and decisions ~~((they))~~ it renders and arrange for the reasonable distribution of the rules and decisions. Except as it conflicts with specific provisions of this chapter, the administrative procedure act, chapter 34.05 RCW, and specifically including the provisions of RCW 34.05.455 governing ex parte communications, shall govern the practice and procedure of the board~~((s)).~~

(8) A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW. The ~~((joint))~~ rules of practice of the board~~((s))~~ shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

(9) ~~((The))~~ All members of the board~~((s))~~ shall meet ~~((jointly))~~ on at least an annual basis with the objective of sharing information that promotes the goals and purposes of this chapter.

(10) The board shall annually elect one of its members to be the board administrative officer. The duties and responsibilities of the administrative officer include handling day-to-day administrative, budget, and personnel matters on behalf of the board, together with making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members. The administrative officer of the board may carry a reduced caseload to allow time for performing the administrative work functions.

**Sec. 7.** RCW 36.70A.280 and 2008 c 289 s 5 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

**Sec. 8.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to read as follows:

(1) All requests for review to ((a)) the growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. The board shall render written decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW 36.70A.040, promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW 90.58.090, the local government shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology. For purposes of this section, the date of publication for the adoption or amendment of a shoreline master program is the date the local government publishes notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology.

(3) Unless the board dismisses the petition as frivolous or finds that the person filing the petition lacks standing, or the parties have filed an agreement to have the case heard in superior court as provided in RCW 36.70A.295, the board shall, within ten days of receipt of the petition, set a time for hearing the matter.

(4) The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

(5) The board, shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.

**Sec. 9.** RCW 36.70A.295 and 1997 c 429 s 13 are each amended to read as follows:

(1) The superior court may directly review a petition for review filed under RCW 36.70A.290 if all parties to the proceeding before the board have agreed to direct review in the superior court. The agreement of the parties shall be in writing and signed by all of the parties to the proceeding or their designated representatives. The agreement shall include the parties' agreement to proper venue as provided in RCW 36.70A.300(5). The parties shall file their agreement with the board within ten days after the date the petition is filed, or if multiple petitions have been filed and the board has consolidated the petitions pursuant to RCW 36.70A.300, within ten days after the board serves its order of consolidation.

(2) Within ten days of receiving the timely and complete agreement of the parties, the board shall file a certificate of agreement with the designated superior court and shall serve the parties with copies of the certificate. The superior court shall obtain exclusive jurisdiction over a petition when it receives the certificate of agreement. With the certificate of agreement the board shall also file the petition for review, any orders entered by the board, all other documents in the board's files regarding the action, and the written agreement of the parties.

(3) For purposes of a petition that is subject to direct review, the superior court's subject matter jurisdiction shall be equivalent to that of the board. Consistent with the requirements of the superior court civil rules, the superior court may consolidate a petition subject to direct review under this section with a separate action filed in the superior court.

(4)(a) Except as otherwise provided in (b) and (c) of this subsection, the provisions of RCW 36.70A.280 through 36.70A.330, which specify the nature and extent of board review, shall apply to the superior court's review.

(b) The superior court:

(i) Shall not have jurisdiction to directly review or modify an office of financial management population projection;

(ii) Except as otherwise provided in RCW 36.70A.300(2)(b), shall render its decision on the petition within one hundred eighty days of receiving the certification of agreement; and

(iii) Shall give a compliance hearing under RCW 36.70A.330(2) the highest priority of all civil matters before the court.

(c) An aggrieved party may secure appellate review of a final judgment of the superior court under this section by the supreme court or the court of appeals. The review shall be secured in the manner provided by law for review of superior court decisions in other civil cases.

(5) If, following a compliance hearing, the court finds that the state agency, county, or city is not in compliance with the court's prior order, the court may use its remedial and contempt powers to enforce compliance.

(6) The superior court shall transmit a copy of its decision and order on direct review to the board, the department, and the governor. If the court has determined that a county or city is not in compliance with the provisions of this chapter, the governor may impose sanctions against the county or city in the same manner as if ((a)) the board had recommended the imposition of sanctions as provided in RCW 36.70A.330.

(7) After the court has assumed jurisdiction over a petition for review under this section, the superior court civil rules shall govern a request for intervention and all other procedural matters not specifically provided for in this section.

**Sec. 10.** RCW 36.70A.302 and 1997 c 429 s 16 are each amended to read as follows:

(1) ((A)) The board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

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(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

(3)(a) Except as otherwise provided in subsection (2) of this section and (b) of this subsection, a development permit application not vested under state or local law before receipt of the board's order by the county or city vests to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter.

(b) Even though the application is not vested under state or local law before receipt by the county or city of the board's order, a determination of invalidity does not apply to a development permit application for:

(i) A permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before receipt by the county or city of the board's order, except as otherwise specifically provided in the board's order to protect the public health and safety;

(ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before receipt of the board's order by the county or city; and

(iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before receipt of the board's order by the county or city.

(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

(5) A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until it adopts a comprehensive plan and development regulations that comply with the requirements of this chapter. A development permit application may vest under an interim control or measure upon determination by the board that the interim controls and other measures do not substantially interfere with the fulfillment of the goals of this chapter.

(6) A county or city subject to a determination of invalidity may file a motion requesting that the board clarify, modify, or rescind the order. The board shall expeditiously schedule a hearing on the motion. At the hearing on the motion, the parties may present information to the board to clarify the part or parts of the comprehensive plan or development regulations to which the final order applies. The board shall issue any supplemental order based on the information provided at the hearing not later than thirty days after the date of the hearing.

(7)(a) If a determination of invalidity has been made and the county or city has enacted an ordinance or resolution amending the invalidated part or parts of the plan or regulation or establishing interim controls on development affected by the order of invalidity,

after a compliance hearing, the board shall modify or rescind the determination of invalidity if it determines under the standard in subsection (1) of this section that the plan or regulation, as amended or made subject to such interim controls, will no longer substantially interfere with the fulfillment of the goals of this chapter.

(b) If the board determines that part or parts of the plan or regulation are no longer invalid as provided in this subsection, but does not find that the plan or regulation is in compliance with all of the requirements of this chapter, the board, in its order, may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

**Sec. 11.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to read as follows:

A request for review by the state to ((a)) the growth management hearings board may be made only by the governor, or with the governor's consent the head of an agency, or by the commissioner of public lands as relating to state trust lands, for the review of whether: (1) A county or city that is required or chooses to plan under RCW 36.70A.040 has failed to adopt a comprehensive plan or development regulations, or county-wide planning policies within the time limits established by this chapter; or (2) a county or city that is required or chooses to plan under this chapter has adopted a comprehensive plan, development regulations, or county-wide planning policies, that are not in compliance with the requirements of this chapter.

**Sec. 12.** RCW 36.70A.3201 and 1997 c 429 s 2 are each amended to read as follows:

~~(In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws of 1997,)~~ The legislature intends that the board((s apply)) applies a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the board((s)) to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

**Sec. 13.** RCW 36.70A.345 and 1994 c 249 s 33 are each amended to read as follows:

The governor may impose a sanction or sanctions specified under RCW 36.70A.340 on: (1) A county or city that fails to designate critical areas, agricultural lands, forest lands, or mineral resource lands under RCW 36.70A.170 by the date such action was required to have been taken; (2) a county or city that fails to adopt development regulations under RCW 36.70A.060 protecting critical areas or conserving agricultural lands, forest lands, or mineral resource lands by the date such action was required to have been taken; (3) a county that fails to designate urban growth areas under RCW 36.70A.110 by the date such action was required to have been taken; and (4) a county or city that fails to adopt its comprehensive plan or development regulations when such actions are required to be taken.

Imposition of a sanction or sanctions under this section shall be preceded by written findings by the governor, that either the county or city is not proceeding in good faith to meet the requirements of the act; or that the county or city has unreasonably delayed taking the required action. The governor shall consult with and communicate his or her findings to the ((appropriate)) growth

management hearings board prior to imposing the sanction or sanctions. For those counties or cities that are not required to plan or have not opted in, the governor in imposing sanctions shall consider the size of the jurisdiction relative to the requirements of this chapter and the degree of technical and financial assistance provided.

**Sec. 14.** RCW 90.58.190 and 2003 c 321 s 4 are each amended to read as follows:

(1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's decision to approve, reject, or modify a proposed master program or amendment adopted by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board (~~(with jurisdiction over the local government)~~). The appeal shall be initiated by filing a petition as provided in RCW 36.70A.250 through 36.70A.320.

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.

(e) Any party aggrieved by a final decision of ~~((a))~~ the growth management hearings board under this subsection may appeal the decision to superior court as provided in RCW 36.70A.300.

(3)(a) The department's decision to approve, reject, or modify a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date of the department's written notice to the local government of the department's decision to approve, reject, or modify a proposed master program or master program amendment as provided in RCW 90.58.090(2).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. The aggrieved local government shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program amendment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program amendment.

**Sec. 15.** RCW 34.05.518 and 2003 c 393 s 16 are each amended to read as follows:

(1) The final decision of an administrative agency in an adjudicative proceeding under this chapter may, except as otherwise provided in chapter 43.21L RCW, be directly reviewed by the court of appeals either (a) upon certification by the superior court pursuant to this section or (b) if the final decision is from an environmental board as defined in subsection (3) of this section, upon acceptance by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision.

(2) For direct review upon certification by the superior court, an application for direct review must be filed with the superior court within thirty days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

(a) Fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;

(b) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;

(c) An appeal to the court of appeals would be likely regardless of the determination in superior court; and

(d) The appellate court's determination in the proceeding would have significant precedential value.

Procedures for certification shall be established by court rule.

(3)(a) For the purposes of direct review of final decisions of environmental boards, environmental boards include those boards identified in RCW 43.21B.005 and the growth management hearings board~~(s)~~ as identified in RCW 36.70A.250.

(b) An environmental board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest and either:

(i) Fundamental and urgent statewide or regional issues are raised; or

(ii) The proceeding is likely to have significant precedential value.

(4) The environmental board shall state in the certificate of appealability which criteria it applied, explain how that criteria was met, and file with the certificate a copy of the final decision.

(5) For an appellate court to accept direct review of a final decision of an environmental board, it shall consider the same criteria outlined in subsection (3) of this section, except as otherwise provided in chapter 43.21L RCW.

(6) The procedures for direct review of final decisions of environmental boards include:

(a) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and serve the appropriate environmental board and all parties of record. The application shall request the environmental board to file a certificate of appealability.

(b) If an issue on review is the jurisdiction of the environmental board, the board may file an application for direct review on that issue.

(c) The environmental board shall have thirty days to grant or deny the request for a certificate of appealability and its decision shall be filed with the superior court and served on all parties of record.

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(d) If a certificate of appealability is issued, the parties shall have fifteen days from the date of service to file a notice of discretionary review in the superior court, and the notice shall include a copy of the certificate of appealability and a copy of the final decision.

(e) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(f) If a certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

**Sec. 16.** RCW 34.12.020 and 2002 c 354 s 226 are each amended to read as follows:

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

(1) "Office" means the office of administrative hearings.

(2) "Administrative law judge" means any person appointed by the chief administrative law judge to conduct or preside over hearings as provided in this chapter.

(3) "Hearing" means an adjudicative proceeding within the meaning of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413 through 34.05.476.

(4) "State agency" means any state board, commission, department, or officer authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the growth management hearings board((s)), the utilities and transportation commission, the pollution control hearings board, the shorelines hearings board, the forest practices appeals board, the environmental hearings office, the board of industrial insurance appeals, the Washington personnel resources board, the public employment relations commission, and the board of tax appeals.

**NEW SECTION. Sec. 17.** (1) The three growth management hearings boards are abolished and their powers, duties, and functions are transferred to the growth management hearings board.

(2) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the three growth management hearings boards must be delivered to the custody of the growth management hearings board. All office furnishings, office equipment, motor vehicles, and other tangible property in the possession of the three growth management hearings boards must be made available to the growth management hearings board.

(3) All funds, credits, or other assets held by the three growth management hearings boards must, on the effective date of this section, be transferred to the growth management hearings board. Any appropriations made to the three growth management hearings boards must, on the effective date of this section, be transferred and credited to the growth management hearings board. If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(4) All employees of the three growth management hearings boards are transferred to the growth management hearings board. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the growth management hearings board to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(5) This section may not be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the

bargaining unit has been modified by action of the public employment relations commission as provided by law.

(6) All rules and pending business before the three growth management hearings boards must be continued and acted upon by the growth management hearings board. All existing contracts and obligations remain in full force and must be performed by the growth management hearings board.

(7) The transfer of the powers, duties, functions, and personnel of the three growth management hearings boards to the growth management hearings board does not affect the validity of any act performed before the effective date of this section.

(8) All cases decided and all orders previously issued by the three growth management hearings boards remain in full force and effect and are not affected by this act.

**NEW SECTION. Sec. 18.** This act takes effect July 1, 2010."

Correct the title.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Haugen moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6214.

Senator Haugen spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Haugen that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6214.

The motion by Senator Haugen carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6214 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6214, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6214, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 43; Nays, 4; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Benton, Honeyford, Roach and Stevens  
Excused: Senators Fairley and McCaslin

SUBSTITUTE SENATE BILL NO. 6214, as amended by the House, 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.

MESSAGE FROM THE HOUSE

March 3, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6248 with the following amendment(s): 6248-S AMH ENVH MADS 187,

On page 1, after line 11, insert the following:

"(3) "Sports bottle" means a resealable, reusable container, sixty-four ounces or less in size, that is designed or intended primarily to be filled with a liquid or beverage for consumption from the container, and is sold or distributed at retail without containing any liquid or beverage."

On page 1, line 12, after "**Sec. 2.**" insert "(1)"

On page 1, line 14, after "state" strike "any of the following: Any" and insert ", any"

On page 2, after line 3, insert the following:

"(2) Beginning July 1, 2012, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, sports bottles that contain bisphenol A."

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Keiser moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6248.

Senators Keiser and Marr spoke in favor of passage of the motion.

Senator Pflug spoke against the motion.

The President declared the question before the Senate to be the motion by Senator Keiser that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6248.

The motion by Senator Keiser carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6248 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6248, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6248, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 38; Nays, 9; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Franklin, Fraser, Gordon, Hargrove, Haugen, Hewitt, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Becker, Delvin, Hatfield, Holmquist, Honeyford, Morton, Pflug, Schoesler and Stevens

Excused: Senators Fairley and McCaslin

SUBSTITUTE SENATE BILL NO. 6248, as amended by the House, 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

Pursuant to Rule 46, on motion of Senator Eide, and without objection, the Committee on Ways & Means was granted special leave to meet during the day's floor session.

#### MOTION

At 10:06 a.m., on motion of Senator Eide, the Senate was recessed until 2:00 p.m.

#### AFTERNOON SESSION

The Senate was called to order at 2:00 p.m. by President Owen.

#### MOTION

At 2:02 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 4:07 p.m. by President Owen.

#### SIGNED BY THE PRESIDENT

The President signed:

ENGROSSED SUBSTITUTE SENATE BILL 5543,  
SUBSTITUTE SENATE BILL 6208,  
ENGROSSED SENATE BILL 6261,  
SUBSTITUTE SENATE BILL 6346,  
SUBSTITUTE SENATE BILL 6356,  
ENGROSSED SUBSTITUTE SENATE BILL 6359,  
SUBSTITUTE SENATE BILL 6361,  
SENATE BILL 6379,  
SENATE BILL 6540

#### MESSAGE FROM THE HOUSE

March 5, 2010

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5902 with the following amendment(s): 5902-S.E AMH ENGR H5391.E,

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that when people who have disabilities are welcomed and included as members of our communities and provided with equal access to the opportunities available to others, their participation enriches those communities, enhances the strength of those communities' diversity, and contributes toward the economic vitality of those communities. The legislature further finds that more than nine hundred thousand Washington state residents with disabilities continue to face barriers to full participation that could be easily eliminated.

**NEW SECTION. Sec. 2.** (1) The accessible communities account is created in the custody of the state treasurer. One hundred dollars of the assessment imposed under RCW 46.16.381 (7), (8), and (9) must be deposited into the account. Any reduction in the penalty or fine and assessment imposed under section 6 of this act shall be applied proportionally between the penalty or fine and the assessment.

(2) The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Only the commissioner may authorize expenditures from the account.

(3) Expenditures from the account may be used for promoting greater awareness of disability issues and improved access for and inclusion and acceptance of persons with disabilities in communities in the state of Washington, including:

(a) Reimbursing travel, per diem, and reasonable accommodation for county accessible community advisory committee meetings and committee sponsored activities including, but not limited to, supporting the involvement of people with disabilities and disability organization in emergency planning and emergency preparedness activities;



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(b) Establishing and maintaining an accessible communities web site;

(c) Providing training or technical assistance for county accessible community advisory committees;

(d) A grant program for funding proposals developed and submitted by county accessible community advisory committees to promote greater awareness of disability issues and acceptance, inclusion, and access for persons with disabilities within the community;

(e) Reimbursing the state agency that provides administrative support to the governor's committee on disability issues and employment for costs associated with implementing this act; and

(f) Programming changes to the judicial information system accounting module required for disbursement of funds to this account.

**NEW SECTION. Sec. 3.** A new section is added to chapter 50.40 RCW to read as follows:

(1) To the extent allowed by funds available from the accessible communities account created in section 2 of this act, the governor's committee on disability issues and employment shall:

(a) Determine eligibility of accessible community advisory committees for reimbursement or for grant funding according to section 4 of this act; and

(b) Solicit proposals from active accessible community advisory committees for projects to improve disability awareness and access for persons with disabilities, and shall select projects for funding from moneys available in the accessible communities account.

(2) The commissioner shall adopt rules to administer this section.

(3) To the extent allowed by funds available from the accessible communities account created in section 2 of this act, the governor's committee on disability issues and employment shall establish an accessible communities web site to provide the following information: Guidance, technical assistance, reference materials, and resource identification for local governments, accessible community advisory committees, and public accommodations; examples of best practices for local initiatives and activities to promote greater awareness of disability issues and access for persons with disabilities within the community; and a searchable listing of local public accommodations that have taken steps to be more disability friendly, including information on the specific access features provided.

**NEW SECTION. Sec. 4.** A new section is added to chapter 36.01 RCW to read as follows:

(1) A county has the option to expand the scope of an advisory committee established and maintained under RCW 29A.46.260 to that of an accessible community advisory committee, or to create an accessible community advisory committee.

(2) A county that has an active accessible community advisory committee may be reimbursed within available funds from the accessible communities account created in section 2 of this act for travel, per diem, and reasonable accommodation expenses for the participation of that committee's members in committee meetings and sponsored activities.

(3) A county establishes that it has an active accessible community advisory committee by submitting biennial assurances to the governor's committee on disability issues and employment that:

(a) The decision to establish an accessible community advisory committee was made by the county legislative authority, or by agents or officers acting under that authority.

(b) If an accessible community advisory committee is established by expanding the advisory committee established and

maintained under RCW 29A.46.260, the county auditor supports that expansion.

(c) Committee members include persons with a diverse range of disabilities who are knowledgeable in identifying and eliminating attitudinal, programmatic, communication, and physical barriers encountered by persons with disabilities.

(d) The committee is actively involved in the following activities: Advising on addressing the needs of persons with disabilities in emergency plans; advising the county and other local governments within the county on access to programs services and activities, new construction or renovation projects, sidewalks, other pedestrian routes of travel, and disability parking enforcement; and developing local initiatives and activities to promote greater awareness of disability issues, and acceptance, involvement, and access for persons with disabilities within the community.

(4) Counties may form joint accessible community advisory committees, as long as no more than one of the participating counties has a population greater than seventy thousand.

**Sec. 5.** RCW 29A.46.260 and 2006 c 207 s 7 are each amended to read as follows:

(1) The legislature finds that the elimination of polling places resulting from the transition to vote by mail creates barriers that restrict the ability of many voters with disabilities from achieving the independence and privacy in voting provided by the accessible voting devices required under the help America vote act. Counties adopting a vote by mail system must take appropriate steps to mitigate these impacts and to address the obligation to provide voters with disabilities an equal opportunity to vote independently and privately, to the extent that this can be achieved without incurring undue administrative and financial burden.

(2) Each county shall establish and maintain an advisory committee that includes persons with diverse disabilities and persons with expertise in providing accommodations for persons with disabilities. The committee shall assist election officials in developing a plan to identify and implement changes to improve the accessibility of elections for voters with disabilities. The plan shall include recommendations for the following:

(a) The number of polling places that will be maintained in order to ensure that people with disabilities have reasonable access to accessible voting devices, and a written explanation for how the determination was made;

(b) The locations of polling places, drop-off facilities, voting centers, and other election-related functions necessary to maximize accessibility to persons with disabilities;

(c) Outreach to voters with disabilities on the availability of disability accommodation, including in-person disability access voting;

(d) Transportation of voting devices to locations convenient for voters with disabilities in order to ensure reasonable access for voters with disabilities; and

(e) Implementation of the provisions of the help America vote act related to persons with disabilities.

Counties must update the plan at least annually. The election review staff of the secretary of state shall review and evaluate the plan in conformance with the review procedure identified in RCW 29A.04.570.

(3) Counties may form a joint advisory committee to develop the plan identified in subsection (2) of this section if ~~((the total population of the joining counties does not exceed thirty thousand, and the counties are geographically adjacent))~~ no more than one of the participating counties has a population greater than seventy thousand.

**Sec. 6.** RCW 46.16.381 and 2007 c 262 s 1 and 2007 c 44 s 1 are each reenacted and amended to read as follows:

(1) The director shall grant special parking privileges to any person who has a disability that limits or impairs the ability to walk or involves acute sensitivity to light and meets one of the following criteria, as determined by a licensed physician, an advanced registered nurse practitioner licensed under chapter 18.79 RCW, or a physician assistant licensed under chapter 18.71A or 18.57A RCW:

- (a) Cannot walk two hundred feet without stopping to rest;
- (b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;
- (c) Has such a severe disability, that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) Uses portable oxygen;
- (e) Is restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
- (f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American Heart Association;
- (g) Has a disability resulting from an acute sensitivity to automobile emissions which limits or impairs the ability to walk. The personal physician, advanced registered nurse practitioner, or physician assistant of the applicant shall document that the disability is comparable in severity to the others listed in this subsection;
- (h) Is legally blind and has limited mobility; or
- (i) Is restricted by a form of porphyria to the extent that the applicant would significantly benefit from a decrease in exposure to light.

(2) The applications for parking permits for persons with disabilities and parking permits for persons with temporary disabilities are official state documents. Knowingly providing false information in conjunction with the application is a gross misdemeanor punishable under chapter 9A.20 RCW. The following statement must appear on each application form immediately below the physician's, advanced registered nurse practitioner's, or physician assistant's signature and immediately below the applicant's signature: "A parking permit for a person with disabilities may be issued only for a medical necessity that severely affects mobility or involves acute sensitivity to light (RCW 46.16.381). Knowingly providing false information on this application is a gross misdemeanor. The penalty is up to one year in jail and a fine of up to \$5,000 or both."

(3) Persons who qualify for special parking privileges are entitled to receive from the department of licensing a removable windshield placard bearing the international symbol of access and an individual serial number, along with a special identification card bearing the name and date of birth of the person to whom the placard is issued, and the placard's serial number. The special identification card shall be issued to all persons who are issued parking placards, including those issued for temporary disabilities, and special parking license plates for persons with disabilities. The department shall design the placard to be displayed when the vehicle is parked by suspending it from the rearview mirror, or in the absence of a rearview mirror the card may be displayed on the dashboard of any vehicle used to transport the person with disabilities. Instead of regular motor vehicle license plates, persons with disabilities are entitled to receive special license plates under this section or RCW 46.16.385 bearing the international symbol of access for one vehicle registered in the name of the person with disabilities. Persons with disabilities who are not issued the special license plates are entitled to receive a second special placard upon submitting a written request to the department. Persons who have been issued the parking privileges and who are using a vehicle or are riding in a vehicle

displaying the placard or special license plates issued under this section or RCW 46.16.385 may park in places reserved for persons with physical disabilities. The director shall adopt rules providing for the issuance of special placards and license plates to public transportation authorities, nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, senior citizen centers, private nonprofit agencies as defined in chapter 24.03 RCW, and vehicles registered with the department as cabulances that regularly transport persons with disabilities who have been determined eligible for special parking privileges provided under this section. The director may issue special license plates for a vehicle registered in the name of the public transportation authority, nursing home, boarding home, senior citizen center, private nonprofit agency, or cabulance service if the vehicle is primarily used to transport persons with disabilities described in this section. Public transportation authorities, nursing homes, boarding homes, senior citizen centers, private nonprofit agencies, and cabulance services are responsible for insuring that the special placards and license plates are not used improperly and are responsible for all fines and penalties for improper use.

(4) Whenever the person with disabilities transfers or assigns his or her interest in the vehicle, the special license plates shall be removed from the motor vehicle. If another vehicle is acquired by the person with disabilities and the vehicle owner qualifies for a special plate, the plate shall be attached to the vehicle, and the director shall be immediately notified of the transfer of the plate. If another vehicle is not acquired by the person with disabilities, the removed plate shall be immediately surrendered to the director.

(5) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who has a condition expected to improve within six months may be issued a temporary placard for a period not to exceed six months. If the condition exists after six months a new temporary placard shall be issued upon receipt of a new certification from the person's physician. The permanent parking placard and identification card of a person with disabilities shall be renewed at least every five years, as required by the director, by satisfactory proof of the right to continued use of the privileges. In the event of the permit holder's death, the parking placard and identification card must be immediately surrendered to the department. The department shall match and purge its database of parking permits issued to persons with disabilities with available death record information at least every twelve months.

(6) Additional fees shall not be charged for the issuance of the special placards or the identification cards. No additional fee may be charged for the issuance of the special license plates except the regular motor vehicle registration fee and any other fees and taxes required to be paid upon registration of a motor vehicle.

(7) Any unauthorized use of the special placard, special license plate issued under this section or RCW 46.16.385, or identification card is a ~~((traffice))~~ parking infraction with a monetary penalty of two hundred fifty dollars. In addition to any penalty or fine imposed under this subsection, two hundred dollars shall be assessed.

(8) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for a person to park in, block, or otherwise make inaccessible the access aisle located next to a space reserved for persons with physical disabilities. In addition to any penalty or fine imposed under this subsection, two hundred dollars shall be assessed. The clerk of the court shall report all violations related to this subsection to the department.

(9) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for persons with physical disabilities without a

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placard or special license plate issued under this section or RCW 46.16.385. In addition to any penalty or fine imposed under this subsection, two hundred dollars shall be assessed. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the placard or special license plate issued under this section or RCW 46.16.385 required under this section. A local jurisdiction providing nonmetered, on-street parking places reserved for persons with physical disabilities may impose by ordinance time restrictions of no less than four hours on the use of these parking places. A local jurisdiction may impose by ordinance time restrictions of no less than four hours on the use of nonreserved, on-street parking spaces by vehicles displaying the special parking placards or special license plates issued under this section or RCW 46.16.385. All time restrictions must be clearly posted.

~~(10) ((The penalties))~~ (a) Two hundred dollars from each full penalty imposed under subsections (7), (8), and (9) of this section shall be allocated as follows:

(i) One hundred dollars shall be deposited in the accessible communities account created in section 2 of this act; and

(ii) One hundred dollars shall be deposited in the multimodal transportation account under RCW 47.66.070 for the sole purpose of supplementing a grant program for special needs transportation provided by transit agencies and nonprofit providers of transportation that is administered by the department of transportation.

(b) When a reduced penalty is imposed under subsection (7), (8), or (9) of this section, the amount deposited in the accounts identified in (a) of this subsection shall be reduced equally and proportionally. The remaining penalty amounts shall be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs it may have incurred in removal and storage of the improperly parked vehicle.

(11) Except as provided by subsection (2) of this section, it is a traffic infraction with a monetary penalty of two hundred fifty dollars for any person willfully to obtain a special license plate issued under this section or RCW 46.16.385, placard, or identification card in a manner other than that established under this section.

(12)(a) A law enforcement agency authorized to enforce parking laws may appoint volunteers, with a limited commission, to issue notices of infractions for violations of this section or RCW 46.61.581. Volunteers must be at least twenty-one years of age. The law enforcement agency appointing volunteers may establish any other qualifications the agency deems desirable.

(b) An agency appointing volunteers under this section must provide training to the volunteers before authorizing them to issue notices of infractions.

(c) A notice of infraction issued by a volunteer appointed under this subsection has the same force and effect as a notice of infraction issued by a police officer for the same offense.

(d) A police officer or a volunteer may request a person to show the person's identification card or special parking placard when investigating the possibility of a violation of this section. If the request is refused, the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

(13) For second or subsequent violations of this section, in addition to a monetary fine, the violator must complete a minimum of forty hours of:

(a) Community restitution for a nonprofit organization that serves persons having disabilities or disabling diseases; or

(b) Any other community restitution that may sensitize the violator to the needs and obstacles faced by persons who have disabilities.

(14) The court may not suspend more than one-half of any fine imposed under subsection (7), (8), (9), or (11) of this section.

(15) For the purposes of this section, "legally blind" means a person who: (a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by individuals with normal vision; or (b) has an eye condition of a progressive nature which may lead to blindness.

**Sec. 7.** RCW 43.79A.040 and 2009 c 87 s 4 are each amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

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

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the accessible communities account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self- insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the Washington international exchange scholarship endowment fund, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the food animal veterinarian conditional scholarship account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account, and the reading achievement account. However, the earnings to be

distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

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

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Pridemore moved that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5902 and request of the House a conference thereon.

Senator Pridemore spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Pridemore that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5902 and request of the House a conference thereon.

The motion by Senator Pridemore carried and the Senate refused to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5902 and requested of the House a conference thereon by voice vote.

#### MESSAGE FROM THE HOUSE

March 3, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5798 with the following amendment(s): 5798-S AMH CODY KNUT 160; 5798-S AMH ERIC KNUT 159,

On page 3, line 30, after "(6)" insert "For an authorization of marijuana use written on or after the effective date of this act,"

On page 3, beginning on line 32, after "professional," strike all material through "records" on line 33 and insert "((or a copy of the qualifying patient's pertinent medical records)) written on a tamper-resistant paper approved by the Board of Pharmacy pursuant to RCW 18.64.500"

On page 3, line 35, after "marijuana;" insert "and"

On page 3, beginning on line 37, after "RCW 46.20.035" strike all material through "original" on page 4, line 3 and insert "((and (e) A copy of the physician statement described in (a) of this subsection shall have the same force and effect as the signed original))" and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Keiser moved that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 5798 and request of the House a conference thereon.

Senators Keiser, Pflug and Kohl-Welles spoke in favor of passage of the motion.

The President declared the question before the Senate to be motion by Senator Keiser that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 5798 and request of the House a conference thereon.

The motion by Senator Keiser carried and the Senate refused to concur in the House amendment(s) to Substitute Senate Bill No. 5798 and requested of the House a conference thereon by voice vote.

#### MESSAGE FROM THE HOUSE

March 5, 2010

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6774 with the following amendment(s): 6774-S.E AMH ENGR H5430.E,

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 36.73.020 and 2009 c 515 s 14 are each amended to read as follows:

(1) The legislative authority of a county or city, or a public transportation benefit area as provided under subsection (2) of this section, may establish a transportation benefit district within the county or city area or within the area specified in subsection (2) of this section, for the purpose of acquiring, constructing, improving, providing, and funding a transportation improvement within the district that is consistent with any existing state, regional, ~~((and))~~ or local transportation plans and necessitated by existing or reasonably foreseeable congestion levels. The transportation improvements shall be owned by the county of jurisdiction if located in an unincorporated area, by the city of jurisdiction if located in an incorporated area, or by the state in cases where the transportation improvement is or becomes a state highway. However, if deemed appropriate by the governing body of the transportation benefit district, a transportation improvement may be owned by a participating port district or transit district, unless otherwise prohibited by law. Transportation improvements shall be administered and maintained as other public streets, roads, highways, and transportation improvements. To the extent practicable, the district shall consider the following criteria when selecting transportation improvements:

- (a) Reduced risk of transportation facility failure and improved safety;
- (b) Improved travel time;
- (c) Improved air quality;
- (d) Increases in daily and peak period trip capacity;
- (e) Improved modal connectivity;
- (f) Improved freight mobility;
- (g) Cost-effectiveness of the investment;
- (h) Optimal performance of the system through time;
- (i) Improved accessibility for, or other benefits to, persons with special transportation needs as defined in RCW 47.06B.012; and
- (j) Other criteria, as adopted by the governing body.

(2) ~~((Subject to subsection (6) of this section, the))~~ (a) The legislative authority of a public transportation benefit area under chapter 36.57A RCW with boundaries that encompass all or part of a county having a population of more than six hundred thousand may establish a transportation benefit district within the full boundaries of the public transportation benefit area. An authorized public transportation benefit area must, except as otherwise provided in subsection (2) of this section, comply with all requirements of this chapter. A district may be formed by majority vote of the public transportation benefit area's governing body, and the governing body of the benefit area is not required to obtain agreement of the jurisdictions having territory within the boundaries

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of the public transportation benefit area.

(b) The transportation improvements shall be owned by the public transportation benefit area unless otherwise agreed to or prohibited by law.

(c) The authority of a public transportation benefit area to establish a transportation benefit district or to impose or collect an authorized tax, charge, or fee under this chapter or under RCW 82.80.140 expires on June 30, 2015. Any contract entered into by the transportation benefit district for the collection of taxes, charges, or fees on its behalf must include a provision establishing that the collection of any such taxes, charges, or fees is not authorized after June 30, 2015. The benefit district shall dissolve itself and cease to exist no later than July 31, 2015.

(3) Except as otherwise provided in subsection (2) of this section, a district may include area within more than one county, city, port district, county transportation authority, or public transportation benefit area, if the legislative authority of each participating jurisdiction has agreed to the inclusion as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. However, the boundaries of the district need not include all territory within the boundaries of the participating jurisdictions comprising the district.

~~((3))~~ (4) The members of the legislative authority proposing to establish the district, acting ex officio and independently, shall constitute the governing body of the district: PROVIDED, That, except as otherwise provided in subsection (2) of this section, where a district includes area within more than one jurisdiction under subsection (2) of this section, the district shall be governed under an interlocal agreement adopted pursuant to chapter 39.34 RCW (However), with the governing body (shall be) being composed of (a) at least five members including at least one elected official from the legislative authority of each participating jurisdiction or (b) the governing body of the metropolitan planning organization serving the district, but only if the district boundaries are identical to the boundaries of the metropolitan planning organization serving the district. However, only those members of the governing body of a metropolitan planning organization that are elected officials may determine whether the district will impose or seek voter approval of any authorized taxes, charges, or fees. Members that are not elected officials are ex officio, nonvoting members of the district's governing body for purposes of making decisions to impose or seek approval of taxes, charges, or fees.

~~((4))~~ (5) The treasurer of the jurisdiction proposing to establish the district shall act as the ex officio treasurer of the district, unless an interlocal agreement states otherwise.

~~((5))~~ (6) The electors of the district shall all be registered voters residing within the district.

~~((6) Prior to December 1, 2007, the authority under this section, regarding the establishment of or the participation in a district, shall not apply to:~~

~~— (a) Counties with a population greater than one million five hundred thousand persons and any adjoining counties with a population greater than five hundred thousand persons;~~

~~— (b) Cities with any area within the counties under (a) of this subsection; and~~

~~— (c) Other jurisdictions with any area within the counties under (a) of this subsection.)"~~

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Marr moved that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6774 and ask the House to recede therefrom.

Senators Marr and Swecker spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Marr that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6774 and ask the House to recede therefrom.

The motion by Senator Marr carried and the Senate refused to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6774 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

February 28, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6280 with the following amendment(s): 6280-S AMH HCW MORI 070,

On page 7, at the beginning of line 1, strike "unless the patient signs a written waiver acknowledging the risks associated with failure to pursue treatment from a primary health care provider. The requirements of the waiver shall be established by the secretary in rule" and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Keiser moved that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 6280 and ask the House to recede therefrom.

Senators Keiser and Pflug spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Keiser that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 6280 and ask the House to recede therefrom.

The motion by Senator Keiser carried and the Senate refused to concur in the House amendment(s) to Substitute Senate Bill No. 6280 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

February 28, 2010

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6538 with the following amendments: 6538-S.E AMH BAIL H5490.1; 6538-S.E AMH HCW KNUT 152,

On page 9, after line 28, insert the following:

"NEW SECTION. Sec. 4. This act takes effect one hundred and eighty days after the date the insurance commissioner certifies to the secretary of the senate, the chief clerk of the house of representatives, and the code reviser's office that federal legislation has been signed into law by the President of the United States that includes guaranteed issue for individuals who purchase health coverage through the individual or small group markets."

Correct the title.

On page 9, after line 28, insert the following:

"NEW SECTION. Sec. 4. If federal legislation that includes guaranteed issue for individuals who purchase health coverage through the individual or small group market has not been signed by the president of the United States by December 31, 2010, this act is null and void."

Correct the title.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Keiser moved that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6538 and ask the House to recede therefrom.

Senators Keiser and Pflug spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Keiser that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6538 and ask the House to recede therefrom.

The motion by Senator Keiser carried and the Senate refused to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6538 and asked the House to recede therefrom by voice vote.

#### MESSAGE FROM THE HOUSE

March 5, 2010

MR. PRESIDENT:

The House passed ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6696 with the following amendment(s): 6696-S2.E AMH ENGR H5458.E,

Strike everything after the enacting clause and insert the following:

#### "PART I ACCOUNTABILITY FRAMEWORK

**NEW SECTION. Sec. 101.** The legislature finds that it is the state's responsibility to create a coherent and effective accountability framework for the continuous improvement for all schools and districts. This system must provide an excellent and equitable education for all students; an aligned federal/state accountability system; and the tools necessary for schools and districts to be accountable. These tools include the necessary accounting and data reporting systems, assessment systems to monitor student achievement, and a system of general support, targeted assistance, and if necessary, intervention.

The office of the superintendent of public instruction is responsible for developing and implementing the accountability tools to build district capacity and working within federal and state guidelines. The legislature assigned the state board of education responsibility and oversight for creating an accountability framework. This framework provides a unified system of support for challenged schools that aligns with basic education, increases the level of support based upon the magnitude of need, and uses data for decisions. Such a system will identify schools and their districts for recognition as well as for additional state support. For a specific group of challenged schools, defined as persistently lowest-achieving schools, and their districts, it is necessary to provide a required action process that creates a partnership between the state and local district to target funds and assistance to turn around the identified lowest-achieving schools.

Phase I of this accountability system will recognize schools that have done an exemplary job of raising student achievement and closing the achievement gaps using the state board of education's accountability index. The state board of education shall have ongoing collaboration with the achievement gap oversight and accountability committee regarding the measures used to measure the closing of the achievement gaps and the recognition provided to

the school districts for closing the achievement gaps. Phase I will also target the lowest five percent of persistently lowest-achieving schools defined under federal guidelines to provide federal funds and federal intervention models through a voluntary option in 2010, and for those who do not volunteer and have not improved student achievement, a required action process beginning in 2011.

Phase II of this accountability system will work toward implementing the state board of education's accountability index for identification of schools in need of improvement, including those that are not Title I schools, and the use of state and local intervention models and state funds through a required action process beginning in 2013, in addition to the federal program. Federal approval of the state board of education's accountability index must be obtained or else the federal guidelines for persistently lowest-achieving schools will continue to be used.

The expectation from implementation of this accountability system is the improvement of student achievement for all students to prepare them for postsecondary education, work, and global citizenship in the twenty-first century.

**NEW SECTION. Sec. 102.** (1) Beginning in 2010, and each year thereafter, by December 1st, the superintendent of public instruction shall annually identify schools as one of the state's persistently lowest-achieving schools if the school is a Title I school, or a school that is eligible for but does not receive Title I funds, that is among the lowest-achieving five percent of Title I or Title I eligible schools in the state.

(2) The criteria for determining whether a school is among the persistently lowest-achieving five percent of Title I schools, or Title I eligible schools, under subsection (1) of this section shall be established by the superintendent of public instruction. The criteria must meet all applicable requirements for the receipt of a federal school improvement grant under the American recovery and reinvestment act of 2009 and Title I of the elementary and secondary education act of 1965, and take into account both:

(a) The academic achievement of the "all students" group in a school in terms of proficiency on the state's assessment, and any alternative assessments, in reading and mathematics combined; and

(b) The school's lack of progress on the mathematics and reading assessments over a number of years in the "all students" group.

**NEW SECTION. Sec. 103.** (1) Beginning in January 2011, the superintendent of public instruction shall annually recommend to the state board of education school districts for designation as required action districts. A district with at least one school identified as a persistently lowest-achieving school shall be designated as a required action district if it meets the criteria developed by the superintendent of public instruction. However, a school district shall not be recommended for designation as a required action district if the district was awarded a federal school improvement grant by the superintendent in 2010 and for three consecutive years following receipt of the grant implemented a federal school intervention model at each school identified for improvement. The state board of education may designate a district that received a school improvement grant in 2010 as a required action district if after three years of voluntarily implementing a plan the district continues to have a school identified as persistently lowest-achieving and meets the criteria for designation established by the superintendent of public instruction.

(2) The superintendent of public instruction shall provide a school district superintendent with written notice of the recommendation for designation as a required action district by certified mail or personal service. A school district superintendent may request reconsideration of the superintendent of public instruction's recommendation. The reconsideration shall be limited to a determination of whether the school district met the criteria for being recommended as a required action district. A request for

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reconsideration must be in writing and served on the superintendent of public instruction within ten days of service of the notice of the superintendent's recommendation.

(3) The state board of education shall annually designate those districts recommended by the superintendent in subsection (1) of this section as required action districts. A district designated as a required action district shall be required to notify all parents of students attending a school identified as a persistently lowest-achieving school in the district of the state board of education's designation of the district as a required action district and the process for complying with the requirements set forth in sections 104 through 110 of this act.

**NEW SECTION. Sec. 104.** (1) The superintendent of public instruction shall contract with an external review team to conduct an academic performance audit of the district and each persistently lowest-achieving school in a required action district to identify the potential reasons for the school's low performance and lack of progress. The review team must consist of persons under contract with the superintendent who have expertise in comprehensive school and district reform and may not include staff from the agency, the school district that is the subject of the audit, or members or staff of the state board of education.

(2) The audit must be conducted based on criteria developed by the superintendent of public instruction and must include but not be limited to an examination of the following:

- (a) Student demographics;
- (b) Mobility patterns;
- (c) School feeder patterns;
- (d) The performance of different student groups on assessments;
- (e) Effective school leadership;
- (f) Strategic allocation of resources;
- (g) Clear and shared focus on student learning;
- (h) High standards and expectations for all students;
- (i) High level of collaboration and communication;
- (j) Aligned curriculum, instruction, and assessment to state standards;
- (k) Frequency of monitoring of learning and teaching;
- (l) Focused professional development;
- (m) Supportive learning environment;
- (n) High level of family and community involvement;
- (o) Alternative secondary schools best practices; and
- (p) Any unique circumstances or characteristics of the school or district.

(3) Audit findings must be made available to the local school district, its staff, the community, and the state board of education.

**NEW SECTION. Sec. 105.** (1) The local district superintendent and local school board of a school district designated as a required action district must submit a required action plan to the state board of education for approval. Unless otherwise required by subsection (3) of this section, the plan must be submitted under a schedule as required by the state board. A required action plan must be developed in collaboration with administrators, teachers, and other staff, parents, unions representing any employees within the district, students, and other representatives of the local community. The superintendent of public instruction shall provide a district with assistance in developing its plan if requested. The school board must conduct a public hearing to allow for comment on a proposed required action plan. The local school district shall submit the plan first to the office of the superintendent of public instruction to review and approve that the plan is consistent with federal guidelines. After the office of the superintendent of public instruction has approved that the plan is consistent with federal guidelines, the local school district must submit its required action plan to the state board of education for approval.

(2) A required action plan must include all of the following:

(a) Implementation of one of the four federal intervention models required for the receipt of a federal school improvement grant, for those persistently lowest-achieving schools that the district will be focusing on for required action. However, a district may not establish a charter school under a federal intervention model without express legislative authority. The intervention models are the turnaround, restart, school closure, and transformation models. The intervention model selected must address the concerns raised in the academic performance audit and be intended to improve student performance to allow a school district to be removed from the list of districts designated as a required action district by the state board of education within three years of implementation of the plan;

(b) Submission of an application for a federal school improvement grant or a grant from other federal funds for school improvement to the superintendent of public instruction;

(c) A budget that provides for adequate resources to implement the federal model selected and any other requirements of the plan;

(d) A description of the changes in the district's or school's existing policies, structures, agreements, processes, and practices that are intended to attain significant achievement gains for all students enrolled in the school and how the district intends to address the findings of the academic performance audit; and

(e) Identification of the measures that the school district will use in assessing student achievement at a school identified as a persistently lowest-achieving school, which include improving mathematics and reading student achievement and graduation rates as defined by the office of the superintendent of public instruction that enable the school to no longer be identified as a persistently lowest-achieving school.

(3)(a) For any district designated for required action, the parties to any collective bargaining agreement negotiated, renewed, or extended under chapter 41.59 or 41.56 RCW after the effective date of this section must reopen the agreement, or negotiate an addendum, if needed, to make changes to terms and conditions of employment that are necessary to implement a required action plan.

(b) If the school district and the employee organizations are unable to agree on the terms of an addendum or modification to an existing collective bargaining agreement, the parties, including all labor organizations affected under the required action plan, shall request the public employment relations commission to, and the commission shall, appoint an employee of the commission to act as a mediator to assist in the resolution of a dispute between the school district and the employee organizations. Beginning in 2011, and each year thereafter, mediation shall commence no later than April 15th. All mediations held under this section shall include the employer and representatives of all affected bargaining units.

(c) If the executive director of the public employment relations commission, upon the recommendation of the assigned mediator, finds that the employer and any affected bargaining unit are unable to reach agreement following a reasonable period of negotiations and mediation, but by no later than May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located. The issues for determination by the superior court must be limited to the issues certified by the executive director.

(d) The process for filing with the court in this subsection (3)(d) must be used in the case where the executive director certifies issues for a decision by the superior court.

(i) The school district shall file a petition with the superior court, by no later than May 20th of the same year in which the issues were certified, setting forth the following:

(A) The name, address, and telephone number of the school district and its principal representative;

(B) The name, address, and telephone number of the employee organizations and their principal representatives;

(C) A description of the bargaining units involved;

(D) A copy of the unresolved issues certified by the executive director for a final and binding decision by the court; and

(E) The academic performance audit that the office of the superintendent of public instruction completed for the school district.

(ii) Within seven days after the filing of the petition, each party shall file with the court the proposal it is asking the court to order be implemented in a required action plan for the district for each issue certified by the executive director. Contemporaneously with the filing of the proposal, a party must file a brief with the court setting forth the reasons why the court should order implementation of its proposal in the final plan.

(iii) Following receipt of the proposals and briefs of the parties, the court must schedule a date and time for a hearing on the petition. The hearing must be limited to argument of the parties or their counsel regarding the proposals submitted for the court's consideration. The parties may waive a hearing by written agreement.

(iv) The court must enter an order selecting the proposal for inclusion in a required action plan that best responds to the issues raised in the school district's academic performance audit, and allows for the award of a federal school improvement grant or a grant from other federal funds for school improvement to the district from the office of the superintendent of public instruction to implement one of the four federal intervention models. The court's decision must be issued no later than June 15th of the year in which the petition is filed and is final and binding on the parties; however the court's decision is subject to appeal only in the case where it does not allow the school district to implement a required action plan consistent with the requirements for the award of a federal school improvement grant or other federal funds for school improvement by the superintendent of public instruction.

(e) Each party shall bear its own costs and attorneys' fees incurred under this statute.

(f) Any party that proceeds with the process in this section after knowledge that any provision of this section has not been complied with and who fails to state its objection in writing is deemed to have waived its right to object.

(4) All contracts entered into between a school district and an employee must be consistent with this section and allow school districts designated as required action districts to implement one of the four federal models in a required action plan.

**NEW SECTION. Sec. 106.** A required action plan developed by a district's school board and superintendent must be submitted to the state board of education for approval. The state board must accept for inclusion in any required action plan the final decision by the superior court on any issue certified by the executive director of the public employment relations commission under the process in section 105 of this act. The state board of education shall approve a plan proposed by a school district only if the plan meets the requirements in section 105 of this act and provides sufficient remedies to address the findings in the academic performance audit to improve student achievement. Any addendum or modification to an existing collective bargaining agreement, negotiated under section 105 of this act or by agreement of the district and the exclusive bargaining unit, related to student achievement or school improvement shall not go into effect until approval of a required action plan by the state board of education. If the state board does not approve a proposed plan, it must notify the local school board and local district's superintendent in writing with an explicit rationale for why the plan was not approved. Nonapproval by the state board of education of the local school district's initial required action plan submitted is not intended to trigger any actions under

section 108 of this act. With the assistance of the office of the superintendent of public instruction, the superintendent and school board of the required action district shall either: (a) Submit a new plan to the state board of education for approval within forty days of notification that its plan was rejected, or (b) submit a request to the required action plan review panel established under section 107 of this act for reconsideration of the state board's rejection within ten days of the notification that the plan was rejected. If federal funds are not available, the plan is not required to be implemented until such funding becomes available. If federal funds for this purpose are available, a required action plan must be implemented in the immediate school year following the district's designation as a required action district.

**NEW SECTION. Sec. 107.** (1) A required action plan review panel shall be established to offer an objective, external review of a request from a school district for reconsideration of the state board of education's rejection of the district's required action plan. The review and reconsideration by the panel shall be based on whether the state board of education gave appropriate consideration to the unique circumstances and characteristics identified in the academic performance audit of the local school district whose required action plan was rejected.

(2)(a) The panel shall be composed of five individuals with expertise in school improvement, school and district restructuring, or parent and community involvement in schools. Two of the panel members shall be appointed by the speaker of the house of representatives; two shall be appointed by the president of the senate; and one shall be appointed by the governor.

(b) The speaker of the house of representatives, president of the senate, and governor shall solicit recommendations for possible panel members from the Washington association of school administrators, the Washington state school directors' association, the association of Washington school principals, the achievement gap oversight and accountability committee, and associations representing certificated teachers, classified school employees, and parents.

(c) Members of the panel shall be appointed no later than December 1, 2010, but the superintendent of public instruction shall convene the panel only as needed to consider a school district's request for reconsideration. Appointments shall be for a four-year term, with opportunity for reappointment. Reappointments in the case of a vacancy shall be made expeditiously so that all requests are considered in a timely manner.

(3) The required action plan review panel may reaffirm the decision of the state board of education, recommend that the state board reconsider the rejection, or recommend changes to the required action plan that should be considered by the district and the state board of education to secure approval of the plan. The state board of education shall consider the recommendations of the panel and issue a decision in writing to the local school district and the panel. If the school district must submit a new required action plan to the state board of education, the district must submit the plan within forty days of the board's decision.

(4) The state board of education and superintendent of public instruction must develop timelines and procedures for the deliberations under this section so that school districts can implement a required action plan within the time frame required under section 106 of this act.

**NEW SECTION. Sec. 108.** The state board of education may direct the superintendent of public instruction to require a school district that has not submitted a final required action plan for approval, or has submitted but not received state board of education approval of a required action plan by the beginning of the school year in which the plan is intended to be implemented, to redirect the district's Title I funds based on the academic performance audit findings.



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**NEW SECTION. Sec. 109.** A school district must implement a required action plan upon approval by the state board of education. The office of superintendent of public instruction must provide the required action district with technical assistance and federal school improvement grant funds or other federal funds for school improvement, if available, to implement an approved plan. The district must submit a report to the superintendent of public instruction that provides the progress the district is making in meeting the student achievement goals based on the state's assessments, identifying strategies and assets used to solve audit findings, and establishing evidence of meeting plan implementation benchmarks as set forth in the required action plan.

**NEW SECTION. Sec. 110.** (1) The superintendent of public instruction must provide a report twice per year to the state board of education regarding the progress made by all school districts designated as required action districts.

(2) The superintendent of public instruction must recommend to the state board of education that a school district be released from the designation as a required action district after the district implements a required action plan for a period of three years; has made progress, as defined by the superintendent of public instruction, in reading and mathematics on the state's assessment over the past three consecutive years; and no longer has a school within the district identified as persistently lowest achieving. The state board shall release a school district from the designation as a required action district upon confirmation that the district has met the requirements for a release.

(3) If the state board of education determines that the required action district has not met the requirements for release, the district remains in required action and must submit a new or revised plan under the process in section 105 of this act.

**Sec. 111.** RCW 28A.305.225 and 2009 c 548 s 503 are each amended to read as follows:

(1) The state board of education shall continue to refine the development of an accountability framework that creates a unified system of support for challenged schools, that aligns with basic education, increases the level of support based upon the magnitude of need, and uses data for decisions.

(2) The state board of education shall develop an accountability index to identify schools and districts for recognition, for continuous improvement, and for additional state support. The index shall be based on criteria that are fair, consistent, and transparent. Performance shall be measured using multiple outcomes and indicators including, but not limited to, graduation rates and results from statewide assessments. The index shall be developed in such a way as to be easily understood by both employees within the schools and districts, as well as parents and community members. It is the legislature's intent that the index provide feedback to schools and districts to self-assess their progress, and enable the identification of schools with exemplary student performance and those that need assistance to overcome challenges in order to achieve exemplary student performance. ~~((Once the accountability index has identified schools that need additional help, a more thorough analysis will be done to analyze specific conditions in the district including but not limited to the level of state resources a school or school district receives in support of the basic education system, achievement gaps for different groups of students, and community support.~~

~~—(3) Based on the accountability index and in consultation with the superintendent of public instruction, the state board of education shall develop a proposal and timeline for implementation of a comprehensive system of voluntary support and assistance for schools and districts. The timeline must take into account and accommodate capacity limitations of the K-12 educational system. Changes that have a fiscal impact on school districts, as identified by~~

~~a fiscal analysis prepared by the office of the superintendent of public instruction, shall take effect only if formally authorized by the legislature through the omnibus appropriations act or other enacted legislation.~~

~~—(4)(a) The state board of education shall develop a proposal and implementation timeline for a more formalized comprehensive system improvement targeted to challenged schools and districts that have not demonstrated sufficient improvement through the voluntary system. The timeline must take into account and accommodate capacity limitations of the K-12 educational system. The proposal and timeline shall be submitted to the education committees of the legislature by December 1, 2009, and shall include recommended legislation and recommended resources to implement the system according to the timeline developed.~~

~~—(b) The proposal shall outline a process for addressing performance challenges that will include the following features: (i) An academic performance audit using peer review teams of educators that considers school and community factors in addition to other factors in developing recommended specific corrective actions that should be undertaken to improve student learning; (ii) a requirement for the local school board plan to develop and be responsible for implementation of corrective action plan taking into account the audit findings, which plan must be approved by the state board of education at which time the plan becomes binding upon the school district to implement; and (iii) monitoring of local district progress by the office of the superintendent of public instruction. The proposal shall take effect only if formally authorized by the legislature through the omnibus appropriations act or other enacted legislation.~~

~~—(5)) (3) The state board of education, in cooperation with the office of the superintendent of public instruction, shall annually recognize schools for exemplary performance as measured on the state board of education accountability index. The state board of education shall have ongoing collaboration with the achievement gap oversight and accountability committee regarding the measures used to measure the closing of the achievement gaps and the recognition provided to the school districts for closing the achievement gaps.~~

~~—(4) In coordination with the superintendent of public instruction, the state board of education shall seek approval from the United States department of education for use of the accountability index and the state system of support, assistance, and intervention, to replace the federal accountability system under P.L. 107-110, the no child left behind act of 2001.~~

~~((6)) (5) The state board of education shall work with the education data center established within the office of financial management and the technical working group established in section 112, chapter 548, Laws of 2009 to determine the feasibility of using the prototypical funding allocation model as not only a tool for allocating resources to schools and districts but also as a tool for schools and districts to report to the state legislature and the state board of education on how the state resources received are being used.~~

**NEW SECTION. Sec. 112.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "All students group" means those students in grades three through eight and high school who take the state's assessment in reading and mathematics required under 20 U.S.C. Sec. 6311(b)(3).

(2) "Title I" means Title I, part A of the federal elementary and secondary education act of 1965 (ESEA) (20 U.S.C. Secs. 6311-6322).

**NEW SECTION. Sec. 113.** The superintendent of public instruction and the state board of education may each adopt rules in

accordance with chapter 34.05 RCW as necessary to implement this chapter.

**NEW SECTION. Sec. 114.** (1) The legislature finds that a unified and equitable system of education accountability must include expectations and benchmarks for improvement, along with support for schools and districts to make the necessary changes that will lead to success for all students. Such a system must also clearly address the consequences for persistent lack of improvement. Establishing a process for school districts to prepare and implement a required action plan is one such consequence. However, to be truly accountable to students, parents, the community, and taxpayers, the legislature must also consider what should happen if a required action district continues not to make improvement after an extended period of time. Without an answer to this significant question, the state's system of education accountability is incomplete. Furthermore, accountability must be appropriately shared among various levels of decision makers, including in the building, in the district, and at the state.

(2)(a) A joint select committee on education accountability is established beginning no earlier than May 1, 2012, with the following members:

(i) The president of the senate shall appoint two members from each of the two largest caucuses of the senate.

(ii) The speaker of the house of representatives shall appoint two members from each of the two largest caucuses of the house of representatives.

(b) The committee shall choose its cochairs from among its membership.

(3) The committee shall:

(a) Identify and analyze options for a complete system of education accountability, particularly consequences in the case of persistent lack of improvement by a required action district;

(b) Identify and analyze appropriate decision-making responsibilities and accompanying consequences at the building, district, and state level within such an accountability system;

(c) Examine models and experiences in other states;

(d) Identify the circumstances under which significant state action may be required; and

(e) Analyze the financial, legal, and practical considerations that would accompany significant state action.

(4) Staff support for the committee must be provided by the senate committee services and the house of representatives office of program research.

(5) The committee shall submit an interim report to the education committees of the legislature by September 1, 2012, and a final report with recommendations by September 1, 2013.

(6) This section expires June 30, 2014.

## PART II EVALUATIONS

**Sec. 201.** RCW 28A.150.230 and 2006 c 263 s 201 are each amended to read as follows:

(1) It is the intent and purpose of this section to guarantee that each common school district board of directors, whether or not acting through its respective administrative staff, be held accountable for the proper operation of their district to the local community and its electorate. In accordance with the provisions of Title 28A RCW, as now or hereafter amended, each common school district board of directors shall be vested with the final responsibility for the setting of policies ensuring quality in the content and extent of its educational program and that such program provide students with the opportunity to achieve those skills which are generally recognized as requisite to learning.

(2) In conformance with the provisions of Title 28A RCW, as now or hereafter amended, it shall be the responsibility of each common school district board of directors to adopt policies to:

(a) Establish performance criteria and an evaluation process for its superintendent, classified staff, certificated personnel, including administrative staff, and for all programs constituting a part of such district's curriculum. Each district shall report annually to the superintendent of public instruction the following for each employee group listed in this subsection (2)(a): (i) Evaluation criteria and rubrics; (ii) a description of each rating; and (iii) the number of staff in each rating;

(b) Determine the final assignment of staff, certificated or classified, according to board enumerated classroom and program needs and data, based upon a plan to ensure that the assignment policy: (i) Supports the learning needs of all the students in the district; and (ii) gives specific attention to high-need schools and classrooms;

(c) Provide information to the local community and its electorate describing the school district's policies concerning hiring, assigning, terminating, and evaluating staff, including the criteria for evaluating teachers and principals;

(d) Determine the amount of instructional hours necessary for any student to acquire a quality education in such district, in not less than an amount otherwise required in RCW 28A.150.220, or rules of the state board of education;

~~((d))~~ (e) Determine the allocation of staff time, whether certificated or classified;

~~((e))~~ (f) Establish final curriculum standards consistent with law and rules of the superintendent of public instruction, relevant to the particular needs of district students or the unusual characteristics of the district, and ensuring a quality education for each student in the district; and

~~((f))~~ (g) Evaluate teaching materials, including text books, teaching aids, handouts, or other printed material, in public hearing upon complaint by parents, guardians or custodians of students who consider dissemination of such material to students objectionable.

**Sec. 202.** RCW 28A.405.100 and 1997 c 278 s 1 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, the superintendent of public instruction shall establish and may amend from time to time minimum criteria for the evaluation of the professional performance capabilities and development of certificated classroom teachers and certificated support personnel. For classroom teachers the criteria shall be developed in the following categories: Instructional skill; classroom management, professional preparation and scholarship; effort toward improvement when needed; the handling of student discipline and attendant problems; and interest in teaching pupils and knowledge of subject matter.

(b) Every board of directors shall, in accordance with procedure provided in RCW 41.59.010 through 41.59.170, 41.59.910 and 41.59.920, establish evaluative criteria and procedures for all certificated classroom teachers and certificated support personnel. The evaluative criteria must contain as a minimum the criteria established by the superintendent of public instruction pursuant to this section and must be prepared within six months following adoption of the superintendent of public instruction's minimum criteria. The district must certify to the superintendent of public instruction that evaluative criteria have been so prepared by the district.

(2)(a) Pursuant to the implementation schedule established in subsection (7)(b) of this section, every board of directors shall, in accordance with procedures provided in RCW 41.59.010 through 41.59.170, 41.59.910, and 41.59.920, establish revised evaluative criteria and a four-level rating system for all certificated classroom teachers.

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(b) The minimum criteria shall include: (i) Centering instruction on high expectations for student achievement; (ii) demonstrating effective teaching practices; (iii) recognizing individual student learning needs and developing strategies to address those needs; (iv) providing clear and intentional focus on subject matter content and curriculum; (v) fostering and managing a safe, positive learning environment; (vi) using multiple student data elements to modify instruction and improve student learning; (vii) communicating and collaborating with parents and school community; and (viii) exhibiting collaborative and collegial practices focused on improving instructional practice and student learning.

(c) The four-level rating system used to evaluate the certificated classroom teacher must describe performance along a continuum that indicates the extent to which the criteria have been met or exceeded. When student growth data, if available and relevant to the teacher and subject matter, is referenced in the evaluation process it must be based on multiple measures that can include classroom-based, school-based, district-based, and state-based tools. As used in this subsection, "student growth" means the change in student achievement between two points in time.

~~(3)(a)~~ Except as provided in subsection ~~((§))~~ (10) of this section, it shall be the responsibility of a principal or his or her designee to evaluate all certificated personnel in his or her school. During each school year all classroom teachers and certificated support personnel ~~((hereinafter referred to as "employees" in this section))~~ shall be observed for the purposes of evaluation at least twice in the performance of their assigned duties. Total observation time for each employee for each school year shall be not less than sixty minutes. An employee in the third year of provisional status as defined in RCW 28A.405.220 shall be observed at least three times in the performance of his or her duties and the total observation time for the school year shall not be less than ninety minutes. Following each observation, or series of observations, the principal or other evaluator shall promptly document the results of the observation in writing, and shall provide the employee with a copy thereof within three days after such report is prepared. New employees shall be observed at least once for a total observation time of thirty minutes during the first ninety calendar days of their employment period.

(b) As used in this subsection and subsection (4) of this section, "employees" means classroom teachers and certificated support personnel.

(4)(a) At any time after October 15th, an employee whose work is ~~not~~ judged ~~((unsatisfactory))~~ satisfactory based on district evaluation criteria shall be notified in writing of the specific areas of deficiencies along with a reasonable program for improvement. During the period of probation, the employee may not be transferred from the supervision of the original evaluator. Improvement of performance or probable cause for nonrenewal must occur and be documented by the original evaluator before any consideration of a request for transfer or reassignment as contemplated by either the individual or the school district. A probationary period of sixty school days shall be established. The establishment of a probationary period does not adversely affect the contract status of an employee within the meaning of RCW 28A.405.300. The purpose of the probationary period is to give the employee opportunity to demonstrate improvements in his or her areas of deficiency. The establishment of the probationary period and the giving of the notice to the employee of deficiency shall be by the school district superintendent and need not be submitted to the board of directors for approval. During the probationary period the evaluator shall meet with the employee at least twice monthly to supervise and make a written evaluation of the progress, if any, made by the employee. The evaluator may authorize one

additional certificated employee to evaluate the probationer and to aid the employee in improving his or her areas of deficiency; such additional certificated employee shall be immune from any civil liability that might otherwise be incurred or imposed with regard to the good faith performance of such evaluation. The probationer may be removed from probation if he or she has demonstrated improvement to the satisfaction of the principal in those areas specifically detailed in his or her initial notice of deficiency and subsequently detailed in his or her improvement program. Lack of necessary improvement during the established probationary period, as specifically documented in writing with notification to the probationer and shall constitute grounds for a finding of probable cause under RCW 28A.405.300 or 28A.405.210.

(b) Immediately following the completion of a probationary period that does not produce performance changes detailed in the initial notice of deficiencies and improvement program, the employee may be removed from his or her assignment and placed into an alternative assignment for the remainder of the school year. This reassignment may not displace another employee nor may it adversely affect the probationary employee's compensation or benefits for the remainder of the employee's contract year. If such reassignment is not possible, the district may, at its option, place the employee on paid leave for the balance of the contract term.

~~((2))~~ (5) Every board of directors shall establish evaluative criteria and procedures for all superintendents, principals, and other administrators. It shall be the responsibility of the district superintendent or his or her designee to evaluate all administrators. ~~Except as provided in subsection (6) of this section,~~ such evaluation shall be based on the administrative position job description. Such criteria, when applicable, shall include at least the following categories: Knowledge of, experience in, and training in recognizing good professional performance, capabilities and development; school administration and management; school finance; professional preparation and scholarship; effort toward improvement when needed; interest in pupils, employees, patrons and subjects taught in school; leadership; and ability and performance of evaluation of school personnel.

~~((3))~~ (6)(a) Pursuant to the implementation schedule established by subsection (7)(b) of this section, every board of directors shall establish revised evaluative criteria and a four-level rating system for principals.

(b) The minimum criteria shall include: (i) Creating a school culture that promotes the ongoing improvement of learning and teaching for students and staff; (ii) demonstrating commitment to closing the achievement gap; (iii) providing for school safety; (iv) leading the development, implementation, and evaluation of a data-driven plan for increasing student achievement, including the use of multiple student data elements; (v) assisting instructional staff with alignment of curriculum, instruction, and assessment with state and local district learning goals; (vi) monitoring, assisting, and evaluating effective instruction and assessment practices; (vii) managing both staff and fiscal resources to support student achievement and legal responsibilities; and (viii) partnering with the school community to promote student learning.

(c) The four-level rating system used to evaluate the principal must describe performance along a continuum that indicates the extent to which the criteria have been met or exceeded. When available, student growth data that is referenced in the evaluation process must be based on multiple measures that can include classroom-based, school-based, district-based, and state-based tools. As used in this subsection, "student growth" means the change in student achievement between two points in time.

(7)(a) The superintendent of public instruction, in collaboration with state associations representing teachers, principals, administrators, and parents, shall create models for implementing

the evaluation system criteria, student growth tools, professional development programs, and evaluator training for certificated classroom teachers and principals. Human resources specialists, professional development experts, and assessment experts must also be consulted. Due to the diversity of teaching assignments and the many developmental levels of students, classroom teachers and principals must be prominently represented in this work. The models must be available for use in the 2011-12 school year.

(b) A new certificated classroom teacher evaluation system that implements the provisions of subsection (2) of this section and a new principal evaluation system that implements the provisions of subsection (6) of this section shall be phased-in beginning with the 2010-11 school year by districts identified in (c) of this subsection and implemented in all school districts beginning with the 2013-14 school year.

(c) A set of school districts shall be selected by the superintendent of public instruction to participate in a collaborative process resulting in the development and piloting of new certificated classroom teacher and principal evaluation systems during the 2010-11 and 2011-12 school years. These school districts must be selected based on: (i) The agreement of the local associations representing classroom teachers and principals to collaborate with the district in this developmental work and (ii) the agreement to participate in the full range of development and implementation activities, including: Development of rubrics for the evaluation criteria and ratings in subsections (2) and (6) of this section; identification of or development of appropriate multiple measures of student growth in subsections (2) and (6) of this section; development of appropriate evaluation system forms; participation in professional development for principals and classroom teachers regarding the content of the new evaluation system; participation in evaluator training; and participation in activities to evaluate the effectiveness of the new systems and support programs. The school districts must submit to the office of the superintendent of public instruction data that is used in evaluations and all district-collected student achievement, aptitude, and growth data regardless of whether the data is used in evaluations. If the data is not available electronically, the district may submit it in nonelectronic form. The superintendent of public instruction must analyze the districts' use of student data in evaluations, including examining the extent that student data is not used or is underutilized. The superintendent of public instruction must also consult with participating districts and stakeholders, recommend appropriate changes, and address statewide implementation issues. The superintendent of public instruction shall report evaluation system implementation status, evaluation data, and recommendations to appropriate committees of the legislature and governor by July 1, 2011, and at the conclusion of the development phase by July 1, 2012. In the July 1, 2011 report, the superintendent shall include recommendations for whether a single statewide evaluation model should be adopted, whether modified versions developed by school districts should be subject to state approval, and what the criteria would be for determining if a school district's evaluation model meets or exceeds a statewide model. The report shall also identify challenges posed by requiring a state approval process.

(8) Each certificated ((employee)) classroom teacher and certificated support personnel shall have the opportunity for confidential conferences with his or her immediate supervisor on no less than two occasions in each school year. Such confidential conference shall have as its sole purpose the aiding of the administrator in his or her assessment of the employee's professional performance.

((4)) (9) The failure of any evaluator to evaluate or supervise or cause the evaluation or supervision of certificated ((employees)) classroom teachers and certificated support personnel or administrators in accordance with this section, as now or hereafter

amended, when it is his or her specific assigned or delegated responsibility to do so, shall be sufficient cause for the nonrenewal of any such evaluator's contract under RCW 28A.405.210, or the discharge of such evaluator under RCW 28A.405.300.

((5)) (10) After ((an employee)) a certificated classroom teacher or certificated support personnel has four years of satisfactory evaluations under subsection (1) of this section or has received one of the two top ratings for four years under subsection (2) of this section, a school district may use a short form of evaluation, a locally bargained evaluation emphasizing professional growth, an evaluation under subsection (1) or (2) of this section, or any combination thereof. The short form of evaluation shall include either a thirty minute observation during the school year with a written summary or a final annual written evaluation based on the criteria in subsection (1) or (2) of this section and based on at least two observation periods during the school year totaling at least sixty minutes without a written summary of such observations being prepared. A locally bargained short-form evaluation emphasizing professional growth must provide that the professional growth activity conducted by the certificated classroom teacher be specifically linked to one or more of the certificated classroom teacher evaluation criteria. However, the evaluation process set forth in subsection (1) or (2) of this section shall be followed at least once every three years unless this time is extended by a local school district under the bargaining process set forth in chapter 41.59 RCW. The employee or evaluator may require that the evaluation process set forth in subsection (1) or (2) of this section be conducted in any given school year. No evaluation other than the evaluation authorized under subsection (1) or (2) of this section may be used as a basis for determining that an employee's work is ((unsatisfactory)) not satisfactory under subsection (1) or (2) of this section or as probable cause for the nonrenewal of an employee's contract under RCW 28A.405.210 unless an evaluation process developed under chapter 41.59 RCW determines otherwise.

**Sec. 203.** RCW 28A.405.220 and 2009 c 57 s 2 are each amended to read as follows:

(1) Notwithstanding the provisions of RCW 28A.405.210, every person employed by a school district in a teaching or other nonsupervisory certificated position shall be subject to nonrenewal of employment contract as provided in this section during the first ((two)) three years of employment by such district, unless: (a) The employee has previously completed at least two years of certificated employment in another school district in the state of Washington, in which case the employee shall be subject to nonrenewal of employment contract pursuant to this section during the first year of employment with the new district; or (b) the school district superintendent may make a determination to remove an employee from provisional status if the employee has received one of the top two evaluation ratings during the second year of employment by the district. Employees as defined in this section shall hereinafter be referred to as "provisional employees((s))."

(2) In the event the superintendent of the school district determines that the employment contract of any provisional employee should not be renewed by the district for the next ensuing term such provisional employee shall be notified thereof in writing on or before May 15th preceding the commencement of such school term, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall state the reason or reasons for such determination. Such notice shall be served upon the provisional employee personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein. The determination of the superintendent shall be subject to the evaluation requirements of RCW 28A.405.100.

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(3) Every such provisional employee so notified, at his or her request made in writing and filed with the superintendent of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the superintendent for the purpose of requesting the superintendent to reconsider his or her decision. Such meeting shall be held no later than ten days following the receipt of such request, and the provisional employee shall be given written notice of the date, time and place of meeting at least three days prior thereto. At such meeting the provisional employee shall be given the opportunity to refute any facts upon which the superintendent's determination was based and to make any argument in support of his or her request for reconsideration.

(4) Within ten days following the meeting with the provisional employee, the superintendent shall either reinstate the provisional employee or shall submit to the school district board of directors for consideration at its next regular meeting a written report recommending that the employment contract of the provisional employee be nonrenewed and stating the reason or reasons therefor. A copy of such report shall be delivered to the provisional employee at least three days prior to the scheduled meeting of the board of directors. In taking action upon the recommendation of the superintendent, the board of directors shall consider any written communication which the provisional employee may file with the secretary of the board at any time prior to that meeting.

(5) The board of directors shall notify the provisional employee in writing of its final decision within ten days following the meeting at which the superintendent's recommendation was considered. The decision of the board of directors to nonrenew the contract of a provisional employee shall be final and not subject to appeal.

(6) This section applies to any person employed by a school district in a teaching or other nonsupervisory certificated position after June 25, 1976. This section provides the exclusive means for nonrenewing the employment contract of a provisional employee and no other provision of law shall be applicable thereto, including, without limitation, RCW 28A.405.210 and chapter 28A.645 RCW.

**NEW SECTION. Sec. 204.** A new section is added to chapter 28A.405 RCW to read as follows:

(1) Representatives of the office of the superintendent of public instruction and statewide associations representing administrators, principals, human resources specialists, and certificated classroom teachers shall analyze how the evaluation systems in RCW 28A.405.100 (2) and (6) affect issues related to a change in contract status.

(2) The analysis shall be conducted during each of the phase-in years of the certificated classroom teacher and principal evaluation systems. The analysis shall include: Procedures, timelines, probationary periods, appeal procedures, and other items related to the timely exercise of employment decisions and due process provisions for certificated classroom teachers and principals.

**NEW SECTION. Sec. 205.** A new section is added to chapter 28A.405 RCW to read as follows:

If funds are provided for professional development activities designed specifically for first through third-year teachers, the funds shall be allocated first to districts participating in the evaluation systems in RCW 28A.405.100 (2) and (6) before the required implementation date under that section.

### PART III PRINCIPAL PERFORMANCE

**NEW SECTION. Sec. 301.** The legislature finds that the presence of highly effective principals in schools has never been more important than it is today. To enable students to meet high academic standards, principals must lead and encourage teams of teachers and support staff to work together, align curriculum and

instruction, use student data to target instruction and intervention strategies, and serve as the chief school officer with parents and the community. Greater responsibility should come with greater authority over personnel, budgets, resource allocation, and programs. But greater responsibility also comes with greater accountability for outcomes. Washington is putting into place an updated and rigorous system of evaluating principal performance, one that will measure what matters. This system will never be truly effective unless the results are meaningfully used.

**NEW SECTION. Sec. 302.** A new section is added to chapter 28A.405 RCW to read as follows:

(1) Any certificated employee of a school district under this section who is first employed as a principal after the effective date of this section shall be subject to transfer as provided under this section, at the expiration of the term of his or her employment contract, to any subordinate certificated position within the school district. "Subordinate certificated position" as used in this section means any administrative or nonadministrative certificated position for which the annual compensation is less than the position currently held by the administrator. This section applies only to school districts with an annual average student enrollment of more than thirty-five thousand full-time equivalent students.

(2) During the first three consecutive school years of employment as a principal by the school district, or during the first full school year of such employment in the case of a principal who has been previously employed as a principal by another school district in the state for three or more consecutive school years, the transfer of the principal to a subordinate certificated position may be made by a determination of the superintendent that the best interests of the school district would be served by the transfer.

(3) Commencing with the fourth consecutive school year of employment as a principal, or the second consecutive school year of such employment in the case of a principal who has been previously employed as a principal by another school district in the state for three or more consecutive school years, the transfer of the principal to a subordinate certificated position shall be based on the superintendent's determination that the results of the evaluation of the principal's performance using the evaluative criteria and rating system established under RCW 28A.405.100 provide a valid reason for the transfer without regard to whether there is probable cause for the transfer. If a valid reason is shown, it shall be deemed that the transfer is reasonably related to the principal's performance. No probationary period is required. However, provision of support and an attempt at remediation of the performance of the principal, as defined by the superintendent, are required for a determination by the superintendent under this subsection that the principal should be transferred to a subordinate certificated position.

(4) Any superintendent transferring a principal under this section to a subordinate certificated position shall notify that principal in writing on or before May 15th before the beginning of the school year of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th. The notification shall state the reason or reasons for the transfer and shall identify the subordinate certificated position to which the principal will be transferred. The notification shall be served upon the principal personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein.

(5) Any principal so notified may request to the president or chair of the board of directors of the district, in writing and within ten days after receiving notice, an opportunity to meet informally with the board of directors in an executive session for the purpose of requesting the board to reconsider the decision of the superintendent, and shall be given such opportunity. The board,

upon receipt of such request, shall schedule the meeting for no later than the next regularly scheduled meeting of the board, and shall give the principal written notice at least three days before the meeting of the date, time, and place of the meeting. At the meeting the principal shall be given the opportunity to refute any evidence upon which the determination was based and to make any argument in support of his or her request for reconsideration. The principal and the board may invite their respective legal counsel to be present and to participate at the meeting. The board shall notify the principal in writing of its final decision within ten days following its meeting with the principal. No appeal to the courts shall lie from the final decision of the board of directors to transfer a principal to a subordinate certificated position.

(6) This section provides the exclusive means for transferring a certificated employee first employed by a school district under this section as a principal after the effective date of this section to a subordinate certificated position at the expiration of the term of his or her employment contract.

**Sec. 303.** RCW 28A.405.210 and 2009 c 57 s 1 are each amended to read as follows:

No teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with a school district, hereinafter referred to as "employee", shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless he or she is the holder of an effective teacher's certificate or other certificate required by law or the Washington professional educator standards board for the position for which the employee is employed.

The board shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and except as otherwise provided by law, limited to a term of not more than one year. Every such contract shall be made in duplicate, one copy to be retained by the school district superintendent or secretary and one copy to be delivered to the employee. No contract shall be offered by any board for the employment of any employee who has previously signed an employment contract for that same term in another school district of the state of Washington unless such employee shall have been released from his or her obligations under such previous contract by the board of directors of the school district to which he or she was obligated. Any contract signed in violation of this provision shall be void.

In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall specify the cause or causes for nonrenewal of contract. Such determination of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notice shall be served upon the employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract: PROVIDED, That any employee receiving notice of nonrenewal of contract due to an enrollment decline or loss of revenue may, in his or her request for a hearing, stipulate that initiation of the arrangements for a hearing officer as provided for by RCW 28A.405.310(4) shall occur within ten days following July 15

rather than the day that the employee submits the request for a hearing. If any such notification or opportunity for hearing is not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his or her employment had actually been renewed by the board of directors for such ensuing term.

This section shall not be applicable to "provisional employees" as so designated in RCW 28A.405.220; transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 or section 302 of this act shall not be construed as a nonrenewal of contract for the purposes of this section.

**Sec. 304.** RCW 28A.405.230 and 2009 c 57 s 3 are each amended to read as follows:

Any certificated employee of a school district employed as an assistant superintendent, director, principal, assistant principal, coordinator, or in any other supervisory or administrative position, hereinafter in this section referred to as "administrator", shall be subject to transfer, at the expiration of the term of his or her employment contract, to any subordinate certificated position within the school district. "Subordinate certificated position" as used in this section, shall mean any administrative or nonadministrative certificated position for which the annual compensation is less than the position currently held by the administrator.

Every superintendent determining that the best interests of the school district would be served by transferring any administrator to a subordinate certificated position shall notify that administrator in writing on or before May 15th preceding the commencement of such school term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall state the reason or reasons for the transfer, and shall identify the subordinate certificated position to which the administrator will be transferred. Such notice shall be served upon the administrator personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein.

Every such administrator so notified, at his or her request made in writing and filed with the president or chair, or secretary of the board of directors of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the board of directors in an executive session thereof for the purpose of requesting the board to reconsider the decision of the superintendent. Such board, upon receipt of such request, shall schedule the meeting for no later than the next regularly scheduled meeting of the board, and shall notify the administrator in writing of the date, time and place of the meeting at least three days prior thereto. At such meeting the administrator shall be given the opportunity to refute any facts upon which the determination was based and to make any argument in support of his or her request for reconsideration. The administrator and the board may invite their respective legal counsel to be present and to participate at the meeting. The board shall notify the administrator in writing of its final decision within ten days following its meeting with the administrator. No appeal to the courts shall lie from the final decision of the board of directors to transfer an administrator to a subordinate certificated position: PROVIDED, That in the case of principals such transfer shall be made at the expiration of the contract year and only during the first three consecutive school years of employment as a principal by a school district; except that if any such principal has been previously employed as a principal by another school district in the state of Washington for three or more consecutive school years the provisions of this section shall apply only to the first full school year of such employment.

This section applies to any person employed as an administrator by a school district on June 25, 1976, and to all persons so employed

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at any time thereafter, except that section 302 of this act applies to persons first employed after the effective date of this section as a principal by a school district meeting the criteria of section 302 of this act. This section provides the exclusive means for transferring an administrator subject to this section to a subordinate certificated position at the expiration of the term of his or her employment contract.

**Sec. 305.** RCW 28A.405.300 and 1990 c 33 s 395 are each amended to read as follows:

In the event it is determined that there is probable cause or causes for a teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with the school district, hereinafter referred to as "employee", to be discharged or otherwise adversely affected in his or her contract status, such employee shall be notified in writing of that decision, which notification shall specify the probable cause or causes for such action. Such determinations of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notices shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for a hearing pursuant to RCW 28A.405.310 to determine whether or not there is sufficient cause or causes for his or her discharge or other adverse action against his or her contract status.

In the event any such notice or opportunity for hearing is not timely given, or in the event cause for discharge or other adverse action is not established by a preponderance of the evidence at the hearing, such employee shall not be discharged or otherwise adversely affected in his or her contract status for the causes stated in the original notice for the duration of his or her contract.

If such employee does not request a hearing as provided herein, such employee may be discharged or otherwise adversely affected as provided in the notice served upon the employee.

Transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 or section 302 of this act shall not be construed as a discharge or other adverse action against contract status for the purposes of this section.

#### **PART IV ENCOURAGING INNOVATIONS**

**Sec. 401.** RCW 28A.400.200 and 2002 c 353 s 2 are each amended to read as follows:

(1) Every school district board of directors shall fix, alter, allow, and order paid salaries and compensation for all district employees in conformance with this section.

(2)(a) Salaries for certificated instructional staff shall not be less than the salary provided in the appropriations act in the statewide salary allocation schedule for an employee with a baccalaureate degree and zero years of service; and

(b) Salaries for certificated instructional staff with a master's degree shall not be less than the salary provided in the appropriations act in the statewide salary allocation schedule for an employee with a master's degree and zero years of service;

(3)(a) The actual average salary paid to certificated instructional staff shall not exceed the district's average certificated instructional staff salary used for the state basic education allocations for that school year as determined pursuant to RCW 28A.150.410.

(b) Fringe benefit contributions for certificated instructional staff shall be included as salary under (a) of this subsection only to

the extent that the district's actual average benefit contribution exceeds the amount of the insurance benefits allocation provided per certificated instructional staff unit in the state operating appropriations act in effect at the time the compensation is payable. For purposes of this section, fringe benefits shall not include payment for unused leave for illness or injury under RCW 28A.400.210; employer contributions for old age survivors insurance, workers' compensation, unemployment compensation, and retirement benefits under the Washington state retirement system; or employer contributions for health benefits in excess of the insurance benefits allocation provided per certificated instructional staff unit in the state operating appropriations act in effect at the time the compensation is payable. A school district may not use state funds to provide employer contributions for such excess health benefits.

(c) Salary and benefits for certificated instructional staff in programs other than basic education shall be consistent with the salary and benefits paid to certificated instructional staff in the basic education program.

(4) Salaries and benefits for certificated instructional staff may exceed the limitations in subsection (3) of this section only by separate contract for additional time, for additional responsibilities, ((or)) for incentives, or for implementing specific measurable innovative activities, including professional development, specified by the school district to: (a) Close one or more achievement gaps, (b) focus on development of science, technology, engineering, and mathematics (STEM) learning opportunities, or (c) provide arts education. Beginning September 1, 2011, school districts shall annually provide a brief description of the innovative activities included in any supplemental contract to the office of the superintendent of public instruction. The office of the superintendent of public instruction shall summarize the district information and submit an annual report to the education committees of the house of representatives and the senate. Supplemental contracts shall not cause the state to incur any present or future funding obligation. Supplemental contracts shall be subject to the collective bargaining provisions of chapter 41.59 RCW and the provisions of RCW 28A.405.240, shall not exceed one year, and if not renewed shall not constitute adverse change in accordance with RCW 28A.405.300 through 28A.405.380. No district may enter into a supplemental contract under this subsection for the provision of services which are a part of the basic education program required by Article IX, section 3 of the state Constitution.

(5) Employee benefit plans offered by any district shall comply with RCW 28A.400.350 and 28A.400.275 and 28A.400.280.

#### **PART V EXPANDING PROFESSIONAL PREPARATION OPTIONS AND WORKFORCE INFORMATION**

NEW SECTION. **Sec. 501.** A new section is added to chapter 28A.410 RCW to read as follows:

(1) Beginning with the 2011-12 school year, all professional educator standards board-approved teacher preparation programs must administer to all preservice candidates the evidence-based assessment of teaching effectiveness adopted by the professional educator standards board. The professional educator standards board shall adopt rules that establish a date during the 2012-13 school year after which candidates completing teacher preparation programs must successfully pass this assessment. Assessment results from persons completing each preparation program must be reported annually by the professional educator standards board to the governor and the education and fiscal committees of the legislature by December 1st.

(2) The professional educator standards board and the superintendent of public instruction, as determined by the board, may contract with one or more third parties for:

(a) The administration, scoring, and reporting of scores of the assessment under this section;

(b) Related clerical and administrative activities; or

(c) Any combination of the purposes of this subsection (2).

(3) Candidates for residency certification who are required to successfully complete the assessment under this section, and who are charged a fee for the assessment by a third party contracted with under this section, shall pay the fee charged by the contractor directly to the contractor. Such fees shall be reasonably related to the actual costs of the contractor in providing the assessment.

**NEW SECTION. Sec. 502.** A new section is added to chapter 28A.410 RCW to read as follows:

(1) By September 30, 2010, the professional educator standards board shall review and revise teacher and administrator preparation program approval standards and proposal review procedures at the residency certificate level to ensure they are rigorous and appropriate standards for an expanded range of potential providers, including community college and nonhigher education providers. All approved providers must adhere to the same standards and comply with the same requirements.

(2) Beginning September 30, 2010, the professional educator standards board must accept proposals for community college and nonhigher education providers of educator preparation programs. Proposals must be processed and considered by the board as expeditiously as possible.

(3) By September 1, 2011, all professional educator standards board-approved residency teacher preparation programs at institutions of higher education as defined in RCW 28B.10.016 not currently a partner in an alternative route program approved by the professional educator standards board must submit to the board a proposal to offer one or more of the alternative route programs that meet the requirements of RCW 28A.660.020 and 28A.660.040.

**Sec. 503.** RCW 28A.660.020 and 2006 c 263 s 816 are each amended to read as follows:

(1) ~~(Each)~~ The professional educator standards board shall transition the alternative route partnership grant program from a separate competitive grant program to a preparation program model to be expanded among approved preparation program providers. Alternative routes are partnerships between professional educator standards board-approved preparation programs, Washington school districts, and other partners as appropriate.

(2) Each prospective teacher preparation program provider, in cooperation with a Washington school district or consortia of school districts applying ~~(for the)~~ to operate alternative route certification program shall ~~(submit a)~~ include in its proposal to the Washington professional educator standards board ~~(specifying)~~:

(a) The route or routes the partnership program intends to offer and a detailed description of how the routes will be structured and operated by the partnership;

(b) The estimated number of candidates that will be enrolled per route;

(c) An identification, indication of commitment, and description of the role of approved teacher preparation programs ~~(that are)~~ and partnering ~~(with the)~~ district or consortia of districts;

(d) An assurance ~~(of)~~ that the district ~~(provision of)~~ or approved preparation program provider will provide adequate training for mentor teachers ~~(either through participation in a state mentor training academy or district provided training that meets state established mentor training standards)~~ specific to the mentoring of alternative route candidates;

(e) An assurance that significant time will be provided for mentor teachers to spend with the alternative route teacher candidates throughout the internship. Partnerships must provide

each candidate with intensive classroom mentoring until such time as the candidate demonstrates the competency necessary to manage the classroom with less intensive supervision and guidance from a mentor;

(f) A description of the rigorous screening process for applicants to alternative route programs, including entry requirements specific to each route, as provided in RCW 28A.660.040; ~~(and)~~

(g) A summary of procedures that provide flexible completion opportunities for candidates to achieve a residency certificate; and

~~(h) The design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's new performance-based standards for residency certification and adjusting any requirements accordingly. The plan may include the following components:~~

~~(i) A minimum of one-half of a school year, and an additional significant amount of time if necessary, of intensive mentorship during field experience, starting with full-time mentoring and progressing to increasingly less intensive monitoring and assistance as the intern demonstrates the skills necessary to take over the classroom with less intensive support. ~~(For route one and two candidates.)~~ Before the supervision is diminished, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the ~~(higher education)~~ teacher preparation program must both agree that the teacher candidate is ready to manage the classroom with less intensive supervision ~~(For route three and four candidates, the mentor of the teacher candidate shall make the decision);~~~~

~~(ii) Identification of performance indicators based on the knowledge and skills standards required for residency certification by the Washington professional educator standards board;~~

~~(iii) Identification of benchmarks that will indicate when the standard is met for all performance indicators;~~

~~(iv) A description of strategies for assessing candidate performance on the benchmarks;~~

~~(v) Identification of one or more tools to be used to assess a candidate's performance once the candidate has been in the classroom for about one-half of a school year; ~~(and)~~~~

~~(vi) A description of the criteria that would result in residency certification after about one-half of a school year but before the end of the program; and~~

~~(vii) A description of how the district intends for the alternative route program to support its workforce development plan and how the presence of alternative route interns will advance its school improvement plans.~~

~~(2) (3) To the extent funds are appropriated for this purpose, ~~(districts)~~ alternative route programs may apply for program funds to pay stipends to trained mentor teachers of interns during the mentored internship. The per intern amount of mentor stipend provided by state funds shall not exceed five hundred dollars.~~

**Sec. 504.** RCW 28A.660.040 and 2009 c 192 s 1 and 2009 c 166 s 1 are each reenacted and amended to read as follows:

~~(Partnership grants funded)~~ Alternative route programs under this chapter shall operate one to four specific route programs. Successful completion of the program shall make a candidate eligible for residency teacher certification. ~~(For route one and two candidates.)~~ The mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the ~~(higher education)~~ teacher preparation program must both agree that the teacher candidate has successfully completed the program. ~~(For route three and four candidates, the mentor of the teacher candidate shall make the determination that the candidate has successfully completed the program.)~~

~~(1) (Partnership grant programs seeking funds to operate)~~ Alternative route programs operating route one programs shall



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enroll currently employed classified instructional employees with transferable associate degrees seeking residency teacher certification with endorsements in special education, bilingual education, or English as a second language. It is anticipated that candidates enrolled in this route will complete both their baccalaureate degree and requirements for residency certification in two years or less, including a mentored internship to be completed in the final year. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including one year of successful student interaction and leadership as a classified instructional employee;

(b) Successful passage of the statewide basic skills exam(~~(when available)~~); and

(c) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers.

(2) (~~Partnership grant programs seeking funds to operate~~) Alternative route programs operating route two programs shall enroll currently employed classified staff with baccalaureate degrees seeking residency teacher certification in subject matter shortage areas and areas with shortages due to geographic location. Candidates enrolled in this route must complete a mentored internship complemented by flexibly scheduled training and coursework offered at a local site, such as a school or educational service district, or online or via video-conference over the K-20 network, in collaboration with the partnership program's higher education partner. In addition, partnership grant programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including one year of successful student interaction and leadership as classified staff;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's college or university grade point average may be considered as a selection factor;

(c) Successful completion of the (~~content test, once the state content test is available~~) subject matter assessment required by RCW 28A.410.220(3);

(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(e) Successful passage of the statewide basic skills exam(~~(when available)~~).

(3) (~~Partnership grant~~) Alternative route programs seeking funds to operate route three programs shall enroll individuals with baccalaureate degrees, who are not employed in the district at the time of application. When selecting candidates for certification through route three, districts and approved preparation program providers shall give priority to individuals who are seeking residency teacher certification in subject matter shortage areas or shortages due to geographic locations. (~~For route three only, the districts may include additional candidates in nonshortage subject areas if the candidates are seeking endorsements with a secondary grade level designation as defined by rule by the professional educator standards board. The districts shall disclose to candidates in nonshortage subject areas available information on the demand in those subject areas.~~) Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship, followed, if necessary, by a second summer teaching academy. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

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(b) Successful completion of the (~~content test, once the state content test is available~~) subject matter assessment required by RCW 28A.410.220(3);

(c) External validation of qualifications, including demonstrated successful experience with students or children, such as reference letters and letters of support from previous employers;

(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(e) Successful passage of statewide basic skills exam(~~(when available)~~).

(4) (~~Partnership grant programs seeking funds to operate~~) Alternative route programs operating route four programs shall enroll individuals with baccalaureate degrees, who are employed in the district at the time of application, or who hold conditional teaching certificates or emergency substitute certificates. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship. If employed on a conditional certificate, the intern may serve as the teacher of record, supported by a well-trained mentor. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

(b) Successful completion of the (~~content test, once the state content test is available~~) subject matter assessment required by RCW 28A.410.220(3);

(c) External validation of qualifications, including demonstrated successful experience with students or children, such as reference letters and letters of support from previous employers;

(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(e) Successful passage of statewide basic skills exam(~~(when available)~~).

(5) Applicants for alternative route programs who are eligible veterans or national guard members and who meet the entry requirements for the alternative route program for which application is made shall be given preference in admission.

**Sec. 505.** RCW 28A.660.050 and 2009 c 539 s 3 and 2009 c 192 s 2 are each reenacted and amended to read as follows:

Subject to the availability of amounts appropriated for these purposes, the conditional scholarship programs in this chapter are created under the following guidelines:

(1) The programs shall be administered by the higher education coordinating board. In administering the programs, the higher education coordinating board has the following powers and duties:

(a) To adopt necessary rules and develop guidelines to administer the programs;

(b) To collect and manage repayments from participants who do not meet their service obligations; and

(c) To accept grants and donations from public and private sources for the programs.

(2) Requirements for participation in the conditional scholarship programs are as provided in this subsection (2).

(a) The alternative route conditional scholarship program is limited to interns of (~~the partnership grant~~) professional educator standards board-approved alternative routes to teaching programs under RCW 28A.660.040. For fiscal year 2011, priority must be given to fiscal year 2010 participants in the alternative route partnership program. In order to receive conditional scholarship awards, recipients shall:

(i) Be accepted and maintain enrollment in alternative certification routes through (~~the partnership grant~~) a professional educator standards board-approved program;

(ii) Continue to make satisfactory progress toward completion of the alternative route certification program and receipt of a residency teaching certificate; and

(iii) Receive no more than the annual amount of the scholarship, not to exceed eight thousand dollars, for the cost of tuition, fees, and educational expenses, including books, supplies, and transportation for the alternative route certification program in which the recipient is enrolled. The board may adjust the annual award by the average rate of resident undergraduate tuition and fee increases at the state universities as defined in RCW 28B.10.016.

(b) The pipeline for paraeducators conditional scholarship program is limited to qualified paraeducators as provided by RCW 28A.660.042. In order to receive conditional scholarship awards, recipients shall:

(i) Be accepted and maintain enrollment at a community and technical college for no more than two years and attain an associate of arts degree;

(ii) Continue to make satisfactory progress toward completion of an associate of arts degree. This progress requirement is a condition for eligibility into a route one program of the alternative routes to teacher certification program for a mathematics, special education, or English as a second language endorsement; and

(iii) Receive no more than the annual amount of the scholarship, not to exceed four thousand dollars, for the cost of tuition, fees, and educational expenses, including books, supplies, and transportation for the alternative route certification program in which the recipient is enrolled. The board may adjust the annual award by the average rate of tuition and fee increases at the state community and technical colleges.

(c) The retooling to teach mathematics and science conditional scholarship program is limited to current K-12 teachers (~~and individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate as provided by RCW 28A.660.045~~). In order to receive conditional scholarship awards:

(i) Individuals currently employed as teachers shall pursue a middle level mathematics or science, or secondary mathematics or science endorsement; or

(ii) Individuals who are certificated with an elementary education endorsement (~~(, but not employed in positions requiring an elementary education certificate,)~~) shall pursue an endorsement in middle level mathematics or science, or both; and

(iii) Individuals shall use one of the pathways to endorsement processes to receive a mathematics or science endorsement, or both, which shall include passing a mathematics or science endorsement test, or both tests, plus observation and completing applicable coursework to attain the proper endorsement; and

(iv) Individuals shall receive no more than the annual amount of the scholarship, not to exceed three thousand dollars, for the cost of tuition, test fees, and educational expenses, including books, supplies, and transportation for the endorsement pathway being pursued.

(3) The Washington professional educator standards board shall select individuals to receive conditional scholarships. In selecting recipients, preference shall be given to eligible veterans or national guard members.

(4) For the purpose of this chapter, a conditional scholarship is a loan that is forgiven in whole or in part in exchange for service as a certificated teacher employed in a Washington state K-12 public school. The state shall forgive one year of loan obligation for every two years a recipient teaches in a public school. Recipients who fail to continue a course of study leading to residency teacher certification or cease to teach in a public school in the state of Washington in their endorsement area are required to repay the remaining loan principal with interest.

(5) Recipients who fail to fulfill the required teaching obligation are required to repay the remaining loan principal with interest and any other applicable fees. The higher education coordinating board shall adopt rules to define the terms for repayment, including applicable interest rates, fees, and deferments.

(6) The higher education coordinating board may deposit all appropriations, collections, and any other funds received for the program in this chapter in the future teachers conditional scholarship account authorized in RCW 28B.102.080.

**NEW SECTION. Sec. 506.** A new section is added to chapter 28A.410 RCW to read as follows:

Beginning with the 2010 school year and annually thereafter, each educational service district, in cooperation with the professional educator standards board, must convene representatives from school districts within that region and professional educator standards board-approved educator preparation programs to review district and regional educator workforce data, make biennial projections of certificate staffing needs, and identify how recruitment and enrollment plans in educator preparation programs reflect projected need.

**Sec. 507.** RCW 28B.76.335 and 2007 c 396 s 17 are each amended to read as follows:

As part of the state needs assessment process conducted by the board in accordance with RCW 28B.76.230, the board shall, in collaboration with the professional educator standards board, assess the need for additional (~~baccalaureate~~) degree and certificate programs in Washington that specialize in teacher preparation (~~in mathematics, science, and technology~~) to meet regional or subject area shortages. If the board determines that there is a need for additional programs, then the board shall encourage the appropriate institutions of higher education or institutional sectors to create such a program.

**NEW SECTION. Sec. 508.** A new section is added to chapter 28B.76 RCW to read as follows:

(1) The board must establish boundaries for service regions for institutions of higher education as defined in RCW 28B.10.016 implementing professional educator standards board-approved educator preparation programs. Regions shall be established to encourage and support, not exclude, the reach of public institutions of higher education across the state.

(2) Based on the data in the assessment in RCW 28B.76.230 and 28B.76.335, the board shall determine whether reasonable teacher preparation program access for prospective teachers is available in each region. If access is determined to be inadequate in a region, the institution of higher education responsible for the region shall submit a plan for meeting the access need to the board.

(3) Partnerships with other teacher preparation program providers and the use of appropriate technology shall be considered. The board shall review the plan and, as appropriate, assist the institution in developing support and resources for implementing the plan.

**NEW SECTION. Sec. 509.** In conjunction with the regional needs assessments in sections 506 through 508 of this act, the council of presidents shall convene an interinstitutional work group to implement the plans developed under section 601, chapter 564, Laws of 2009 to increase the number of mathematics and science teacher endorsements and certificates. The work group must collaborate in evaluating regional needs and identifying strategies to meet those needs. The council of presidents shall report to the education and higher education committees of the legislature on demonstrated progress toward achieving outcomes identified in the plans no later than December 31, 2011.

**NEW SECTION. Sec. 510.** The following acts or parts of acts are each repealed:

(1) RCW 28A.660.010 (Partnership grant program) and 2004 c 23 s 1 & 2001 c 158 s 2;

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(2) RCW 28A.415.100 (Student teaching centers--Legislative recognition--Intent) and 1991 c 258 s 1;

(3) RCW 28A.415.105 (Definitions) and 2006 c 263 s 811, 1995 c 335 s 403, & 1991 c 258 s 2;

(4) RCW 28A.415.125 (Network of student teaching centers) and 2006 c 263 s 812 & 1991 c 258 s 6;

(5) RCW 28A.415.130 (Allocation of funds for student teaching centers) and 2006 c 263 s 813 & 1991 c 258 s 7;

(6) RCW 28A.415.135 (Alternative means of teacher placement) and 1991 c 258 s 8;

(7) RCW 28A.415.140 (Field experiences) and 1991 c 258 s 9;

(8) RCW 28A.415.145 (Rules) and 2006 c 263 s 814 & 1991 c 258 s 10; and

(9) RCW 28A.660.030 (Partnership grants--Selection--Administration) and 2004 c 23 s 3, 2003 c 410 s 2, & 2001 c 158 s 4.

## PART VI COMMON CORE STANDARDS

**NEW SECTION. Sec. 601.** A new section is added to chapter 28A.655 RCW to read as follows:

(1) By August 2, 2010, the superintendent of public instruction may revise the state essential academic learning requirements authorized under RCW 28A.655.070 for mathematics, reading, writing, and communication by provisionally adopting a common set of standards for students in grades kindergarten through twelve. The revised state essential academic learning requirements may be substantially identical with the standards developed by a multistate consortium in which Washington participated, must be consistent with the requirements of RCW 28A.655.070, and may include additional standards if the additional standards do not exceed fifteen percent of the standards for each content area. However, the superintendent of public instruction shall not take steps to implement the provisionally adopted standards until the education committees of the house of representatives and the senate have an opportunity to review the standards.

(2) By January 1, 2011, the superintendent of public instruction shall submit to the education committees of the house of representatives and the senate:

(a) A detailed comparison of the provisionally adopted standards and the state essential academic learning requirements as of the effective date of this section, including the comparative level of rigor and specificity of the standards and the implications of any identified differences; and

(b) An estimated timeline and costs to the state and to school districts to implement the provisionally adopted standards, including providing necessary training, realignment of curriculum, adjustment of state assessments, and other actions.

(3) The superintendent may implement the revisions to the essential academic learning requirements under this section after the 2011 legislative session unless otherwise directed by the legislature.

## PART VII PARENTS AND COMMUNITY

**NEW SECTION. Sec. 701.** A new section is added to chapter 28A.605 RCW to read as follows:

School districts are encouraged to strengthen family, school, and community partnerships by creating spaces in school buildings, if space is available, where students and families can access the services they need, such as after-school tutoring, dental and health services, counseling, or clothing and food banks.

**NEW SECTION. Sec. 702.** A new section is added to chapter 28A.655 RCW to read as follows:

(1) Beginning with the 2010-11 school year, each school shall conduct outreach and seek feedback from a broad and diverse range of parents, other individuals, and organizations in the community regarding their experiences with the school. The school shall summarize the responses in its annual report under RCW 28A.655.110.

(2) The office of the superintendent of public instruction shall create a working group with representatives of organizations representing parents, teachers, and principals as well as diverse communities. The working group shall also include a representative from the achievement gap oversight and accountability committee. By September 1, 2010, the working group shall develop model feedback tools and strategies that school districts may use to facilitate the feedback process required in subsection (1) of this section. The model tools and strategies are intended to provide assistance to school districts. School districts are encouraged to adapt the models or develop unique tools and strategies that best fit the circumstances in their communities.

**Sec. 703.** RCW 28A.655.110 and 1999 c 388 s 303 are each amended to read as follows:

(1) Beginning with the 1994-95 school year, to provide the local community and electorate with access to information on the educational programs in the schools in the district, each school shall publish annually a school performance report and deliver the report to each parent with children enrolled in the school and make the report available to the community served by the school. The annual performance report shall be in a form that can be easily understood and be used by parents, guardians, and other members of the community who are not professional educators to make informed educational decisions. As data from the assessments in RCW 28A.655.060 becomes available, the annual performance report should enable parents, educators, and school board members to determine whether students in the district's schools are attaining mastery of the student learning goals under RCW 28A.150.210, and other important facts about the schools' performance in assisting students to learn. The annual report shall make comparisons to a school's performance in preceding years (~~and shall include school level goals under RCW 28A.655.050~~), student performance relative to the goals and the percentage of students performing at each level of the assessment, a comparison of student performance at each level of the assessment to the previous year's performance, and information regarding school-level plans to achieve the goals.

(2) The annual performance report shall include, but not be limited to: (a) A brief statement of the mission of the school and the school district; (b) enrollment statistics including student demographics; (c) expenditures per pupil for the school year; (d) a summary of student scores on all mandated tests; (e) a concise annual budget report; (f) student attendance, graduation, and dropout rates; (g) information regarding the use and condition of the school building or buildings; (h) a brief description of the learning improvement plans for the school; (i) a summary of the feedback from parents and community members obtained under section 702 of this act; and ~~((h))~~ (j) an invitation to all parents and citizens to participate in school activities.

(3) The superintendent of public instruction shall develop by June 30, 1994, and update periodically, a model report form, which shall also be adapted for computers, that schools may use to meet the requirements of subsections (1) and (2) of this section. In order to make school performance reports broadly accessible to the public, the superintendent of public instruction, to the extent feasible, shall make information on each school's report available on or through the superintendent's internet web site.

**NEW SECTION. Sec. 704.** A new section is added to chapter 28A.300 RCW to read as follows:

There is a sizeable body of research positively supporting the involvement of parents taking an engaged and active role in their child's education. Therefore, the legislature intends to provide state recognition by the center for the improvement of student learning within the office of the superintendent of public instruction for schools that increase the level of direct parental involvement with their child's education. By September 1, 2010, the center for the improvement of student learning shall determine measures that can be used to evaluate the level of parental involvement in a school. The center for the improvement of student learning shall collaborate with school district family and community outreach programs and educational service districts to identify and highlight successful models and practices of parent involvement.

### PART VIII COLLECTIVE BARGAINING

**Sec. 801.** RCW 41.56.100 and 1989 c 45 s 1 are each amended to read as follows:

(1) A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative (~~PROVIDED, That nothing contained herein shall require any~~). However, a public employer is not required to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution, or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure, and authority to the board created by chapter 41.06 RCW.

(2) Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the commission. This subsection does not apply to negotiations and mediations conducted between a school district employer and an exclusive bargaining representative under section 105 of this act.

(3) If a public employer implements its last and best offer where there is no contract settlement, allegations that either party is violating the terms of the implemented offer shall be subject to grievance arbitration procedures if and as such procedures are set forth in the implemented offer, or, if not in the implemented offer, if and as such procedures are set forth in the parties' last contract.

**NEW SECTION. Sec. 802.** A new section is added to chapter 41.56 RCW to read as follows:

All collective bargaining agreements entered into between a school district employer and school district employees under this chapter after the effective date of this section, as well as bargaining agreements existing on the effective date of this section but renewed or extended after the effective date of this section, shall be consistent with section 105 of this act.

**NEW SECTION. Sec. 803.** A new section is added to chapter 41.59 RCW to read as follows:

All collective bargaining agreements entered into between a school district employer and school district employees under this chapter after the effective date of this section, as well as bargaining agreements existing on the effective date of this section but renewed or extended after the effective date of this section, shall be consistent with section 105 of this act.

**Sec. 804.** RCW 41.59.120 and 1975 1st ex.s. c 288 s 13 are each amended to read as follows:

(1) Either an employer or an exclusive bargaining representative may declare that an impasse has been reached between them in collective bargaining and may request the commission to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the commission determines that its

assistance is needed, not later than five days after the receipt of a request therefor, it shall appoint a mediator in accordance with rules and regulations for such appointment prescribed by the commission. The mediator shall meet with the parties or their representatives, or both, forthwith, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The mediator, without the consent of both parties, shall not make findings of fact or recommend terms of settlement. The services of the mediator, including, if any, per diem expenses, shall be provided by the commission without cost to the parties. Nothing in this subsection (1) shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure, and in the event of such agreement, the commission shall not appoint its own mediator unless failure to do so would be inconsistent with the effectuation of the purposes and policy of this chapter.

(2) If the mediator is unable to effect settlement of the controversy within ten days after his or her appointment, either party, by written notification to the other, may request that their differences be submitted to fact-finding with recommendations, except that the time for mediation may be extended by mutual agreement between the parties. Within five days after receipt of the aforesaid written request for fact-finding, the parties shall select a person to serve as fact finder and obtain a commitment from that person to serve. If they are unable to agree upon a fact finder or to obtain such a commitment within that time, either party may request the commission to designate a fact finder. The commission, within five days after receipt of such request, shall designate a fact finder in accordance with rules and regulations for such designation prescribed by the commission. The fact finder so designated shall not be the same person who was appointed mediator pursuant to subsection (1) of this section without the consent of both parties.

The fact finder, within five days after his appointment, shall meet with the parties or their representatives, or both, either jointly or separately, and make inquiries and investigations, hold hearings, and take such other steps as he may deem appropriate. For the purpose of such hearings, investigations and inquiries, the fact finder shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. If the dispute is not settled within ten days after his appointment, the fact finder shall make findings of fact and recommend terms of settlement within thirty days after his appointment, which recommendations shall be advisory only.

(3) Such recommendations, together with the findings of fact, shall be submitted in writing to the parties and the commission privately before they are made public. Either the commission, the fact finder, the employer, or the exclusive bargaining representative may make such findings and recommendations public if the dispute is not settled within five days after their receipt from the fact finder.

(4) The costs for the services of the fact finder, including, if any, per diem expenses and actual and necessary travel and subsistence expenses, and any other incurred costs, shall be borne by the commission without cost to the parties.

(5) Nothing in this section shall be construed to prohibit an employer and an exclusive bargaining representative from agreeing to substitute, at their own expense, their own procedure for resolving impasses in collective bargaining for that provided in this section or from agreeing to utilize for the purposes of this section any other governmental or other agency or person in lieu of the commission.

(6) Any fact finder designated by an employer and an exclusive representative or the commission for the purposes of this section shall be deemed an agent of the state.

(7) This section does not apply to negotiations and mediations conducted under section 105 of this act.

### PART IX

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**CLOSING THE ACHIEVEMENT GAP**

**Sec. 901.** RCW 28A.300.136 and 2009 c 468 s 2 are each amended to read as follows:

(1) An achievement gap oversight and accountability committee is created to synthesize the findings and recommendations from the 2008 achievement gap studies into an implementation plan, and to recommend policies and strategies to the superintendent of public instruction, the professional educator standards board, and the state board of education to close the achievement gap.

(2) The committee shall recommend specific policies and strategies in at least the following areas:

(a) Supporting and facilitating parent and community involvement and outreach;

(b) Enhancing the cultural competency of current and future educators and the cultural relevance of curriculum and instruction;

(c) Expanding pathways and strategies to prepare and recruit diverse teachers and administrators;

(d) Recommending current programs and resources that should be redirected to narrow the gap;

(e) Identifying data elements and systems needed to monitor progress in closing the gap;

(f) Making closing the achievement gap part of the school and school district improvement process; and

(g) Exploring innovative school models that have shown success in closing the achievement gap.

(3) Taking a multidisciplinary approach, the committee may seek input and advice from other state and local agencies and organizations with expertise in health, social services, gang and violence prevention, substance abuse prevention, and other issues that disproportionately affect student achievement and student success.

(4) The achievement gap oversight and accountability committee shall be composed of the following members:

(a) The chairs and ranking minority members of the house and senate education committees, or their designees;

(b) One additional member of the house of representatives appointed by the speaker of the house and one additional member of the senate appointed by the president of the senate;

(c) A representative of the office of the education ombudsman;

(d) A representative of the center for the improvement of student learning in the office of the superintendent of public instruction;

(e) A representative of federally recognized Indian tribes whose traditional lands and territories lie within the borders of Washington state, designated by the federally recognized tribes; and

(f) Four members appointed by the governor in consultation with the state ethnic commissions, who represent the following populations: African-Americans, Hispanic Americans, Asian Americans, and Pacific Islander Americans.

(5) The governor and the tribes are encouraged to designate members who have experience working in and with schools.

(6) The committee may convene ad hoc working groups to obtain additional input and participation from community members. Members of ad hoc working groups shall serve without compensation and shall not be reimbursed for travel or other expenses.

(7) The chair or co-chairs of the committee shall be selected by the members of the committee. Staff support for the committee shall be provided by the center for the improvement of student learning. Members of the committee shall serve without compensation but must be reimbursed as provided in RCW 43.03.050 and 43.03.060. Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW 44.04.120.

(8) The superintendent of public instruction, the state board of education, the professional educator standards board, and the quality education council shall work collaboratively with the achievement gap oversight and accountability committee to close the achievement gap.

**Sec. 902.** RCW 28A.290.010 and 2009 c 548 s 114 are each amended to read as follows:

(1) The quality education council is created to recommend and inform the ongoing implementation by the legislature of an evolving program of basic education and the financing necessary to support such program. The council shall develop strategic recommendations on the program of basic education for the common schools. The council shall take into consideration the capacity report produced under RCW 28A.300.172 and the availability of data and progress of implementing the data systems required under RCW 28A.655.210. Any recommendations for modifications to the program of basic education shall be based on evidence that the programs effectively support student learning. The council shall update the statewide strategic recommendations every four years. The recommendations of the council are intended to:

(a) Inform future educational policy and funding decisions of the legislature and governor;

(b) Identify measurable goals and priorities for the educational system in Washington state for a ten-year time period, including the goals of basic education and ongoing strategies for coordinating statewide efforts to eliminate the achievement gap and reduce student dropout rates; ~~(and)~~

(c) Enable the state of Washington to continue to implement an evolving program of basic education; and

(d) Two nonlegislative representatives from the achievement gap oversight and accountability committee established under RCW 28A.300.136, to be selected by the members of the committee.

(2) The council may request updates and progress reports from the office of the superintendent of public instruction, the state board of education, the professional educator standards board, and the department of early learning on the work of the agencies as well as educational working groups established by the legislature.

(3) The chair of the council shall be selected from the council members. The council shall be composed of the following members:

(a) Four members of the house of representatives, with two members representing each of the major caucuses and appointed by the speaker of the house of representatives;

(b) Four members of the senate, with two members representing each of the major caucuses and appointed by the president of the senate; and

(c) One representative each from the office of the governor, office of the superintendent of public instruction, state board of education, professional educator standards board, and department of early learning.

(4) In the 2009 fiscal year, the council shall meet as often as necessary as determined by the chair. In subsequent years, the council shall meet no more than four times a year.

(5)(a) The council shall submit an initial report to the governor and the legislature by January 1, 2010, detailing its recommendations, including recommendations for resolving issues or decisions requiring legislative action during the 2010 legislative session, and recommendations for any funding necessary to continue development and implementation of chapter 548, Laws of 2009.

(b) The initial report shall, at a minimum, include:

(i) Consideration of how to establish a statewide beginning teacher mentoring and support system;

(ii) Recommendations for a program of early learning for at-risk children;

(iii) A recommended schedule for the concurrent phase-in of the changes to the instructional program of basic education and the implementation of the funding formulas and allocations to support the new instructional program of basic education as established under chapter 548, Laws of 2009. The phase-in schedule shall have full implementation completed by September 1, 2018; and

(iv) A recommended schedule for phased-in implementation of the new distribution formula for allocating state funds to school districts for the transportation of students to and from school, with phase-in beginning no later than September 1, 2013.

(6) The council shall submit a report to the governor and the legislature by December 1, 2010, that at a minimum includes:

(a) Recommendations for specific strategies, programs, and funding, including funding allocations through the funding distribution formula in RCW 28A.150.260, that are designed to close the achievement gap and increase the high school graduation rate in Washington public schools. The council shall consult with the achievement gap oversight and accountability committee and the building bridges work group in developing its recommendations; and

(b) Recommendations for assuring adequate levels of state-funded classified staff to support essential school and district services.

(7) The council shall be staffed by the office of the superintendent of public instruction and the office of financial management. Additional staff support shall be provided by the state entities with representatives on the committee. Senate committee services and the house of representatives office of program research may provide additional staff support.

((7)) (8) Legislative members of the council shall serve without additional compensation but may be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council may be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

## PART X EDUCATION REFORM FINANCE

**NEW SECTION. Sec. 1001.** (1) An essential aspect of overall education reform is reform in state financing for basic education, both in the way that funds are distributed and the overall level of state support to school districts. Chapter 548, Laws of 2009, took a significant step in this aspect of education reform by creating a framework for new funding distribution formulas and directing further work on this topic and recommendations from the quality education council and technical working groups. It is the legislature's intent to continue implementation of the education reforms in chapter 548, Laws of 2009, by adopting the technical details of a new distribution formula for the instructional program of basic education and authorizing a phase-in of implementation of a new distribution formula for pupil transportation, both to take effect September 1, 2011. Unless otherwise stated, the numeric values adopted in section 1002 of this act represent the translation of 2009-2010 state funding levels for the basic education act into the funding factors of the prototypical school funding formula, based on the expert advice and extensive work of the funding formula technical working group established by the legislature for this purpose. The legislature intends to continue to review and revise the formulas and may make revisions as necessary for technical purposes and consistency in the event of mathematical or other technical errors.

(2) The legislature intends that per-pupil basic education funding for a school district shall not be decreased as a result of the transition of basic education funding formulas in effect during the 2009-2011 biennium to the new funding formulas under RCW 28A.150.260 that take effect September 1, 2011.

(3) It is also the legislature's intent to adopt an implementation schedule for phasing-in additional education finance reforms and enhancements to the baseline funding levels of 2009-10 beginning in the 2011-12 school year for pupil transportation, class size allocations for grades kindergarten through three, full-day kindergarten, and allocations for maintenance, supplies, and operating costs.

(4) Finally, it is the legislature's intent to adjust the timelines for other working groups so that their expertise and advice can be received as soon as possible and to make technical adjustments to certain provisions of chapter 548, Laws of 2009.

**Sec. 1002.** RCW 28A.150.260 and 2009 c 548 s 106 are each amended to read as follows:

The purpose of this section is to provide for the allocation of state funding that the legislature deems necessary to support school districts in offering the minimum instructional program of basic education under RCW 28A.150.220. The allocation shall be determined as follows:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula for the distribution of a basic education instructional allocation for each common school district.

(2) The distribution formula under this section shall be for allocation purposes only. Except as may be required under chapter ~~28A.155~~, 28A.165, 28A.180, or ~~((28A.155))~~ 28A.185 RCW, or federal laws and regulations, nothing in this section requires school districts to use basic education instructional funds to implement a particular instructional approach or service. Nothing in this section requires school districts to maintain a particular classroom teacher-to-student ratio or other staff-to-student ratio or to use allocated funds to pay for particular types or classifications of staff. Nothing in this section entitles an individual teacher to a particular teacher planning period.

(3)(a) To the extent the technical details of the formula have been adopted by the legislature and except when specifically provided as a school district allocation, the distribution formula for the basic education instructional allocation shall be based on minimum staffing and nonstaff costs the legislature deems necessary to support instruction and operations in prototypical schools serving high, middle, and elementary school students as provided in this section. The use of prototypical schools for the distribution formula does not constitute legislative intent that schools should be operated or structured in a similar fashion as the prototypes. Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and various categories of school staff. It is the intent that the funding allocations to school districts be adjusted from the school prototypes based on the actual number of annual average full-time equivalent students in each grade level at each school in the district and not based on the grade-level configuration of the school to the extent that data is available. The allocations shall be further adjusted from the school prototypes with minimum allocations for small schools and to reflect other factors identified in the omnibus appropriations act.

(b) For the purposes of this section, prototypical schools are defined as follows:

(i) A prototypical high school has six hundred average annual full-time equivalent students in grades nine through twelve;

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(ii) A prototypical middle school has four hundred thirty-two average annual full-time equivalent students in grades seven and eight; and

(iii) A prototypical elementary school has four hundred average annual full-time equivalent students in grades kindergarten through six.

~~((e))~~ (4)(a) The minimum allocation for each level of prototypical school shall be based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours under RCW 28A.150.220 and provide at least one teacher planning period per school day, and based on ~~((a))~~ the following general education average class size ~~((as specified in the omnibus appropriations act.))~~ of full-time equivalent students per teacher:

<u>General education average class size</u>	
Grades K-3.....	25.23
Grade 4.....	27.00
Grades 5-6.....	27.00
Grades 7-8.....	28.53
Grades 9-12.....	28.74

(b) Beginning in the 2011-12 school year and beginning with schools with the highest percentage of students eligible for free and reduced-price meals in the prior school year, the general education average class size for grades K-3 shall be reduced until the average class size funded under this subsection (4) is no more than 17.0 full-time equivalent students per teacher beginning in the 2015-16 school year.

(c) The minimum allocation for each prototypical middle and high school shall also provide for full-time equivalent classroom teachers based on the following number of full-time equivalent students per teacher in career and technical education:

<u>Career and technical education average class size</u>	
Approved career and technical education offered at the middle school and high school level.....	
Skill center programs meeting the standards established by the office of the superintendent of public instruction.....	

(d) In addition, the omnibus appropriations act shall at a minimum specify:

(i) ~~((Basic average class size;~~  
~~((ii) Basic))~~ A high-poverty average class size in schools where more than fifty percent of the students are eligible for free and reduced-price meals; and

~~((iii))~~ (ii) A specialty average class size for ~~((exploratory and preparatory career and technical education,))~~ laboratory science, advanced placement, and international baccalaureate courses ~~((and~~  
~~((iv) Average class size in grades kindergarten through three)).~~

~~((d))~~ (5) The minimum allocation for each level of prototypical school shall include allocations for the following types of staff in addition to classroom teachers:

- ~~((i) Principals, including assistant principals, and other certificated building level administrators;~~
- ~~((ii) Teacher librarians, performing functions including information literacy, technology, and media to support school library media programs;~~
- ~~((iii) Student health services, a function that includes school nurses, whether certificated instructional or classified employee, and social workers;~~

- ~~((iv) Guidance counselors, performing functions including parent outreach and graduation advisor;~~
  - ~~((v) Professional development coaches;~~
  - ~~((vi) Teaching assistance, which includes any aspect of educational instructional services provided by classified employees;~~
  - ~~((vii) Office support, technology support, and other noninstructional aides;~~
  - ~~((viii) Custodians, warehouse, maintenance, laborer, and professional and technical education support employees; and~~
  - ~~((ix) Classified staff providing student and staff safety.~~
- ~~((4(a)))~~

	<u>Elementary School</u>	<u>Middle School</u>	<u>High School</u>
<u>Principals, assistant principals, and other certificated building-level administrators.....</u>	1.253	1.353	1.880
<u>Teacher librarians, a function that includes information literacy, technology, and media to support school library media programs.....</u>	0.663	0.519	0.523
<u>Health and social services:</u>			
School nurses.....	0.076	0.060	0.096
Social workers.....	0.042	0.006	0.015
Psychologists.....	0.017	0.002	0.007
<u>Guidance counselors, a function that includes parent outreach and graduation advising.....</u>	0.493	1.116	1.909
<u>Teaching assistance, including any aspect of educational instructional services provided by classified employees ...</u>	0.936	0.700	0.652
<u>Office support and other noninstructional aides.....</u>	2.012	2.325	3.269
<u>Custodians.....</u>	1.657	1.942	2.956
<u>Classified staff providing student and staff safety.....</u>	0.079	0.092	0.176

(6)(a) The minimum staffing allocation for each school district to provide district-wide support services shall be allocated per one thousand annual average full-time equivalent students in grades K-12 as follows:

<u>Staff per 1,000 K-12 students</u>	
<u>Technology.....</u>	0.628
<u>Facilities, maintenance, and grounds.....</u>	1.813
<u>Warehouse, laborers, and mechanics.....</u>	0.332

(b) The minimum allocation of staff units for each school district to support certificated and classified staffing of central administration shall be 5.30 percent of the staff units generated under subsections (4)(a) and (b) and (5) of this section and (a) of this subsection.

(7) The distribution formula shall include staffing allocations to school districts for career and technical education and skill center administrative and other school-level certificated staff, as specified in the omnibus appropriations act.

(8)(a) Except as provided in (b) of this subsection, the minimum allocation for each school district shall include allocations per annual average full-time equivalent student for the following materials, supplies, and operating costs, to be adjusted for inflation

from the 2008-09 school year: ~~((Student technology, utilities; curriculum, textbooks, library materials, and instructional supplies; instructional professional development for both certificated and classified staff; other building level costs including maintenance, custodial, and security; and central office administration.))~~

Per annual average full-time equivalent student in grades K-12

Technology .....	\$54.43
Utilities and insurance.....	\$147.90
Curriculum and textbooks.....	\$58.44
Other supplies and library materials .....	\$124.07
Instructional professional development for certificated and classified staff .....	\$9.04
Facilities maintenance.....	\$73.27
Security and central office .....	\$50.76

(b) ~~((The annual average full-time equivalent student amounts in (a) of this subsection shall be enhanced))~~ Beginning in the 2011-12 school year, the minimum allocation for maintenance, supplies, and operating costs shall be increased annually until the following allocations, adjusted for inflation from the 2007-08 school year, are provided in the 2014-15 school year, after which the allocations shall be adjusted annually for inflation as specified in the omnibus appropriations act:

Per annual average full-time equivalent student in grades K-12

Technology .....	\$113.80
Utilities and insurance.....	\$123.71
Curriculum and textbooks.....	\$123.71
Other supplies and library materials .....	\$123.71
Instructional professional development for certificated and classified staff .....	\$153.18
Facilities maintenance.....	\$153.18
Security and central office administration .....	\$153.18

(9) In addition to the amounts provided in subsection (8) of this section, the omnibus appropriations act shall provide an amount based on full-time equivalent student enrollment in each of the following:

- (a) Exploratory career and technical education courses for students in grades seven through twelve;
- (b) Laboratory science courses for students in grades nine through twelve;
- (c) Preparatory career and technical education courses for students in grades nine through twelve offered in a high school; and
- (d) Preparatory career and technical education courses for students in grades eleven and twelve offered through a skill center.

~~((5))~~ (10) In addition to the allocations otherwise provided under ((subsections (3) and (4) of) this section ((shall be enhanced as follows to provide additional allocations for classroom teachers and maintenance, supplies, and operating costs)), amounts shall be provided to support the following programs and services:

(a) To provide supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065, allocations shall be based on the ~~((percent))~~ district percentage of students in ~~((each school))~~ grades K-12 who ((are)) were eligible for free ((and) or reduced-price meals in the prior school year. The minimum allocation for the ~~((learning assistance))~~ program shall provide ((an extended school day and extended school year)) for each level of prototypical school ~~((and a per student allocation for maintenance, supplies, and operating costs))~~ resources to provide, on a statewide average, 1.5156 hours per week in extra instruction with a class size of fifteen learning assistance program students per teacher.

(b) To provide supplemental instruction and services for students whose primary language is other than English, allocations

shall be based on the head count number of students in each school who are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080. The minimum allocation for each level of prototypical school shall provide ~~((for supplemental instruction based on percent of the school day a student is assumed to receive supplemental instruction and a per student allocation for maintenance, supplies, and operating costs))~~ resources to provide, on a statewide average, 4.7780 hours per week in extra instruction with fifteen transitional bilingual instruction program students per teacher.

~~((6))~~ The allocations provided under subsections (3) and (4) of this section shall be enhanced)) (c) To provide additional allocations to support programs for highly capable students under RCW 28A.185.010 through 28A.185.030, allocations shall be based on two and three hundred fourteen one-thousandths percent of each school district's full-time equivalent basic education enrollment. The minimum allocation for the programs shall provide ~~((an extended school day and extended school year for each level of prototypical school and a per student allocation for maintenance, supplies, and operating costs))~~ resources to provide, on a statewide average, 2.1590 hours per week in extra instruction with fifteen highly capable program students per teacher.

~~((7))~~ (11) The allocations under subsections ((3)) (4)(a) and (b), ((c), (d), (4)), (5), (6) and (8) of this section shall be enhanced as provided under RCW 28A.150.390 on an excess cost basis to provide supplemental instructional resources for students with disabilities..... \$113.80

~~((8))~~ The distribution formula shall include allocation \$109.84 of districts to support certificated and classified staffing, \$123.71 for office administration. The minimum allocation shall be \$259.200 as a percentage, identified in the omnibus appropriations act, of the total allocations for staff under subsections (3) and (6) of this section for all schools in the district..... \$153.18

~~((9))~~ (12)(a) For the purposes of allocations for principal high schools and middle schools under subsections ((3)) (4) and ((5)) (10) of this section that are based on the percent of students in the school who are eligible for free and reduced-price meals, the actual percent of such students in a school shall be adjusted by a factor identified in the omnibus appropriations act to reflect underreporting of free and reduced-price meal eligibility among middle and high school students.

(b) Allocations or enhancements provided under subsections ~~((3) and)~~ (4), (7), and (9) of this section for exploratory and preparatory career and technical education courses shall be provided only for courses approved by the office of the superintendent of public instruction under chapter 28A.700 RCW.

~~((4))~~ (13)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature.

(b) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect.

(c) The enrollment of any district shall be the annual average number of full-time equivalent students and part-time students as provided in RCW 28A.150.350, enrolled on the first school day of each month, including students who are in attendance pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district. The definition of full-time equivalent student shall be determined by rules of the superintendent of public instruction and shall be included as part of the superintendent's biennial budget request. The definition shall be based on the minimum instructional hour offerings required under RCW 28A.150.220. Any revision of the present definition shall not take



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effect until approved by the house ways and means committee and the senate ways and means committee.

(d) The office of financial management shall make a monthly review of the superintendent's reported full-time equivalent students in the common schools in conjunction with RCW 43.62.050.

**Sec. 1003.** RCW 28A.150.390 and 2009 c 548 s 108 are each amended to read as follows:

(1) The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for special education programs for students with disabilities. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.260 ~~((3)(b), (e)(i), and (d), (4), and (8) and federal medical assistance and private funds accruing under RCW 74.09.5249 through 74.09.5253 and 74.09.5254 through 74.09.5256)) (4)(a) and (b), (5), (6), and (8).~~

(2) The excess cost allocation to school districts shall be based on the following:

(a) A district's annual average headcount enrollment of students ages birth through four and those five year olds not yet enrolled in kindergarten who are eligible for and enrolled in special education, multiplied by the district's base allocation per full-time equivalent student, multiplied by 1.15; and

(b) A district's annual average full-time equivalent basic education enrollment, multiplied by the district's funded enrollment percent, multiplied by the district's base allocation per full-time equivalent student, multiplied by 0.9309.

(3) As used in this section:

(a) "Base allocation" means the total state allocation to all schools in the district generated by the distribution formula under RCW 28A.150.260 ~~((3)(b), (e)(i), and (d), (4), and (8))) (4)(a) and (b), (5), (6), and (8), to be divided by the district's full-time equivalent enrollment.~~

(b) "Basic education enrollment" means enrollment of resident students including nonresident students enrolled under RCW 28A.225.225 and students from nonhigh districts enrolled under RCW 28A.225.210 and excluding students residing in another district enrolled as part of an interdistrict cooperative program under RCW 28A.225.250.

(c) "Enrollment percent" means the district's resident special education annual average enrollment, excluding students ages birth through four and those five year olds not yet enrolled in kindergarten, as a percent of the district's annual average full-time equivalent basic education enrollment.

(d) "Funded enrollment percent" means the lesser of the district's actual enrollment percent or twelve and seven-tenths percent.

**Sec. 1004.** RCW 28A.150.315 and 2009 c 548 s 107 are each amended to read as follows:

(1) Beginning with the 2007-08 school year, funding for voluntary all-day kindergarten programs shall be phased-in beginning with schools with the highest poverty levels, defined as those schools with the highest percentages of students qualifying for free and reduced-price lunch support in the prior school year. Beginning with the 2011-12 school year, funding shall continue to be phased-in incrementally each year until full statewide implementation of all-day kindergarten is achieved in the 2017-18 school year. Once a school receives funding for the all-day kindergarten program, that school shall remain eligible for funding in subsequent school years regardless of changes in the school's percentage of students eligible for free and reduced-price lunches as long as other program requirements are fulfilled. Additionally,

schools receiving all-day kindergarten program support shall agree to the following conditions:

(a) Provide at least a one thousand-hour instructional program;

(b) Provide a curriculum that offers a rich, varied set of experiences that assist students in:

(i) Developing initial skills in the academic areas of reading, mathematics, and writing;

(ii) Developing a variety of communication skills;

(iii) Providing experiences in science, social studies, arts, health and physical education, and a world language other than English;

(iv) Acquiring large and small motor skills;

(v) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(vi) Learning through hands-on experiences;

(c) Establish learning environments that are developmentally appropriate and promote creativity;

(d) Demonstrate strong connections and communication with early learning community providers; and

(e) Participate in kindergarten program readiness activities with early learning providers and parents.

(2) Subject to funds appropriated for this purpose, the superintendent of public instruction shall designate one or more school districts to serve as resources and examples of best practices in designing and operating a high-quality all-day kindergarten program. Designated school districts shall serve as lighthouse programs and provide technical assistance to other school districts in the initial stages of implementing an all-day kindergarten program. Examples of topics addressed by the technical assistance include strategic planning, developing the instructional program and curriculum, working with early learning providers to identify students and communicate with parents, and developing kindergarten program readiness activities.

**Sec. 1005.** 2009 c 548 s 112 (uncodified) is amended to read as follows:

(1) The legislature intends to continue to redefine the instructional program of education under RCW 28A.150.220 that fulfills the obligations and requirements of Article IX of the state Constitution. The funding formulas under RCW 28A.150.260 to support the instructional program shall be implemented to the extent the technical details of the formula have been established and according to an implementation schedule to be adopted by the legislature. The object of the schedule is to assure that any increases in funding allocations are timely, predictable, and occur concurrently with any increases in program or instructional requirements. It is the intent of the legislature that no increased programmatic or instructional expectations be imposed upon schools or school districts without an accompanying increase in resources as necessary to support those increased expectations.

(2) The office of financial management, with assistance and support from the office of the superintendent of public instruction, shall convene a technical working group to:

(a) Develop the details of the funding formulas under RCW 28A.150.260;

(b) Recommend to the legislature an implementation schedule for phasing-in any increased program or instructional requirements concurrently with increases in funding for adoption by the legislature; and

(c) Examine possible sources of revenue to support increases in funding allocations and present options to the legislature and the quality education council created in ~~(section 114 of this act)~~ RCW 28A.290.010 for consideration.

(3) The working group shall include representatives of the legislative evaluation and accountability program committee, school district and educational service district financial managers, the

Washington association of school business officers, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with expertise in education finance. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders.

(4) The working group shall be monitored and overseen by the legislature and the quality education council established in ~~((section 114 of this act))~~ RCW 28A.290.010. The working group shall submit its recommendations to the legislature by December 1, 2009.

(5) After the 2009 report to the legislature, the office of financial management and the office of the superintendent of public instruction shall periodically reconvene the working group to monitor and provide advice on further development and implementation of the funding formulas under RCW 28A.150.260 and provide technical assistance to the ongoing work of the quality education council.

**Sec. 1006.** 2009 c 548 s 302 (uncodified) is amended to read as follows:

(1) Beginning ~~((July))~~ April 1, 2010, the office of financial management, with assistance and support from the office of the superintendent of public instruction, shall convene a technical working group to develop options for a new system of supplemental school funding through local school levies and local effort assistance.

(2) The working group shall consider the impact on overall school district revenues of the new basic education funding system established under ~~((this act))~~ chapter 548, Laws of 2009 and shall recommend a phase-in plan that ensures that no school district suffers a decrease in funding from one school year to the next due to implementation of the new system of supplemental funding.

(3) The working group shall also:

(a) Examine local school district capacity to address facility needs associated with phasing-in full-day kindergarten across the state and reducing class size in kindergarten through third grade; and

(b) Provide the quality education council with analysis on the potential use of local funds that may become available for redeployment and redirection as a result of increased state funding allocations for pupil transportation and maintenance, supplies, and operating costs.

(4) The working group shall be composed of representatives from the department of revenue, the legislative evaluation and accountability program committee, school district and educational service district financial managers, and representatives of the Washington association of school business officers, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with expertise in education finance. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders.

~~((4))~~ (5) The local funding working group shall be monitored and overseen by the legislature and by the quality education council created in ~~((section 114 of this act))~~ RCW 28A.290.010. The working group shall report to the legislature ~~((December 1))~~ June 30, 2011.

**Sec. 1007.** RCW 43.41.398 and 2009 c 548 s 601 are each amended to read as follows:

(1) The legislature recognizes that providing students with the opportunity to access a world-class educational system depends on our continuing ability to provide students with access to world-class educators. The legislature also understands that continuing to attract and retain the highest quality educators will require increased

investments. The legislature intends to enhance the current salary allocation model and recognizes that changes to the current model cannot be imposed without great deliberation and input from teachers, administrators, and classified employees. Therefore, it is the intent of the legislature to begin the process of developing an enhanced salary allocation model that is collaboratively designed to ensure the rationality of any conclusions regarding what constitutes adequate compensation.

(2) Beginning July 1, 2011, the office of the superintendent of public instruction, in collaboration with the office of financial management, shall convene a technical working group to recommend the details of an enhanced salary allocation model that aligns state expectations for educator development and certification with the compensation system and establishes recommendations for a concurrent implementation schedule. In addition to any other details the technical working group deems necessary, the technical working group shall make recommendations on the following:

(a) How to reduce the number of tiers within the existing salary allocation model;

(b) How to account for labor market adjustments;

(c) How to account for different geographic regions of the state where districts may encounter difficulty recruiting and retaining teachers;

(d) The role of and types of bonuses available;

(e) Ways to accomplish salary equalization over a set number of years; and

(f) Initial fiscal estimates for implementing the recommendations including a recognition that staff on the existing salary allocation model would have the option to grandfather in permanently to the existing schedule.

(3) As part of its work, the technical working group shall conduct or contract for a preliminary comparative labor market analysis of salaries and other compensation for school district employees to be conducted and shall include the results in any reports to the legislature. For the purposes of this subsection, "salaries and other compensation" includes average base salaries, average total salaries, average employee basic benefits, and retirement benefits.

(4) The analysis required under subsection (1) of this section must:

(a) Examine salaries and other compensation for teachers, other certificated instructional staff, principals, and other building-level certificated administrators, and the types of classified employees for whom salaries are allocated;

(b) Be calculated at a statewide level that identifies labor markets in Washington through the use of data from the United States bureau of the census and the bureau of labor statistics; and

(c) Include a comparison of salaries and other compensation to the appropriate labor market for at least the following subgroups of educators: Beginning teachers and types of educational staff associates.

(5) The working group shall include representatives of the department of personnel, the professional educator standards board, the office of the superintendent of public instruction, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with appropriate expertise in compensation related matters. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders.

(6) The working group shall be monitored and overseen by the legislature and the quality education council created in RCW 28A.290.010. The working group shall make an initial report to the legislature by ~~((December 1))~~ June 30, 2012, and shall include in its

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report recommendations for whether additional further work of the group is necessary.

**Sec. 1008.** RCW 28A.160.192 and 2009 c 548 s 311 are each amended to read as follows:

(1) The superintendent of public instruction shall phase-in the implementation of the distribution formula under this chapter for allocating state funds to school districts for the transportation of students to and from school. The phase-in shall ~~((be according to the implementation schedule adopted by the legislature and shall))~~ begin no later than the ~~((2013-14))~~ 2011-12 school year and be fully implemented by the 2013-14 school year.

(a) The formula must be developed and revised on an ongoing basis using the major cost factors in student transportation, including basic and special student loads, school district land area, average distance to school, roadway miles, and number of locations served. Factors must include all those site characteristics that are statistically significant after analysis of the data required by the revised reporting process.

(b) The formula must allocate funds to school districts based on the average predicted costs of transporting students to and from school, using a regression analysis.

(2) During the phase-in period, funding provided to school districts for student transportation operations shall be distributed on the following basis:

(a) Annually, each school district shall receive the lesser of the previous school year's pupil transportation operations allocation, or the total of allowable pupil transportation expenditures identified on the previous school year's final expenditure report to the state plus district indirect expenses using the state recovery rate identified by the superintendent; and

(b) Annually, any funds appropriated by the legislature in excess of the maintenance level funding amount for student transportation shall be distributed among school districts on a prorated basis using the difference between the amount identified in (a) of this subsection and the amount determined under the formula in RCW 28A.160.180.

~~((3) The superintendent shall develop, implement, and provide a copy of the rules specifying the student transportation reporting requirements to the legislature and school districts no later than December 1, 2009.~~

~~((4) Beginning in December 2009, and continuing until December 2014, the superintendent shall provide quarterly updates and progress reports to the fiscal committees of the legislature on the implementation and testing of the distribution formula.))~~

**NEW SECTION. Sec. 1009.** A new section is added to chapter 28A.160 RCW to read as follows:

(1) The superintendent of public instruction shall develop, implement, and provide a copy of the rules specifying the student transportation reporting requirements to the legislature and school districts no later than December 1, 2010.

(2) Beginning in December 2010, and continuing until December 2014, the superintendent shall provide quarterly updates and progress reports to the fiscal committees of the legislature on the implementation and testing of the distribution formula.

(3) This section expires June 30, 2015.

**Sec. 1010.** RCW 28A.150.410 and 2007 c 403 s 1 are each amended to read as follows:

(1) The legislature shall establish for each school year in the appropriations act a statewide salary allocation schedule, for allocation purposes only, to be used to distribute funds for basic education certificated instructional staff salaries under RCW 28A.150.260. For the purposes of this section, the staff allocations for classroom teachers, teacher librarians, guidance counselors, and health and social services staff under RCW 28A.150.260 are considered allocations for certificated instructional staff.

(2) Salary allocations for state-funded basic education certificated instructional staff shall be calculated by the superintendent of public instruction by determining the district's average salary for certificated instructional staff, using the statewide salary allocation schedule and related documents, conditions, and limitations established by the omnibus appropriations act.

(3) Beginning January 1, 1992, no more than ninety college quarter-hour credits received by any employee after the baccalaureate degree may be used to determine compensation allocations under the state salary allocation schedule and LEAP documents referenced in the omnibus appropriations act, or any replacement schedules and documents, unless:

(a) The employee has a master's degree; or

(b) The credits were used in generating state salary allocations before January 1, 1992.

(4) Beginning in the 2007-08 school year, the calculation of years of service for occupational therapists, physical therapists, speech-language pathologists, audiologists, nurses, social workers, counselors, and psychologists regulated under Title 18 RCW may include experience in schools and other nonschool positions as occupational therapists, physical therapists, speech-language pathologists, audiologists, nurses, social workers, counselors, or psychologists. The calculation shall be that one year of service in a nonschool position counts as one year of service for purposes of this chapter, up to a limit of two years of nonschool service. Nonschool years of service included in calculations under this subsection shall not be applied to service credit totals for purposes of any retirement benefit under chapter 41.32, 41.35, or 41.40 RCW, or any other state retirement system benefits.

**Sec. 1011.** RCW 28A.175.010 and 2005 c 207 s 3 are each amended to read as follows:

Each school district shall account for the educational progress of each of its students. To achieve this, school districts shall be required to report annually to the superintendent of public instruction:

(1) For students enrolled in each of a school district's high school programs:

(a) The number of students who graduate in fewer than four years;

(b) The number of students who graduate in four years;

(c) The number of students who remain in school for more than four years but who eventually graduate and the number of students who remain in school for more than four years but do not graduate;

(d) The number of students who transfer to other schools;

(e) The number of students in the ninth through twelfth grade who drop out of school over a four-year period; and

(f) The number of students whose status is unknown.

(2) Dropout rates of students in each of the grades seven through twelve.

(3) Dropout rates for student populations in each of the grades seven through twelve by:

(a) Ethnicity;

(b) Gender;

(c) Socioeconomic status; and

(d) Disability status.

(4) The causes or reasons, or both, attributed to students for having dropped out of school in grades seven through twelve.

(5) The superintendent of public instruction shall adopt rules under chapter 34.05 RCW to assure uniformity in the information districts are required to report under subsections (1) through (4) of this section. In developing rules, the superintendent of public instruction shall consult with school districts, including administrative and counseling personnel, with regard to the methods through which information is to be collected and reported.

(6) In reporting on the causes or reasons, or both, attributed to students for having dropped out of school, school building officials shall, to the extent reasonably practical, obtain such information directly from students. In lieu of obtaining such information directly from students, building principals and counselors shall identify the causes or reasons, or both, based on their professional judgment.

(7) The superintendent of public instruction shall report annually to the legislature the information collected under subsections (1) through (4) of this section.

(8) The Washington state institute for public policy shall calculate an annual estimate of the savings to taxpayers resulting from any improvement compared to the prior school year in the extended graduation rate, as calculated by the superintendent of public instruction. The superintendent shall include the estimate from the institute in an appendix of the report required under subsection (7) of this section, beginning with the 2010 report.

**NEW SECTION. Sec. 1012.** A new section is added to chapter 28A.300 RCW to read as follows:

The office of the superintendent of public instruction shall implement and maintain an internet-based portal that provides ready public access to the state's prototypical school funding model for basic education under RCW 28A.150.260. The portal must provide citizens the opportunity to view, for each local school building, the staffing levels and other prototypical school funding elements that are assumed under the state funding formula. The portal must also provide a matrix displaying how individual school districts are deploying those same state resources through their allocation of staff and other resources to school buildings, so that citizens are able to compare the state assumptions to district allocation decisions for each local school building.

**Sec. 1013.** RCW 28A.150.100 and 1990 c 33 s 103 are each amended to read as follows:

(1) For the purposes of this section and RCW 28A.150.410 and 28A.400.200, "basic education certificated instructional staff" ~~((shall))~~ means all full-time equivalent classroom teachers, teacher librarians, guidance counselors, health and social services staff, and other certificated instructional staff in the following programs as defined for statewide school district accounting purposes: Basic education, secondary vocational education, general instructional support, and general supportive services.

(2) ~~((In the 1988-89 school year and thereafter,))~~ Each school district shall maintain a ratio of at least forty-six basic education certificated instructional staff to one thousand annual average full time equivalent students.

**Sec. 1014.** 2009 c 548 s 710 (uncodified) is amended to read as follows:

(1) RCW 28A.150.030 (School day) and 1971 ex.s. c 161 s 1 & 1969 ex.s. c 223 s 28A.01.010;

(2) RCW 28A.150.060 (Certificated employee) and 2005 c 497 s 212, 1990 c 33 s 102, 1977 ex.s. c 359 s 17, 1975 1st ex.s. c 288 s 21, & 1973 1st ex.s. c 105 s 1;

(3) ~~((RCW 28A.150.100 (Basic education certificated instructional staff--Definition--Ratio to students) and 1990 c 33 s 103 & 1987 1st ex.s. c 2 s 203;~~

~~---((4))~~ RCW 28A.150.040 (School year--Beginning--End) and 1990 c 33 s 101, 1982 c 158 s 5, 1977 ex.s. c 286 s 1, 1975-'76 2nd ex.s. c 118 s 22, & 1969 ex.s. c 223 s 28A.01.020;

~~((5))~~ (4) RCW 28A.150.370 (Additional programs for which legislative appropriations must or may be made) and 1995 c 335 s 102, 1995 c 77 s 5, 1990 c 33 s 114, 1982 1st ex.s. c 24 s 1, & 1977 ex.s. c 359 s 7; and

~~((6))~~ (5) RCW 28A.155.180 (Safety net funds--Application--Technical assistance--Annual survey) and 2007 c 400 s 8.

**Sec. 1015.** 2009 c 548 s 805 (uncodified) is amended to read as follows:

Sections 304 through 311 of this act take effect September 1, ~~((2013))~~ 2011.

## PART XI MISCELLANEOUS PROVISIONS

**NEW SECTION. Sec. 1101.** RCW 28A.305.225 is recodified as a section in the chapter created in section 1102 of this act.

**NEW SECTION. Sec. 1102.** Sections 101 through 110 and 112 through 114 of this act constitute a new chapter in Title 28A RCW.

**NEW SECTION. Sec. 1103.** 2009 c 548 s 112, as amended by section 1005 of this act, is codified as a section in chapter 28A.290 RCW.

**NEW SECTION. Sec. 1104.** RCW 43.41.398 is recodified as a section in chapter 28A.400 RCW.

**NEW SECTION. Sec. 1105.** Sections 1002, 1003, 1004, 1008, 1010, 1013, and 1014 of this act take effect September 1, 2011.

**NEW SECTION. Sec. 1106.** Section 1006 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

## POINT OF ORDER

Senator King: "I challenge the scope and object of the house amendment. In previous rulings the President has found that the body of the underlying bill is what determines the scope and object. When an amendment is placed on the bill by the House the President may review it to determine if the amendment is outside the scope and object of the bill when it passed the Senate. In this case, the amendatory language concerning the prototypical funding formula model found in part ten of the striking amendment passed by the House is neither within the scope nor the object of the underlying bill. Engrossed Second Substitute Senate Bill No. 6696 as it passed the Senate had the purpose of implementing changes necessary to make Washington State more competitive for federal 'Race to the Top' grant funds. It focused on the substantive policy changes needed to help directly impact and improve student learning in the class room and in areas that would help earn Washington State points on its grant application. The Senate bill as it left Senate did not in any way have a purpose of furthering the technical implementation requirements for the funding formula adopted last year in House Bill No. 2261. Separate legislation was introduced this session to deal with that issue and those bills continue to work their way through the legislative process. In terms of scope of the bill that passed the Senate, it is true that the bill addressed many aspects of Washington's educational system. However, each subject in the underlying bill is directly tied to improving student learning in our classrooms by focusing on teacher evaluations, new accountability procedures to help turn around struggling schools, increasing parent involvement in the classroom and creating new standards on which are curriculum will be based. Part ten sections through 10..."

REMARKS BY THE PRESIDENT

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President Owen: "Senator King, the President's going to have to stop you. The President allows for brief explanation on each. I think you've laid the ground work and you've got it written out there and we'll read it. Thank you."

#### MOTION

On motion of Senator Eide, further consideration of Engrossed Second Substitute Senate Bill No. 6696 was deferred and the bill held its place on the calendar.

#### INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced the Mayor of Itamar, Israel, The Honorable Moshe Goldsmith and wife Lea Goldsmith accompanied by Tani Zarelli, wife of Senator Zarelli, who were seated in the gallery.

#### MOTION

On motion of Senator Marr, Senators Brown and Hargrove were excused.

#### MESSAGE FROM THE HOUSE

March 2, 2010

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6392 with the following amendment(s): 6392-S.E AMH ENGR H5374.E,

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature recognizes that during the 2009 legislative session tolling was authorized on the state route number 520 corridor. As such, it is the intent of the legislature that tolling commences in the spring of 2011 on the existing state route number 520 bridge.

The legislature further recognizes that tolling of the state route number 520 corridor is integrally related to the issuance of a final project design resulting from the supplemental draft environmental impact statement for the state route number 520 bridge replacement and HOV program released in January 2010. It is the intent of the legislature that the department of transportation work with affected neighborhoods and local governments, including the mayor of the city of Seattle and the Seattle city council, to refine the preferred alternative design in the supplemental draft environmental impact statement so that the final design of the state route number 520 bridge replacement and HOV program will, to the extent required by state and federal law, include reasonable assurance that project impacts will be mitigated as much as practicable to protect against further adverse impacts on neighborhood environmental quality. Within the cost constraints identified in section 1, chapter 472, Laws of 2009, and consistent with an opening date to vehicular traffic of 2014, it is further the intent of the legislature that any final design of the state route number 520 bridge replacement and HOV program accommodate effective connections for transit, including high capacity transit, including, but not limited to, effective connections for transit to the university link light rail line, consistent with the requirements of RCW 47.01.408, and ensure the effective, efficient, and feasible coordination of bus services and light rail services throughout the state route number 520 corridor, consistent with the requirements of RCW 47.01.410. The legislature further intends that any cost savings applicable to the state route number 520 bridge replacement and HOV program stay within the program.

**Sec. 2.** RCW 47.56.870 and 2009 c 472 s 2 are each amended to read as follows:

(1) The initial imposition of tolls on the state route number 520 corridor is authorized, the state route number 520 corridor is designated an eligible toll facility, and toll revenue generated in the corridor must only be expended as allowed under RCW 47.56.820.

(2) The state route number 520 corridor consists of that portion of state route number 520 between the junctions of Interstate 5 and state route number 202. The toll imposed by this section shall be charged only for travel on the floating bridge portion of the state route number 520 corridor.

(3)(a) In setting the toll rates for the corridor pursuant to RCW 47.56.850, the tolling authority shall set a variable schedule of toll rates to maintain travel time, speed, and reliability on the corridor and generate the necessary revenue as required under (b) of this subsection.

(b) The tolling authority shall initially set the variable schedule of toll rates, which the tolling authority may adjust at least annually to reflect inflation as measured by the consumer price index or as necessary to meet the redemption of bonds and interest payments on the bonds, to generate revenue sufficient to provide for:

(i) The issuance of general obligation bonds, authorized in RCW 47.10.879, first payable from toll revenue and then excise taxes on motor vehicle and special fuels pledged for the payment of those bonds in the amount necessary to fund the ((replacement state route number 520 floating bridge and necessary landings)) state route number 520 bridge replacement and HOV program, subject to subsection (4) of this section; and

(ii) Costs associated with the project designated in subsection (4) of this section that are eligible under RCW 47.56.820.

(4)(a) The proceeds of the bonds designated in subsection (3)(b)(i) of this section ~~((which together with other appropriated and identified state and federal funds is sufficient to pay for the replacement of the floating bridge segment and necessary landings of state route number 520,))~~ must be used only to fund the ((construction of the replacement state route number 520 floating bridge and necessary landings)) state route number 520 bridge replacement and HOV program; however, two hundred million dollars of bond proceeds, in excess of the proceeds necessary to complete the floating bridge segment and necessary landings, must be used only to fund the state route number 520, Interstate 5 to Medina bridge replacement and HOV project segment of the program, as identified in applicable environmental impact statements, and may be used to fund effective connections for high occupancy vehicles and transit for state route number 520, but only to the extent those connections benefit or improve the operation of state route number 520.

(b) The program must include the following elements within the cost constraints identified in section 1, chapter 472, Laws of 2009, consistent with the legislature's intent that cost savings applicable to the program stay within the program and that the bridge open to vehicular traffic in 2014:

(i) A project design, consistent with RCW 47.01.408, that includes high occupancy vehicle lanes with a minimum carpool occupancy requirement of three-plus persons on state route number 520;

(ii) High occupancy vehicle lane performance standards for the state route number 520 corridor established by the department. The department shall report to the transportation committees of the legislature when average transit speeds in the two lanes that are for high occupancy vehicle travel fall below forty-five miles per hour at least ten percent of the time during peak hours;

(iii) A work group convened by the mayor and city council of the city of Seattle to include sound transit, King county metro, the Seattle department of transportation, the department, the University

of Washington, and other persons or organizations as designated by the mayor or city council to study and make recommendations of alternative connections for transit, including bus routes and high capacity transit, to the university link light rail line. The work group must consider such techniques as grade separation, additional stations, and pedestrian lids to effect these connections. The recommendations must be alternatives to the transit connections identified in the supplemental draft environmental impact statement for the state route number 520 bridge replacement and HOV program released in January 2010, and must meet the requirements under RCW 47.01.408, including accommodating effective connections for transit. The recommendations must be within the scope of the supplemental draft environmental impact statement. For the purposes of this section, "effective connections for transit" means a connection that connects transit stops, including high capacity transit stops, that serve the state route number 520/Montlake interchange vicinity to the university link light rail line, with a connection distance of less than one thousand two hundred feet between the stops and the light rail station. The city of Seattle shall submit the recommendations by October 1, 2010, to the governor and the transportation committees of the legislature. However, if the city of Seattle does not convene the work group required under this subsection before July 1, 2010, or does not submit recommendations to the governor and the transportation committees of the legislature by October 1, 2010, the department must convene the work group required under this subsection and meet all the requirements of this subsection that are described as requirements of the city of Seattle by November 30, 2010;

(iv) A work group convened by the department to include sound transit and King county metro to study and make recommendations regarding options for planning and financing high capacity transit through the state route number 520 corridor. The department shall submit the recommendations by January 1, 2011, to the governor and the transportation committees of the legislature;

(v) A plan to address mitigation as a result of the state route number 520 bridge replacement and HOV program at the Washington park arboretum. As part of its process, the department shall consult with the governing board of the Washington park arboretum, the Seattle city council and mayor, and the University of Washington to identify all mitigation required by state and federal law resulting from the state route number 520 bridge replacement and HOV program's impact on the arboretum, and to develop a project mitigation plan to address these impacts. The department shall submit the mitigation plan by December 31, 2010, to the governor and the transportation committees of the legislature. Wetland mitigation required by state and federal law as a result of the state route number 520 bridge replacement and HOV program's impacts on the arboretum must, to the greatest extent practicable, include on-site wetland mitigation at the Washington park arboretum, and must enhance the Washington park arboretum. This subsection (4)(b)(v) does not preclude any other mitigation planned for the Washington park arboretum as a result of the state route number 520 bridge replacement and HOV program;

(vi) A work group convened by the department to include the mayor of the city of Seattle, the Seattle city council, the Seattle department of transportation, and other persons or organizations as designated by the Seattle city council and mayor to study and make recommendations regarding design refinements to the preferred alternative selected by the department in the supplemental draft environmental impact statement process for the state route number 520 bridge replacement and HOV program. To accommodate a timely progression of the state route number 520 bridge replacement and HOV program, the design refinements recommended by the work group must be consistent with the current environmental documents prepared by the department for the supplemental draft environmental impact statement. The department shall submit the

recommendations to the legislature and governor by December 31, 2010, and the recommendations must inform the final environmental impact statement prepared by the department; and

(vii) An account, created in section 5 of this act, into which civil penalties generated from the nonpayment of tolls on the state route number 520 corridor are deposited to be used to fund any project within the program, including mitigation. However, this subsection (4)(b)(vii) is contingent on the enactment by June 30, 2010, of either chapter . . . (Engrossed Substitute Senate Bill No. 6499), Laws of 2010 or chapter . . . (Substitute House Bill No. 2897), Laws of 2010, but if the enacted bill does not designate the department as the toll penalty adjudicating agency, this subsection (4)(b)(vii) is null and void.

(5) The department may carry out the ~~(construction and)~~ improvements designated in subsection (4) of this section and administer the tolling program on the state route number 520 corridor.

**Sec. 3.** RCW 47.01.408 and 2008 c 270 s 2 are each amended to read as follows:

(1) The state route number 520 bridge replacement and HOV project shall be designed to provide six total lanes, with two lanes that are for transit and high-occupancy vehicle travel, and four general purpose lanes.

(2) The state route number 520 bridge replacement and HOV project shall be designed to accommodate effective connections for transit, including high capacity transit, to the light rail station at the University of Washington.

(3) The state route number 520 bridge replacement and HOV project shall be designed to provide a total height from the water to the top of the bridge rail on the floating bridge portion of the project of no more than twenty feet if any portion of the project is funded by revenue generated from tolling the state route number 520 corridor.

**Sec. 4.** RCW 47.56.875 and 2009 c 472 s 4 are each amended to read as follows:

A special account to be known as the state route number 520 corridor account is created in the state treasury.

(1) Deposits to the account must include:

(a) All proceeds of bonds issued for ~~(construction of the replacement state route number 520 floating bridge and necessary landings))~~ the state route number 520 bridge replacement and HOV program, including any capitalized interest;

(b) Except as provided in RCW 47.56.870(4)(b)(vii), all of the tolls and other revenues received from the operation of the state route number 520 corridor as a toll facility, to be deposited at least monthly;

(c) Any interest that may be earned from the deposit or investment of those revenues;

(d) Notwithstanding RCW 47.12.063, proceeds from the sale of any surplus real property acquired for the ~~((purpose of building the replacement state route number 520 floating bridge and necessary landings))~~ state route number 520 bridge replacement and HOV program; and

(e) All damages, liquidated or otherwise, collected under any contract involving the ~~((construction of the replacement state route number 520 floating bridge and necessary landings))~~ state route number 520 bridge replacement and HOV program.

(2) Subject to the covenants made by the state in the bond proceedings authorizing the issuance and sale of bonds for the ~~((replacement state route number 520 floating bridge and necessary landings))~~ state route number 520 bridge replacement and HOV program, toll charges, other revenues, and interest received from the operation of the state route number 520 corridor as a toll facility may be used to:

(a) Pay any required costs allowed under RCW 47.56.820; and

(b) Repay amounts to the motor vehicle fund as required.

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(3) When repaying the motor vehicle fund, the state treasurer shall transfer funds from the state route number 520 corridor account to the motor vehicle fund on or before each debt service date for bonds issued for the ~~((replacement state route number 520 floating bridge project and necessary landings))~~ state route number 520 bridge replacement and HOV program in an amount sufficient to repay the motor vehicle fund for amounts transferred from that fund to the highway bond retirement fund to provide for any bond principal and interest due on that date. The state treasurer may establish subaccounts for the purpose of segregating toll charges, bond sale proceeds, and other revenues.

**NEW SECTION. Sec. 5.** A new section is added to chapter 47.56 RCW to read as follows:

(1) A special account to be known as the state route number 520 civil penalties account is created in the state treasury. All state route number 520 bridge replacement and HOV program civil penalties generated from the nonpayment of tolls on the state route number 520 corridor must be deposited into the account, as provided under RCW 47.56.870(4)(b)(vii). Moneys in the account may be spent only after appropriation. Expenditures from the account may be used to fund any project within the state route number 520 bridge replacement and HOV program, including mitigation.

(2) This section is contingent on the enactment by June 30, 2010, of either chapter . . . (Engrossed Substitute Senate Bill No. 6499), Laws of 2010 or chapter . . . (Substitute House Bill No. 2897), Laws of 2010, but if the enacted bill does not designate the department as the toll penalty adjudicating agency, this section is null and void.

**Sec. 6.** RCW 43.84.092 and 2009 c 479 s 31, 2009 c 472 s 5, and 2009 c 451 s 8 are each reenacted and amended to read as follows:

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

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

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

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

The following accounts and funds shall receive their proportionate share of earnings based upon each account's and

fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the personal health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation

equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the urban arterial trust account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

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

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Haugen moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6392.

Senators Haugen and Swecker spoke in favor of passage of the motion.

The President declared the question before the Senate to be the motion by Senator Haugen that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6392.

The motion by Senator Haugen carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 6392 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6392, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6392, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 37; Nays, 10; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Gordon, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Marr, McAuliffe, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Swecker and Tom

Voting nay: Senators Benton, Delvin, Kline, Kohl-Welles, McDermott, Morton, Murray, Roach, Stevens and Zarelli

Excused: Senators Hargrove and McCaslin

ENGROSSED SUBSTITUTE SENATE BILL NO. 6392, as amended by the House, 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.

#### MESSAGE FROM THE HOUSE

March 5, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6673 with the following amendment(s): 6673-S AMH ENGR H5380.E,

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature intends to appoint a panel of experts to study bail practices and procedures. The bail system must be examined in a comprehensive and well-considered manner from all aspects including, but not limited to, judicial discretion, bail amounts and procedures, public safety, variations in county practices, constitutional restraints, and cost to local government. The variety of practices and procedures requires that a panel of experts study the issue and report its recommendation to the legislature.

**NEW SECTION. Sec. 2.** (1)(a) A work group on bail practices is established within existing resources. The work group must consist of the following members:

- (i) One member from each of the two largest caucuses of the senate, appointed by the president of the senate;
- (ii) One member from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;
- (iii) The chief justice of the Washington state supreme court or the chief justice's designee;
- (iv) A superior court judge, appointed by the superior court judges' association;
- (v) A district or municipal court judge, appointed by the district and municipal court judges' association;
- (vi) The governor or the governor's designee;
- (vii) The secretary of the Washington state department of corrections or the secretary's designee;
- (viii) The director of the Washington state department of licensing or the director's designee;
- (ix) The Washington state insurance commissioner or the commissioner's designee;
- (x) Two prosecutors, appointed by the Washington association of prosecuting attorneys or designees of the prosecutors;
- (xi) Two attorneys selected by separate associations of attorneys whose members have practices that focus on representing criminal defendants;
- (xii) One police officer and one deputy sheriff, selected by a statewide association of such officers and deputies;
- (xiii) A representative of a statewide association of city governments, selected by the association;
- (xiv) A representative of a statewide association of counties, selected by the association;
- (xv) A representative employed as an adult corrections officer, selected by a statewide association of such officers;
- (xvi) A representative from an entity representing corrections officers at a local county jail in which adult offenders are in custody and located in any county with a population in excess of one million persons, selected by the entity;



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(xvii) A representative of a statewide organization concerned primarily with the protection of individual liberties, selected by the organization;

(xviii) A representative of a statewide association of advocates who work on behalf of victims and survivors of violent crimes, selected by the association;

(xix) A representative of the bail bond enforcement industry, chosen by a statewide association of bail bond enforcement agents;

(xx) A representative of the bail bond industry, selected by a statewide association of bail companies; and

(xxi) A representative of a statewide consumer advocacy organization with at least thirty thousand members, selected by the organization.

(b) The work group shall choose its cochairs from among its legislative membership. The legislative cochairs shall convene the initial meeting of the work group.

(2) The work group shall review, at a minimum, the following issues:

(a) All aspects of bail, paying particular attention to legislation affecting bail and pretrial release introduced during the 2010 legislative session;

(b) A validated risk assessment tool that measures or predicts the likelihood that an offender will exhibit violent behavior if released and whether judges should use this tool at bail hearings;

(c) Bail practices by county, including the processes used to seek and grant bail as well as the standards by which bail is granted;

(d) Whether, or to what extent, uniformity of bail practices should be required by state law;

(e) The characteristics of the federal system;

(f) The benefits of competitive freedom of government regulation in the pricing of bail bonds;

(g) The interests of crime victims in being notified of a person's release on bail;

(h) The interests of counties and cities that maintain municipal courts;

(i) Legal and constitutional constraints in granting or denying bail;

(j) Whether the existing regulatory, judicial, or statutory constraints on bail should be revised; and

(k) The pretrial release system.

(3) The work group shall use staff from senate committee services and the house of representatives office of program research and meet in state facilities that do not charge for use.

(4) Legislative members of the work group must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The work group may organize itself in a manner and adopt rules of procedure that it determines are most conducive to the timely completion of its charge.

(6) The work group shall report its findings and recommendations to the Washington state supreme court, the governor, and appropriate committees of the legislature by December 1, 2010.

(7) This section expires December 31, 2010."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kline moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6673.

Senator Kline spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kline that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6673.

The motion by Senator Kline carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6673 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6673, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6673, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

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

Absent: Senator Tom

Excused: Senator McCaslin

SUBSTITUTE SENATE BILL NO. 6673, as amended by the House, 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.

MESSAGE FROM THE HOUSE

February 28, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6332 with the following amendment(s): 6332-S AMH CL KILG 012,

On page 3, line 28, after "integrate" strike all material through "contain" on line 30 and insert "information on assisting victims of human trafficking in posters and brochures, as deemed appropriate by the department. The information shall include" and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kohl-Welles moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6332.

Senator Kohl-Welles spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kohl-Welles that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6332.

The motion by Senator Kohl-Welles carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6332 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6332, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6332, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

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

Excused: Senator McCaslin

SUBSTITUTE SENATE BILL NO. 6332, as amended by the House, 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.

#### MESSAGE FROM THE HOUSE

February 28, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6340 with the following amendment(s): 6340-S AMH PSEP H5399.1,

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.103.040 and 1995 c 398 s 5 are each amended to read as follows:

The council shall consist of ~~((twelve))~~ thirteen members who shall be selected as follows: One county coroner; one county prosecutor; one county prosecutor who also serves as ex officio county coroner; one county medical examiner; one county sheriff; one chief of police; the chief of the state patrol; two members of a county legislative authority; one pathologist who is currently in private practice; ~~((and))~~ two members of a city legislative authority; and one attorney whose practice of law includes significant experience representing clients charged with criminal offenses.

The governor shall appoint members to the council from among the nominees submitted for each position as follows: The Washington association of county officials shall submit two nominees each for the coroner position and the medical examiner position; the Washington state association of counties shall submit two nominees each for the two county legislative authority positions; the association of Washington cities shall submit two nominees each for the two city legislative authority positions; the Washington association of prosecuting attorneys shall submit two nominees each for the county prosecutor-ex officio county coroner and for the county prosecutor position; the Washington association of sheriffs and police chiefs shall submit two nominees each for the county sheriff position and the chief of police position; ~~((and))~~ the Washington association of pathologists shall submit two nominees for the private pathologist position; and the Washington association of criminal defense lawyers and the Washington defender association shall jointly submit two nominees for the criminal defense attorney position, one of whom must actively manage or have significant experience in managing a public or private criminal defense agency or association, the other must have experience in cases involving DNA or other forensic evidence."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kline moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6340.

Senator Kline spoke in favor of the motion.

#### MOTION

On motion of Senator Brandland, Senator Pflug was excused.

The President declared the question before the Senate to be the motion by Senator Kline that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6340.

The motion by Senator Kline carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6340 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6340, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6340, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 1; Absent, 0; Excused, 2.

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

Voting nay: Senator Honeyford

Excused: Senators McCaslin and Pflug

SUBSTITUTE SENATE BILL NO. 6340, as amended by the House, 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 on the Point of Order raised by Senator King as to whether the House amendments to Engrossed Second Substitute Senate Bill 6696 fit within the scope and object of the underlying bill, the President finds and rules as follows:

The underlying bill as it left the Senate made a number of substantive policy changes to education statutes, but it is fair to characterize them as all relating to making our state more competitive for federal 'Race to the Top' funds. By contrast, the House amendments include a number of changes having little connection to the 'Race to the Top' program, such as adjusting the formula by which state money is allocated to school districts. Whatever the merits of these changes, the House amendments impermissibly broaden the subject matter of the bill.

For these reasons, the President finds that the House amendments are beyond the scope and object of the committee amendment, and Senator King's point is well-taken."

#### MOTION

Senator King moved that the Senate refuse to concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 6696 and ask the House to recede therefrom.

The President declared the question before the Senate to be motion by Senator King that the Senate refuse to concur in the

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House amendment(s) to Engrossed Second Substitute Senate Bill No. 6696 and ask the House to recede therefrom.

The motion by Senator King carried and the Senate refused to concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 6696 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

March 3, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6342 with the following amendment(s): 6342-S AMH SGTA REIL 093,

On page 1, beginning on line 16, strike all of subsections (4) and (5) and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Swecker moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6342.

Senators Swecker and Becker spoke in favor of passage of the motion.

The President declared the question before the Senate to be the motion by Senator Swecker that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6342.

The motion by Senator Swecker carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6342 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6342, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6342, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

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

Excused: Senators McCaslin and Pflug

SUBSTITUTE SENATE BILL NO. 6342, as amended by the House, 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 Delvin was excused.

MESSAGE FROM THE HOUSE

March 5, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6343 with the following amendment(s): 6343-S AMH ENGR H5408.E,

Strike everything after the enacting clause and insert the following:

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

(a) A number of governmental agencies and programs of the state share goals and missions relating to food, nutrition, agriculture, health, education, and economic development through sustained agricultural production and improved access to nutritious foods;

(b) The food and agriculture industry generates forty-two billion dollars annually, employs one hundred sixty thousand people, and contributes thirteen percent to the state's economy;

(c) Agriculture is a leading employer in the state, produces over three hundred different crops, and is composed of many diverse types of agricultural endeavors;

(d) Washington state continues to lose approximately seventy thousand acres of farmland every year to nonfarming uses and the average age of farmers in the state is fifty-seven;

(e) Washington is currently ranked twenty-eighth in the nation for very low food security with one hundred twelve thousand households experiencing hunger, a twenty-four percent increase from 2008;

(f) According to data average for the years 2004 through 2008, nearly sixty-one percent of Washington adults are either obese or overweight;

(g) Obesity contributes substantially to the burden of preventable illnesses and premature death, which are estimated to cost Washington almost two billion dollars annually; and

(h) The current food system in Washington state is complex and directly affected by the activities and policies of multiple nongovernmental organizations, state agencies, and local governments, and a coordinated, systemic approach is necessary to improve the health of Washington's citizens and improve the economic viability of agriculture.

(2) The legislature recognizes the need to understand the impacts of governmental rules and regulations on the viability of the agricultural sector and on the ability of citizens of all backgrounds to obtain sufficient, high quality foods for themselves and their families.

(3) The purpose of this act is to provide for the establishment of a forum whereby state food policy, food-related programs, and food-related issues can be examined, improved, and better integrated to accomplish the overarching public goals. It is the intent of the legislature to place the state in a favorable position to qualify for available federal funds, moneys from foundations, and other sources to fund the activities of the forum.

**NEW SECTION. Sec. 2.** (1) The Washington food policy forum is established. The purpose of the forum is to develop recommendations to advance the following food system goals:

(a) To increase production, sales, and consumption of Washington-grown foods;

(b) To develop and promote programs that bring healthy Washington grown foods to Washington residents, including increased state purchasing of local food products for school, adult care programs, and other state-funded food programs;

(c) To review and develop programs that support providing proper nutrition and avoid burdens of obesity and chronic diet-related diseases;

(d) To protect the land and water resources needed for sustained local food production;

(e) To examine ways to encourage retention of an adequate number of farmers, the educational needs for an adequate agricultural workforce, and to provide for the continued economic

viability of local food production, processing, and distribution in the state; and

(f) To reduce food insecurity and hunger in the state and ensure that the benefits of a healthy Washington food system are shared with families at all income levels, and particularly with vulnerable children, the elderly, people with disabilities, and communities of color.

(2) Recommendations shall include benchmarks and criteria for measuring progress in achieving each goal.

(3) Recommendations shall consider, but not be limited to, ways in which the following may help achieve each of the five goals:

(a) Increased collaboration and communication between state agencies;

(b) Increased collaboration and communication between local, state, and federal agencies;

(c) Innovative public-private partnerships that can leverage private and public market influence such as through institutional purchasing and contracts;

(d) A review of (i) the future of farming study that was coordinated by the department of agriculture with regard to the goals established in this section, (ii) reports issued by the office of farmland preservation with regard to the goals established in this section, and (iii) data and analysis of food insecurity across the state as reported by the department of health behavioral risk factors surveillance surveys;

(e) Improvements to state or federal laws or regulations relevant to the food system and food security in the state;

(f) Improvements in state or federal program implementation relevant to the food system and food security in the state;

(g) Identifying additional federal, state, local, and private investments needed to accomplish the recommendations.

(4) In developing its recommendations, the forum:

(a) Shall coordinate with the office of farmland preservation to avoid duplication of effort;

(b) Shall solicit public input through public hearings or informational sessions;

(c) May conduct research and analysis as needed within financial resources available to the forum; and

(d) Shall invite additional stakeholder participation through an advisory committee created to address issues identified by the forum as requiring study or particular expertise.

(5) The forum may establish advisory committees to address specific issue areas.

**NEW SECTION. Sec. 3.** (1) All members of the Washington food policy forum are voting members.

(2) The following are invited to participate as ex officio members of the Washington food policy forum convened under section 4(1) of this act:

(a) The director of the department of agriculture or the director's designee;

(b) The secretary of the department of health or the secretary's designee;

(c) The superintendent of public instruction or the superintendent's designee;

(d) The director of the department of commerce or the director's designee;

(e) The secretary of the department of social and health services or the secretary's designee;

(f) The dean of the college of agricultural, human, and natural resource sciences at Washington State University or the dean's designee;

(g) The director of the department of ecology or the director's designee;

(h) A representative from the state conservation commission office of farmland preservation; and

(i) A representative from the University of Washington who has expertise in food systems or nutrition appointed by the president of the University of Washington.

(3) The following members shall be appointed by the director of the department of agriculture to the food policy forum:

(a) Five farmer representatives. The director of the department of agriculture shall endeavor to ensure that geographic diversity, size of operation, and farmer age are balanced among the five farmer representatives, and shall select the farmer representatives from persons nominated by established agricultural organizations;

(b) One representative who represents food distribution, processing, and marketing interests;

(c) One representative who represents direct-to-consumer marketing efforts;

(d) One representative who represents community-based efforts to address nutrition and public health;

(e) One representative who represents nongovernmental statewide anti-hunger efforts;

(f) One representative who represents food banks;

(g) One representative who represents nongovernmental statewide efforts to protect the state's land, air, and water;

(h) One representative from a labor union that represents workers in the food industry;

(i) One representative from the international trade sector with expertise in the trade of food products;

(j) One person representing retail grocers who own a single store or a regional chain with less than ten million five hundred thousand dollars in gross revenue per location annually, nominated by an established food industry association;

(k) One representative from the restaurant sector; and

(l) One representative from the commercial fishing sector.

(4) The fourteen appointed members shall be appointed for terms of three years or until a successor is appointed. Members are eligible to be reappointed.

(5) The chair of the forum shall be elected by the members of the forum for a term not to exceed two years.

(6) The public members of the forum shall serve without compensation from state funds. The ex officio members of the forum shall serve without additional compensation of state funds. Members of the forum may receive reimbursement from the forum for travel expenses as provided in RCW 43.03.050 and 43.03.060 if funds for forum operations are available as determined by the director of the office of financial management.

**NEW SECTION. Sec. 4.** (1) The director of the state conservation commission shall appoint a person to convene an organizational meeting of the food policy forum. At its first meeting, the forum must, at a minimum, (a) elect a forum chair from among its members, (b) identify funding sources for the forum, and (c) begin the development of a work plan.

(2) No state agency or state university may be compelled to incur expenses in connection with the operation of the forum.

(3) The forum shall report its initial findings and recommendations by December 1st of the year following the date of the second meeting of the forum. Thereafter, the forum shall submit an annual report that includes recommendations and progress on benchmarks by December 1st each year. These reports shall be submitted to the office of the governor and to the offices of the chief clerk of the house of representatives and the secretary of the senate.

**NEW SECTION. Sec. 5.** This chapter expires July 1, 2015.

**NEW SECTION. Sec. 6.** Sections 1 through 5 of this act constitute a new chapter in Title 15 RCW."

Correct the title.

and the same are herewith transmitted.

FIFTY SEVENTH DAY, MARCH 8, 2010

2010 REGULAR SESSION

MOTION

Senator Hatfield moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6343.

Senator Hatfield spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hatfield that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6343.

The motion by Senator Hatfield carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6343 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6343, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6343, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 43; Nays, 3; Absent, 0; Excused, 3.

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

Voting nay: Senators Holmquist, Honeyford and Stevens

Excused: Senators Delvin, McCaslin and Pflug

SUBSTITUTE SENATE BILL NO. 6343, as amended by the House, 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.

MESSAGE FROM THE HOUSE

February 28, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6590 with the following amendment(s): 6590-S AMH PSEP H5397.1,

Strike everything after the enacting clause and insert the following:

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

It is the policy of the state of Washington that all commissioned, appointed, and elected law enforcement personnel comply with their oath of office and agency policies regarding the duty to be truthful and honest in the conduct of their official business."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kline moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6590.

Senator Kline spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kline that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6590.

The motion by Senator Kline carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6590 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6590, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6590, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

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

Excused: Senators Delvin, McCaslin and Pflug

SUBSTITUTE SENATE BILL NO. 6590, as amended by the House, 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.

MESSAGE FROM THE HOUSE

March 4, 2010

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6724 with the following amendment(s): 6724-S.E AMH WAYS H5479.1,

Strike everything after the enacting clause and insert the following:

**"Sec. 1.** RCW 41.04.665 and 2008 c 36 s 3 are each amended to read as follows:

(1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services;

(iii) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; or

(iv) The employee is a victim of domestic violence, sexual assault, or stalking;

(b) The illness, injury, impairment, condition, call to service, emergency volunteer service, or consequence of domestic violence, sexual assault, or stalking has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW 38.40.060 if he or she qualifies under (a)(ii) of this subsection; or

(iii) Annual leave if he or she qualifies under (a)(iii) or (iv) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) or (iv) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than ~~((two hundred sixty one))~~ five hundred twenty-two days of leave, except that, a supervisor may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for the shared leave program because he or she is suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. Shared leave received under the uniformed service shared leave pool in RCW 41.04.685 is not included in this total.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

(4) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(2) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. ~~((However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.))~~

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Before the agency head makes a determination to return unused leave in connection with an illness or injury, or any other qualifying condition, he or she must receive from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

(11) The director of personnel may adopt rules as necessary to implement subsection (2)(a) through (c) of this section.

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

Correct the title.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

FIFTY SEVENTH DAY, MARCH 8, 2010

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Senator Kilmer moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6724. Senators Kilmer and Becker spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kilmer that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6724.

The motion by Senator Kilmer carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 6724 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6724, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6724, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

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

Excused: Senators Delvin, McCaslin and Pflug

ENGROSSED SUBSTITUTE SENATE BILL NO. 6724, as amended by the House, 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.

MESSAGE FROM THE HOUSE

March 3, 2010

MR. PRESIDENT:

The House passed ENGROSSED SENATE BILL NO. 6764 with the following amendment(s): 6764.E AMH JUDI JONR 025,

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 4.56.110 and 2004 c 185 s 2 are each amended to read as follows:

Interest on judgments shall accrue as follows:

(1) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts: PROVIDED, That said interest rate is set forth in the judgment.

(2) All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.

(3) ~~(a) Judgments founded on the tortious conduct of (individuals or other entities, whether acting in their personal or representative capacities,)~~ a "public agency" as defined in RCW 42.30.020 shall bear interest from the date of entry at two percentage points above the equivalent coupon issue yield, as published by the board of governors of the federal reserve system, of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment

affirmed shall date back to and shall accrue from the date the verdict was rendered.

(b) Except as provided in subsection (3)(a) of this section, judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, shall bear interest from the date of entry at two percentage points above the prime rate, as published by the board of governors of the federal reserve system on the first business day of the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

(4) Except as provided under subsections (1), (2), and (3) of this section, judgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered. The method for determining an interest rate prescribed by this subsection is also the method for determining the "rate applicable to civil judgments" for purposes of RCW 10.82.090.

NEW SECTION. Sec. 2. The rate of interest required by RCW 4.56.110 3(a) and (b) applies to the accrual of interest:

(1) As of the date of entry of judgment with respect to a judgment that is entered on or after the effective date of this section; and

(2) As of the effective date of this section with respect to a judgment that was entered before the effective date of this section and that is still accruing interest on the effective date of this section." and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Gordon moved that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 6764.

Senators Gordon and Carrell spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Gordon that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 6764.

The motion by Senator Gordon carried and the Senate concurred in the House amendment(s) to Engrossed Senate Bill No. 6764 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 6764, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 6764, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 39; Nays, 8; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Shin, Swecker and Tom

Voting nay: Senators Becker, Holmquist, Honeyford, Parlette, Schoesler, Sheldon, Stevens and Zarelli

Excused: Senators McCaslin and Pflug

ENGROSSED SENATE BILL NO. 6764, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### PERSONAL PRIVILEGE

Senator Kohl-Welles: "Yes, during debate on Substitute House Bill No. 2546, during the debate a few days ago on Substitute House Bill No. 2546, extending the hours for electrical trainees, the good Senator from the Second District asked me a question and I said that I would attain the information and provide it to her. And that had to do with statistics on electrical safety concerns. So, at a national level an estimated twenty-eight thousand three hundred residential building electrical fires occur annually and cause three-hundred sixty civilian deaths, one thousand civilian injuries and nine hundred ninety-five million dollars in direct loss accordingly to the United States Fire Administration. Contact with a electrical current is the fourth leading cause of deaths of construction workers according to the American Journal of Industrial Medicine and four hundred eleven people died from electrocutions in the United States in 2000 according to United States Consumer Protect Safety. So, I just wanted to provide that information."

#### MOTION

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

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 2935, by House Committee on General Government Appropriations (originally sponsored by Representatives Van De Wege, Sells, Blake, Takko, Darneille, Walsh, Hinkle and Kessler)

Regarding environmental and land use hearings boards and making more uniform the timelines for filing appeals with those boards. Revised for 1st Substitute: Regarding environmental and land use hearings boards and making more uniform the timelines for filing appeals with those boards. (REVISED FOR PASSED LEGISLATURE: Regarding environmental and land use hearings boards.)

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:

**"NEW SECTION. Sec. 1.** It is the intent of the legislature to reduce and consolidate the number of state boards that conduct administrative review of environmental and land use decisions and to make more uniform the timelines for filing appeals with such boards. The legislature intends to eliminate the hydraulics appeals board and the forest practices appeals board by transferring their duties to the pollution control hearings board. The legislature further intends to eliminate certain preliminary informal appeals heard internally by agencies. The legislature also intends to consolidate administratively and physically collocate the growth

management hearings boards into the environmental and land use hearings office by July 1, 2011.

**Sec. 2.** RCW 43.21B.001 and 2004 c 204 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) "Business days" means Monday through Friday exclusive of any state or federal holiday.

(2) "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

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

(4) "Director" means the director of ecology.

(5) "Environmental boards" means the pollution control hearings board created in RCW 43.21B.010 and the shorelines hearings board created in RCW 90.58.170.

(6) "Land use board" means the growth management hearings board created in RCW 36.70A.250.

**Sec. 3.** RCW 43.21B.005 and 2003 c 393 s 18 and 2003 c 39 s 22 are each reenacted and amended to read as follows:

(1) There is created an environmental hearings office of the state of Washington. The environmental hearings office (~~(shall)~~) consists of the pollution control hearings board created in RCW 43.21B.010, ~~((the forest practices appeals board created in RCW 76.09.210,))~~ the shorelines hearings board created in RCW 90.58.170, and the environmental and land use hearings board created in chapter 43.21L RCW ~~((, and the hydraulic appeals board created in RCW 77.55.170)).~~ The chair of the pollution control hearings board shall be the chief executive officer of the environmental hearings office. Membership, powers, functions, and duties of the pollution control hearings board ~~((, the forest practices appeals board,))~~ and the shorelines hearings board ~~((, and the hydraulic appeals board))~~ shall be as provided by law.

(2) The chief executive officer of the environmental hearings office may appoint an administrative appeals judge who shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW, in cases before the boards comprising the office. The administrative appeals judge shall have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. Additional administrative appeals judges may also be appointed by the chief executive officer on the same terms. Administrative appeals judges shall not be subject to chapter 41.06 RCW.

(3) The administrative appeals judges appointed under subsection (2) of this section are subject to discipline and termination, for cause, by the chief executive officer. Upon written request by the person so disciplined or terminated, the chief executive officer shall state the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(4) The chief executive officer may appoint, discharge, and fix the compensation of such administrative or clerical staff as may be necessary.

(5) The chief executive officer may also contract for required services.

**Sec. 4.** RCW 43.21B.005 and 2003 c 393 s 18 and 2003 c 39 s 22 are each reenacted and amended to read as follows:

(1) There is created an environmental and land use hearings office of the state of Washington. The environmental and land use hearings office (~~(shall)~~) consists of the pollution control hearings



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board created in RCW 43.21B.010, ~~((the forest practices appeals board created in RCW 76.09.210,))~~ the shorelines hearings board created in RCW 90.58.170, ~~((the environmental and land use hearings board created in chapter 43.21L RCW, and the hydraulic appeals board created in RCW 77.55.170. The chair of the pollution control hearings board shall be the chief executive officer of the environmental hearings office))~~ and the growth management hearings board created in RCW 36.70A.250. The governor shall designate one of the members of the pollution control hearings board or growth management hearings board to be the director of the environmental and land use hearings office during the term of the governor. Membership, powers, functions, and duties of the pollution control hearings board, ~~((the forest practices appeals board,))~~ the shorelines hearings board, and the ~~((hydraulic appeals))~~ growth management hearings board shall be as provided by law.

(2) The ~~((chief executive officer))~~ director of the environmental and land use hearings office may appoint ~~((an))~~ one or more administrative appeals judges ~~((who shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW,))~~ in cases before the environmental boards and, with the consent of the chair of the growth management hearings board, one or more hearing examiners in cases before the land use board comprising the office. The administrative appeals judges shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW, have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. ~~((Additional administrative appeals judges may also be appointed by the chief executive officer on the same terms. Administrative appeals judges shall not be subject to chapter 41.06 RCW.))~~ The hearing examiners possess the powers and duties provided for in RCW 36.70A.270.

(3) Administrative appeals judges are not subject to chapter 41.06 RCW. The administrative appeals judges appointed under subsection (2) of this section are subject to discipline and termination, for cause, by the ~~((chief executive officer))~~ director of the environmental and land use hearings office. Upon written request by the person so disciplined or terminated, the ~~((chief executive officer))~~ director of the environmental and land use hearings office shall state the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(4) The ~~((chief executive officer))~~ director of the environmental and land use hearings office may appoint, discharge, and fix the compensation of such administrative or clerical staff as may be necessary.

(5) The ~~((chief executive officer))~~ director of the environmental and land use hearings office may also contract for required services.

**Sec. 5.** RCW 43.21B.010 and 1979 ex.s. c 47 s 3 are each amended to read as follows:

There is hereby created within the environmental hearings office a pollution control hearings board of the state of Washington.

The purpose of the pollution control hearings board is to provide for a more expeditious and efficient disposition of designated environmental appeals ~~((with respect to the decisions and orders of the department and director and with respect to all decisions of air pollution control boards or authorities established pursuant to chapter 70.94 RCW))~~ as provided for in RCW 43.21B.110.

**Sec. 6.** RCW 43.21B.010 and 1979 ex.s. c 47 s 3 are each amended to read as follows:

There is hereby created within the environmental and land use hearings office a pollution control hearings board of the state of Washington.

The purpose of the pollution control hearings board is to provide for a more expeditious and efficient disposition of designated

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environmental appeals ~~((with respect to the decisions and orders of the department and director and with respect to all decisions of air pollution control boards or authorities established pursuant to chapter 70.94 RCW))~~ as provided for in RCW 43.21B.110.

**Sec. 7.** RCW 43.21B.110 and 2009 c 456 s 16, 2009 c 332 s 18, and 2009 c 183 s 17 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, ~~((and))~~ the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, ~~((or))~~ local health departments, the department of natural resources, the department of fish and wildlife, and the parks and recreation commission:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under chapter 183, Laws of 2009.

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(g) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(i) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(j) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(k) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(l) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(m) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(n) Decisions of a state agency that is an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(e) Appeals of decisions by the department as provided in chapter 43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec. 8.** RCW 43.21B.110 and 2009 c 456 s 16 and 2009 c 332 s 18 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, ~~((and))~~ the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, ~~((or))~~ local health departments, the department of natural resources, the department of fish and wildlife, and the parks and recreation commission:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue,

deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of a state agency that is an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(e) Appeals of decisions by the department as provided in chapter 43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**NEW SECTION. Sec. 9.** A new section is added to chapter 43.21B RCW to read as follows:

In all appeals, upon request of one or more parties and with the consent of all parties, the environmental hearings boards may schedule a conference for the purpose of attempting to mediate the case. Mediation must be conducted by an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board. A person who mediates in a particular appeal may not participate in a hearing on that appeal and may not write the decision and order in the appeal. The mediator may not communicate with board members regarding the mediation other than to inform them of the pendency of the mediation and whether the case settled. Mediation provided by the environmental hearings boards must be conducted pursuant to the provisions of the uniform mediation act, chapter 7.07 RCW.

**Sec. 10.** RCW 43.21B.180 and 1994 c 253 s 6 are each amended to read as follows:

~~((Judicial review of))~~ Any party aggrieved by a final decision and order of the pollution control hearings board may ((be obtained only pursuant to)) obtain judicial review of the final decision and order as provided in RCW 34.05.510 through 34.05.598. The ((director)) state or local agency that issued the decision appealed to the board shall have the same right of review from a decision made pursuant to RCW 43.21B.110 as does any person.

**Sec. 11.** RCW 43.21B.230 and 2004 c 204 s 3 are each amended to read as follows:

~~((Consistent with RCW 43.21B.110, any person having received notice of denial of a petition, a notice of determination, or notice of an order made by the department may appeal to the hearings board, within thirty days from the date of receipt of the notice of such denial, order, or determination by the appealing party.))~~ (1) Unless otherwise provided by law, any person with standing may commence an appeal to the pollution control hearings board by filing a notice of appeal with the board within thirty days from the date of receipt of the decision being appealed.

(2) The appeal ((shall be perfected by serving a copy of the notice of appeal upon the department or air pollution authority established pursuant to chapter 70.94 RCW, as the case may be, within the time specified herein and by filing the original thereof with)) is timely if it is filed with the board and served upon the state

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or local agency whose action is being appealed within the same thirty-day period. Proof of service must be filed with the clerk of the hearings board to perfect the appeal.

(3) The appeal must contain the following in accordance with the rules of the hearings board:

- (a) The appellant's name and address;
- (b) The date and docket number of the order, permit, license, or decision appealed;
- (c) A copy of the order, permit, license, or decision that is the subject of the appeal;
- (d) A clear, separate, and concise statement of every error alleged to have been committed;
- (e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and
- (f) A statement setting forth the relief sought.

**Sec. 12.** RCW 43.21B.300 and 2009 c 456 s 17 and 2009 c 178 s 2 are each reenacted and amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within thirty days after the notice is received, the person incurring the penalty may apply in writing to ((the department or)) the authority for the remission or mitigation of the penalty. Upon receipt of the application, the ((department or)) authority may remit or mitigate the penalty upon whatever terms ((the department or)) the authority in its discretion deems proper. The ((department or the)) authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

- (a) Thirty days after receipt of the notice imposing the penalty;
- (b) Thirty days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or
- (c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW

70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100.

**Sec. 13.** RCW 43.21B.310 and 2009 c 456 s 18 and 2009 c 178 s 3 are each reenacted and amended to read as follows:

~~(1) ((Except as provided in RCW 90.03.210(2), any order issued by the department or local air authority pursuant to RCW 43.27A.190, 70.94.211, 70.94.332, 70.95.315, 70.105.095, 86.16.020, 88.46.070, 90.46.250, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority within thirty days after the date of receipt of the order. Except as provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the exclusive means of appeal of such an order.~~

~~(2) The department or the authority)) The issuing agency in its discretion may stay the effectiveness of ((an)) any order that has been appealed to the board during the pendency of such an appeal.~~

~~((3)) (2) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to RCW 43.21B.320 to the hearings board for a stay of the order or for the removal thereof.~~

~~((4) Any appeal must contain the following in accordance with the rules of the hearings board:~~

- ~~(a) The appellant's name and address;~~
- ~~(b) The date and docket number of the order, permit, or license appealed;~~
- ~~(c) A description of the substance of the order, permit, or license that is the subject of the appeal;~~
- ~~(d) A clear, separate, and concise statement of every error alleged to have been committed;~~
- ~~(e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and~~
- ~~(f) A statement setting forth the relief sought.~~

~~((5)) (3) Upon failure to comply with any final order of the department, the attorney general, on request of the department, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to ((insure)) ensure compliance with the order. The air authorities may bring similar actions to enforce their orders.~~

~~((6)) (4) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the ((department)) issuing agency within thirty days of the date of receipt.~~

**Sec. 14.** RCW 43.21B.320 and 1987 c 109 s 7 are each amended to read as follows:

(1) A person appealing to the hearings board an order ~~((of the department or an authority))~~, not stayed by the issuing agency, may obtain a stay of the effectiveness of that order only as set forth in this section.

(2) An appealing party may request a stay by including such a request in the appeal document, in a subsequent motion, or by such other means as the rules of the hearings board shall prescribe. The request must be accompanied by a statement of grounds for the stay and evidence setting forth the factual basis upon which request is based. The hearings board shall hear the request for a stay as soon as possible. The hearing on the request for stay may be consolidated with the hearing on the merits.

(3) The applicant may make a prima facie case for stay if the applicant demonstrates either a likelihood of success on the merits of the appeal or irreparable harm. Upon such a showing, the hearings board shall grant the stay unless the ~~((department or authority))~~ issuing agency demonstrates either (a) a substantial probability of success on the merits or (b) likelihood of success on the merits and an overriding public interest which justifies denial of the stay.

(4) Unless otherwise stipulated by the parties, the hearings board, after granting or denying an application for a stay, shall expedite the hearing and decision on the merits.

(5) Any party or other person aggrieved by the grant or denial of a stay by the hearings board may petition the superior court for Thurston county for review of that decision pursuant to chapter 34.05 RCW pending the appeal on the merits before the board. The superior court shall expedite its review of the decision of the hearings board.

**NEW SECTION. Sec. 15.** A new section is added to chapter 36.70A RCW to read as follows:

(1) On July 1, 2011, the growth management hearings board is administratively consolidated into the environmental and land use hearings office created in RCW 43.21B.005.

(2) Not later than July 1, 2012, the growth management hearings board consists of seven members qualified by experience or training in matters pertaining to land use law or land use planning, except that the governor may reduce the board to six members if warranted by the board's caseload. All board members must be appointed by the governor, two each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions and shall continue to meet the qualifications set out in RCW 36.70A.260. The reduction from seven board members to six board members must be made through attrition, voluntary resignation, or retirement.

**Sec. 16.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to read as follows:

Each growth management hearings board shall be governed by the following rules on conduct and procedure:

(1) Any board member may be removed for inefficiency, malfeasance, and misfeasance in office, under specific written charges filed by the governor. The governor shall transmit such written charges to the member accused and the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Removal of any member of a board by the tribunal shall disqualify such member for reappointment.

(2) Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060. If it is determined that the review boards shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. If it is determined that a review board shall operate on a part-time basis, each member shall receive compensation pursuant to RCW 43.03.250, provided such amount shall not exceed the amount that would be set if they were a full-time board member. The principal office of each board shall be located by the governor within the jurisdictional boundaries of each board. The boards shall operate on either a part-time or full-time basis, as determined by the governor.

(3) Each board member shall not: (a) Be a candidate for or hold any other public office or trust; (b) engage in any occupation or business interfering with or inconsistent with his or her duty as a board member; and (c) for a period of one year after the termination of his or her board membership, act in a representative capacity before the board on any matter.

(4) A majority of each board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct

of its powers and duties, or transacting other official business, and may act even though one position of the board is vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

(5) The board may ~~((appoint))~~ use one or more hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact and, if requested by the board, to make recommendations to the board for decisions in cases before the board. Such hearing examiners must have demonstrated knowledge of land use planning and law. The boards shall specify in their joint rules of practice and procedure, as required by subsection (7) of this section, the procedure and criteria to be employed for designating hearing examiners as a presiding officer. Hearing examiners ~~((selected))~~ used by a board shall meet the requirements of subsection (3) of this section. The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the board. This authorization to use hearing examiners does not waive the requirement of RCW 36.70A.300 that final orders be issued within one hundred eighty days of board receipt of a petition.

(6) Each board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

(7) All proceedings before the board, any of its members, or a hearing examiner appointed by the board shall be conducted in accordance with such administrative rules of practice and procedure as the boards jointly prescribe. All three boards shall jointly meet to develop and adopt joint rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals. The boards shall publish such rules and decisions they render and arrange for the reasonable distribution of the rules and decisions. Except as it conflicts with specific provisions of this chapter, the administrative procedure act, chapter 34.05 RCW, and specifically including the provisions of RCW 34.05.455 governing ex parte communications, shall govern the practice and procedure of the boards.

(8) A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW. The joint rules of practice of the boards shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

(9) The members of the boards shall meet jointly on at least an annual basis with the objective of sharing information that promotes the goals and purposes of this chapter.

**Sec. 17.** RCW 70.95.094 and 1989 c 431 s 8 are each amended to read as follows:

(1) The department and local governments preparing plans are encouraged to work cooperatively during plan development. Each county and city preparing a comprehensive solid waste management plan shall submit a preliminary draft plan to the department for technical review. The department shall review and comment on the draft plan within one hundred twenty days of receipt. The department's comments shall state specific actions or revisions that must be completed for plan approval.

(2) Each final draft solid waste management plan shall be submitted to the department for approval. The department will limit its comments on the final draft plans to those issues identified during its review of the draft plan and any other changes made between submittal of the preliminary draft and final draft plans. Disapproval of the local comprehensive solid waste management plan shall be supported by specific findings. A final draft plan shall

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be deemed approved if the department does not disapprove it within forty-five days of receipt.

(3) If the department disapproves a plan or any plan amendments, the submitting entity may appeal the decision ~~((under the procedures of Part IV of chapter 34.05 RCW. An administrative law judge shall preside over the appeal)) to the pollution control hearings board as provided in RCW 43.21B.230.~~ The appeal shall be limited to review of the specific findings which supported the disapproval under subsection (2) of this section.

**Sec. 18.** RCW 76.06.180 and 2007 c 480 s 7 are each amended to read as follows:

(1) Prior to issuing a forest health hazard warning or forest health hazard order, the commissioner shall consider the findings and recommendations of the forest health technical advisory committee and shall consult with county government officials, forest landowners and forest land managers, consulting foresters, and other interested parties to gather information on the threat, opportunities or constraints on treatment options, and other information they may provide. The commissioner, or a designee, shall conduct a public hearing in a county within the geographical area being considered.

(2) The commissioner of public lands may issue a forest health hazard warning when he or she deems such action is necessary to manage the development of a threat to forest health or address an existing threat to forest health. A decision to issue a forest health hazard warning may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has or is likely to (i) spread to multiple forest ownerships and cause extensive damage to forests; or (ii) significantly increase forest fuel that is likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause, there are (i) insect populations building up to large scale levels; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire; or

(c) When otherwise determined by the commissioner to be appropriate.

(3) The commissioner of public lands may issue a forest health hazard order when he or she deems such action is necessary to address a significant threat to forest health. A decision to issue a forest health hazard order may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has (i) spread to multiple forest ownerships and has caused and is likely to continue to cause extensive damage to forests; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause (i) insect populations are causing extensive damage to forests; or (ii) significantly increased forest fuels are likely to further the spread of uncharacteristic fire;

(c) Insufficient landowner action under a forest health hazard warning; or

(d) When otherwise determined by the commissioner to be appropriate.

(4) A forest health hazard warning or forest health hazard order shall be issued by use of a commissioner's order. General notice of the commissioner's order shall be published in a newspaper of general circulation in each county within the area covered by the order and on the department's web site. The order shall specify the boundaries of the area affected, including federal and tribal lands, the forest stand conditions that would make a parcel subject to the provisions of the order, and the actions landowners or land managers should take to reduce the hazard.

(5) Written notice of a forest health hazard warning or forest health hazard order shall be provided to forest landowners of specifically affected property.

(a) The notice shall set forth:

(i) The reasons for the action;

(ii) The boundaries of the area affected, including federal and tribal lands;

(iii) Suggested actions that should be taken by the forest landowner under a forest health hazard warning or the actions that must be taken by a forest landowner under a forest health hazard order;

(iv) The time within which such actions should or must be taken;

(v) How to obtain information or technical assistance on forest health conditions and treatment options;

(vi) The right to request mitigation under subsection (6) of this section and appeal under subsection (7) of this section;

(vii) These requirements are advisory only for federal and tribal lands.

(b) The notice shall be served by personal service or by mail to the latest recorded real property owner, as shown by the records of the county recording officer as defined in RCW 65.08.060. Service by mail is effective on the date of mailing. Proof of service shall be by affidavit or declaration under penalty of perjury.

(6) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may apply to the department for the remission or mitigation of such order. The application shall be made to the department within fifteen days after notice of the order has been served. Upon receipt of the application, the department may remit or mitigate the order upon whatever terms the department in its discretion deems proper, provided the department deems the remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in such reasonable manner and under such rule as it deems proper.

(7) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may appeal the order to the ~~((forest practices appeals))~~ pollution control hearings board.

~~((a))~~ The appeal shall be filed within thirty days after notice of the order has been served, unless application for mitigation has been made to the department. When such an application for mitigation is made, such appeal shall be filed within thirty days after notice of the disposition of the application for mitigation has been served as provided in RCW 43.21B.230.

~~((b))~~ The appeal must set forth:

~~—(i) The name and mailing address of the appellant;~~

~~—(ii) The name and mailing address of the appellant's attorney, if any;~~

~~—(iii) A duplicate copy of the forest health hazard order;~~

~~—(iv) A separate and concise statement of each error alleged to have been committed;~~

~~—(v) A concise statement of facts upon which the appellant relies to sustain the statement of error; and~~

~~—(vi) A statement of the relief requested.)~~

(8) A forest health hazard order issued under subsection (5) of this section is effective thirty days after date of service unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the order is effective thirty days after notice setting forth the disposition of the application is served unless an appeal is filed from such disposition. Whenever an appeal of the order is filed, the order shall become effective only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the order in whole or in part.

(9) Upon written request, the department may certify as adequate a forest health management plan developed by a forest landowner, before or in response to a forest health hazard warning or forest health hazard order, if the plan is likely to achieve the desired result and the terms of the plan are being diligently followed by the forest landowner. The certification of adequacy shall be determined by the department in its sole discretion, and be provided to the requestor in writing.

**Sec. 19.** RCW 76.09.020 and 2009 c 354 s 5 and 2009 c 246 s 4 are each reenacted and amended to read as follows:

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

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the ~~((forest practices appeals))~~ pollution control hearings board created by RCW ~~((76.09.210))~~ 43.21B.010.

(3) "Application" means the application required pursuant to RCW 76.09.050.

(4) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(5) "Board" means the forest practices board created in RCW 76.09.030.

(6) "Commissioner" means the commissioner of public lands.

(7) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right-of-way shall be considered contiguous.

(8) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(9) "Department" means the department of natural resources.

(10) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(11) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, the term "forest land" excludes:

(a) Residential home sites, which may include up to five acres; and

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(12) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other

person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(13) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- (a) Road and trail construction;
- (b) Harvesting, final and intermediate;
- (c) Precommercial thinning;
- (d) Reforestation;
- (e) Fertilization;
- (f) Prevention and suppression of diseases and insects;
- (g) Salvage of trees; and
- (h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(14) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(15) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(16) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(17) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(18) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(19) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(20) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(21) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

(22) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(23) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(24) "Unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(25) "Unconfined stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

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(26) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

**Sec. 20.** RCW 76.09.050 and 2005 c 146 s 1003 are each amended to read as follows:

(1) The board shall establish by rule which forest practices shall be included within each of the following classes:

**Class I:** Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

**Class II:** Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW or on lands that have or are being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

(c) Within "shorelines of the state" as defined in RCW 90.58.030;

(d) Excluded from Class II by the board; or

(e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

**Class III:** Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

**Class IV:** Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from

determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt

of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

(i) Platted after January 1, 1960, as provided in chapter 58.17 RCW; or

(ii) On lands that have or are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to subparagraphs (b)(i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in ~~((RCW 76.09.220(8)))~~ section 24 of this act. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected.

**Sec. 21.** RCW 76.09.080 and 1989 c 175 s 163 are each amended to read as follows:

(1) The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of this chapter or the forest practices regulations; or

(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) The stop work order shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and

(d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within ~~((fifteen))~~ thirty days ~~((after service upon))~~ from the date of receipt of the order by the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be an adjudicative proceeding within the meaning of chapter 34.05 RCW, the administrative procedure act. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding.

**Sec. 22.** RCW 76.09.090 and 1975 1st ex.s. c 200 s 6 are each amended to read as follows:

If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator or land owner a notice, which shall clearly set forth:

(1)(a) The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;

(2) The right of the operator or land owner to a hearing before the department; and

(3) The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or wilful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.



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The department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the department: PROVIDED, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest land owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of receipt of such final order, the operator, forest land owner, or timber owner appeals such final order to the appeals board.

No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: PROVIDED, That this provision shall not relieve the forest land owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs.

**Sec. 23.** RCW 76.09.170 and 1999 sp.s. c 4 s 803 are each amended to read as follows:

(1) Every person who violates any provision of RCW 76.09.010 through 76.09.280 or of the forest practices rules, or who converts forest land to a use other than commercial timber operation within three years after completion of the forest practice without the consent of the county, city, or town, shall be subject to a penalty in an amount of not more than ten thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a failure to comply with a stop work order, every day's continuance shall be a separate and distinct violation. Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty in this section. No penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board or advisory committee created by this chapter for any act or omission in his or her duties in the administration of this chapter or of any rule adopted under this chapter.

(2) The department shall develop and recommend to the board a penalty schedule to determine the amount to be imposed under this section. The board shall adopt by rule, pursuant to chapter 34.05 RCW, such penalty schedule to be effective no later than January 1, 1994. The schedule shall be developed in consideration of the following:

- (a) Previous violation history;
- (b) Severity of the impact on public resources;
- (c) Whether the violation of this chapter or its rules was intentional;
- (d) Cooperation with the department;
- (e) Repairability of the adverse effect from the violation; and
- (f) The extent to which a penalty to be imposed on a forest landowner for a forest practice violation committed by another should be reduced because the owner was unaware of the violation

and has not received substantial economic benefits from the violation.

(3) The penalty in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, that department may remit or mitigate the penalty upon whatever terms that department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rule as it may deem proper.

(4) Any person incurring a penalty under this section may appeal the penalty to the ~~((forest practices))~~ appeals board. Such appeals shall be filed within thirty days ~~((of))~~ after the date of receipt of ~~((notice imposing any))~~ the penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation.

(5) The penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the penalty in whole or in part.

(6) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty, interest, costs, and attorneys' fees. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter ~~((provided))~~. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided in Title 3 RCW, to collect penalties, interest, costs, and attorneys' fees.

(7) Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall be a lien upon the real property of the person assessed the penalty and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens.

(8) Any person incurring a penalty imposed under this section is also responsible for the payment of all costs and attorneys' fees incurred in connection with the penalty and interest accruing on the unpaid penalty amount.

**NEW SECTION. Sec. 24.** A new section is added to chapter 76.09 RCW to read as follows:

A person aggrieved by the approval or disapproval of an application to conduct a forest practice or the approval or disapproval of any landscape plan or permit or watershed analysis may seek review from the appeals board by filing a request for the same within thirty days from the date of receipt of the decision.

Concurrently with the filing of any request for review with the appeals board as provided in this section, the requestor must file a copy of his or her request with the department and the attorney general. The attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with.

**Sec. 25.** RCW 76.09.310 and 1987 c 95 s 4 are each amended to read as follows:

(1) The department shall send a notice to all forest landowners, both public and private, within the geographic area selected for review, stating that the department intends to study the area as part of the hazard-reduction program.

(2) The department shall prepare a proposed plan for each geographic area studied. The department shall provide the proposed plan to affected landowners, Indian tribes, interested parties, and to the advisory committee, if established pursuant to RCW 76.09.305.

(3) Any aggrieved landowners, agencies, tribes, and other persons who object to any or all of the proposed hazard-reduction plan may, within thirty days of issuance of the plan, request the department in writing to schedule a conference. If so requested, the department shall schedule a conference on a date not more than thirty days after receiving such request.

(4) Within ten days after such a conference, the department shall either amend the proposed plan or respond in writing indicating why the objections were not incorporated into the plan.

(5) Within one hundred twenty days following the issuance of the proposed plan as provided in subsection (2) of this section, the department shall distribute a final hazard-reduction plan designating those sites for which hazard-reduction measures are recommended and those sites where no action is recommended. For each hazard-reduction measure recommended, a description of the work and cost estimate shall be provided.

(6) Any aggrieved landowners, agencies, tribes, and other persons are entitled to appeal the final hazard-reduction plan to the ((forest practices)) appeals board if, within thirty days of the issuance of the final plan, the party transmits a notice of appeal to the ((forest practices)) appeals board and to the department.

(7) A landowner's failure to object to the recommendations or to appeal the final hazard-reduction plan shall not be deemed an admission that the hazard-reduction recommendations are appropriate.

(8) The department shall provide a copy of the final hazard-reduction plan to the department of ecology and to each affected county.

**Sec. 26.** RCW 77.55.011 and 2009 c 549 s 1028 are each amended to read as follows:

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

(1) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered artificially.

(2) "Board" means the ((hydraulic appeals)) pollution control hearings board created in chapter 43.21B RCW ((77.55.304)).

(3) "Commission" means the state fish and wildlife commission.

(4) "Department" means the department of fish and wildlife.

(5) "Director" means the director of the department of fish and wildlife.

(6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(9) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

(11) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

(12) "Permit" means a hydraulic project approval permit issued under this chapter.

(13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

(14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

(15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

(16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

(17) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(18) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state.

(19) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

**Sec. 27.** RCW 77.55.021 and 2008 c 272 s 1 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

(2) A complete written application for a permit may be submitted in person or by registered mail and must contain the following:

(a) General plans for the overall project;

(b) Complete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater;

(c) Complete plans and specifications for the proper protection of fish life; and

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably

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conditioned. Except as provided in this subsection and subsections (8), (10), and (12) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

- (i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;
- (ii) The site is physically inaccessible for inspection;
- (iii) The applicant requests a delay; or
- (iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

(b) Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to ((the department or) the board ((as specified in RCW 77.55.301) within thirty days from the date of receipt of the ((notice of) decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

(5)(a) The permittee must demonstrate substantial progress on construction of that portion of the project relating to the permit within two years of the date of issuance.

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

(c) A permit remains in effect without need for periodic renewal for hydraulic projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. A permit for streambank stabilization projects to protect farm and agricultural land as defined in RCW 84.34.020 remains in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the permit.

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification ~~((becomes effective unless appealed to the department or the board as specified in RCW 77.55.301 within thirty days from the notice of the proposed modification))~~ is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within

forty-five calendar days of receipt of the written request. A decision by the department ~~((may be appealed to the board within thirty days of the notice of the decision))~~ is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(9) All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

(10) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(11)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (3) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

(12) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

**Sec. 28.** RCW 77.55.141 and 2005 c 146 s 501 are each amended to read as follows:

(1) In order to protect the property of marine waterfront shoreline owners it is necessary to facilitate issuance of permits for bulkheads or rockwalls under certain conditions.

(2) The department shall issue a permit with or without conditions within forty-five days of receipt of a complete and accurate application which authorizes commencement of construction, replacement, or repair of a marine beach front protective bulkhead or rockwall for single-family type residences or property under the following conditions:

(a) The waterward face of a new bulkhead or rockwall shall be located only as far waterward as is necessary to excavate for footings or place base rock for the structure and under no conditions shall be located more than six feet waterward of the ordinary high water line;

(b) Any bulkhead or rockwall to replace or repair an existing bulkhead or rockwall shall be placed along the same alignment as the bulkhead or rockwall it is replacing. However, the replaced or repaired bulkhead or rockwall may be placed waterward of and directly abutting the existing structure only in cases where removal of the existing bulkhead or rockwall would result in environmental degradation or removal problems related to geological, engineering, or safety considerations; and

(c) Construction of a new bulkhead or rockwall, or replacement or repair of an existing bulkhead or rockwall waterward of the existing structure shall not result in the permanent loss of critical food fish or shellfish habitats; and

(d) Timing constraints shall be applied on a case-by-case basis for the protection of critical habitats, including but not limited to migration corridors, rearing and feeding areas, and spawning habitats, for the proper protection of fish life.

(3) Any bulkhead or rockwall construction, replacement, or repair not meeting the conditions in this section shall be processed under this chapter in the same manner as any other application.

(4) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may ~~((formally))~~ appeal the decision ~~((to the board pursuant to this chapter))~~ as provided in RCW 77.55.021(4).

**Sec. 29.** RCW 77.55.181 and 2005 c 146 s 505 are each amended to read as follows:

(1) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (a) and (b) of this subsection:

(a) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made fish passage barriers, including culvert repair and replacement;

(ii) Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(b) A fish habitat enhancement project must be approved in one of the following ways:

(i) By the department pursuant to chapter 77.95 or 77.100 RCW;

(ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

(iii) By the department as a department-sponsored fish habitat enhancement or restoration project;

(iv) Through the review and approval process for the jobs for the environment program;

(v) Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States fish and wildlife service and the natural resource conservation service;

(vi) Through a formal grant program established by the legislature or the department for fish habitat enhancement or restoration; and

(vii) Through other formal review and approval processes established by the legislature.

(2) Fish habitat enhancement projects meeting the criteria of subsection (1) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (1) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).

(3)(a) A permit is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(b) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may ~~((formally))~~

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appeal the decision ~~((to the board pursuant to the provisions of this chapter))~~ as provided in RCW 77.55.021(4).

(4) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section.

**Sec. 30.** RCW 77.55.241 and 2005 c 146 s 602 are each amended to read as follows:

(1) The legislature finds that the construction of hydraulic projects may require mitigation for the protection of fish life, and that the mitigation may be most cost-effective and provide the most benefit to the fish resource if the mitigation is allowed to be applied in locations that are off-site of the hydraulic project location. The department may approve off-site mitigation plans that are submitted by permit applicants.

(2) If a permit applicant proposes off-site mitigation and the department does not approve the permit or conditions the permit in such a manner as to render off-site mitigation unpracticable, the project proponent ~~((must be given the opportunity to submit the permit application to the board for approval))~~ may appeal the decision as provided in RCW 77.55.021(4).

**Sec. 31.** RCW 77.55.291 and 2005 c 146 s 701 are each amended to read as follows:

(1) The department may levy civil penalties of up to one hundred dollars per day for violation of any provisions of RCW 77.55.021. The penalty provided shall be imposed by notice in writing, either by certified mail or personal service to the person incurring the penalty, from the director or the director's designee describing the violation.

(2)(a) Except as provided in (b) of this subsection, any person incurring any penalty under this chapter may appeal the same under chapter 34.05 RCW to the ((director)) board. Appeals shall be filed within thirty days from the date of receipt of ((notice imposing any)) the penalty in accordance with RCW 43.21B.230.

(b) Issuance of a civil penalty may be informally appealed to the department within thirty days from the date of receipt of the penalty. Requests for informal appeal must be filed in the form and manner prescribed by the department by rule. A civil penalty that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

(3) The penalty imposed shall become due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action. All penalties recovered under this section shall be paid into the state's general fund.

**Sec. 32.** RCW 78.44.270 and 1993 c 518 s 35 are each amended to read as follows:

~~((Appeals from)) Department determinations under this chapter ((shall be made as follows:~~

~~— Appeals from department determinations made under this chapter shall be made under the provisions of the Administrative Procedure Act (chapter 34.05 RCW), and shall be considered an adjudicative proceeding within the meaning of the Administrative Procedure Act, chapter 34.05 RCW))~~ may be appealed to the

pollution control hearings board as provided in RCW 43.21B.230. Only a person aggrieved within the meaning of RCW 34.05.530 has standing and can file an appeal.

**Sec. 33.** RCW 78.44.380 and 2007 c 192 s 3 are each amended to read as follows:

(1) The department may issue an order to stop all surface mining to any permit holder, miner, or other person who authorizes, directs, or conducts such activities without a valid surface mine reclamation permit. This order is effective upon issuance unless otherwise stated in the order. Administrative appeal of the order to stop work does not stay the stop work requirement. The department shall notify the local jurisdiction of record when a stop work order has been issued for operating without a valid reclamation permit.

(2) The department may issue an order to stop surface mining occurring outside of any permit area to a permit holder that does not have a legal right to occupy the affected area. This order is effective upon issuance unless otherwise stated in the order. An administrative appeal of the order to stop work does not stay the stop work requirement.

(3) Where a permit holder is conducting surface mining activities outside of its permit boundary, but within land that it has the right to occupy, the department may issue an order to stop surface mining or mining-related activities occurring outside of the authorized area after the permit holder fails to comply with a notice of correction. The notice of correction must specify the corrections necessary as per the violation and provide a reasonable time to do so. This order is effective upon issuance unless otherwise stated in the order. An administrative appeal of the order to stop work does not stay the stop work requirement.

(4) Stop work orders must be in writing, delivered by United States certified mail with return receipt requested, facsimile, or by hand to the permit holder of record. The order must state the facts supporting the violation, the law being violated, and the specific activities being stopped. Stop work orders must be signed by the state geologist or an assistant state geologist. The ~~((department))~~ pollution control hearings board shall proceed as quickly as feasible to complete any requested adjudicative proceedings unless the parties stipulate to an appeal timeline or the department's stop work order states that it is not effective until after the administrative review process. If the recipient appeals the order, the recipient may file a motion for stay with the presiding officer, which will be reviewed under ~~((preliminary injunction standards))~~ RCW 43.21B.320.

**Sec. 34.** RCW 79.100.120 and 2006 c 153 s 5 are each amended to read as follows:

(1) A person seeking to contest an authorized public entity's decision to take temporary possession or custody of a vessel under this chapter, or to contest the amount of reimbursement owed to an authorized public entity under this chapter, may request a hearing in accordance with this section.

(2)(a) If the contested decision or action was undertaken by a state agency, a written request for a hearing related to the decision or action must be filed with the ~~((aquatic resources division of the department))~~ pollution control hearings board and served on the state agency in accordance with RCW 43.21B.230 (2) and (3) within ((twenty)) thirty days of the date the authorized public entity acquires custody of the vessel under RCW 79.100.040, or if the vessel is redeemed before the authorized public entity acquires custody, the date of redemption, or the right to a hearing is deemed waived and the vessel's owner is liable for any costs owed the authorized public entity. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(b) Upon receipt of a timely hearing request, the ~~((department))~~ pollution control hearings board shall proceed to hear and determine the validity of the decision to take the vessel into temporary

possession or custody and the reasonableness of any towing, storage, or other charges permitted under this chapter. Within five business days after the request for a hearing is filed, the ~~((department))~~ pollution control hearings board shall notify the vessel owner requesting the hearing and the authorized public entity of the date, time, and location for the hearing. Unless the vessel is redeemed before the request for hearing is filed, the ~~((department))~~ pollution control hearings board shall set the hearing on a date that is within ten business days of the filing of the request for hearing. If the vessel is redeemed before the request for a hearing is filed, the ~~((department))~~ pollution control hearings board shall set the hearing on a date that is within sixty days of the filing of the request for hearing. A proceeding brought under this subsection may be heard by one member of the pollution control hearings board, whose decision is the final decision of the board.

(3)(a) If the contested decision or action was undertaken by a metropolitan park district, port district, city, town, or county, which has adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, those rules or procedures must be followed in order to contest a decision to take temporary possession or custody of a vessel, or to contest the amount of reimbursement owed.

(b) If the metropolitan park district, port district, city, town, or county has not adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, then a person requesting a hearing under this section must follow the procedure established in RCW 53.08.320(5) for contesting the decisions or actions of moorage facility operators.

**Sec. 35.** RCW 84.33.0775 and 1999 sp.s. c 5 s 1 are each amended to read as follows:

(1) A taxpayer is allowed a credit against the tax imposed under RCW 84.33.041 for timber harvested on and after January 1, 2000, under a forest practices notification filed or application approved under RCW 76.09.050 and subject to enhanced aquatic resources requirements.

(2)(a) For a person other than a small harvester who elects to calculate tax under RCW 84.33.074, the credit is equal to the stumpage value of timber harvested for sale or for commercial or industrial use multiplied by eight-tenths of one percent.

(b) For a small harvester who elects to calculate tax under RCW 84.33.074, the credit is equal to sixteen percent of the tax imposed under this chapter.

(c) The amount of credit claimed by a taxpayer under this section shall be reduced by the amount of any compensation received from the federal government for reduced timber harvest due to enhanced aquatic resource requirements. If the amount of compensation from the federal government exceeds the amount of credit available to a taxpayer in any reporting period, the excess shall be carried forward and applied against credits in future reporting periods. This subsection does not apply to small harvesters as defined in RCW 84.33.073.

(d) Refunds may not be given in place of credits. Credit may not be claimed in excess of tax owed. The department of revenue shall disallow any credits, used or unused, upon written notification from the department of natural resources of a final decision that timber for which credit was claimed was not harvested under a forest practices notification filed or application approved under RCW 76.09.050 and subject to enhanced aquatic resources requirements.

(3) As used in this section, a forest ~~((practices))~~ practices notification or application is subject to enhanced aquatic resource requirements if it includes, in whole or in part, riparian area, wetland, or steep or unstable slope from which the operator is limited, by rule adopted under RCW 76.09.055, 34.05.090, 43.21C.250, and 76.09.370, or any federally approved habitat conservation plan or department of natural resources approved

watershed analysis, from harvesting timber, or if a road is included within or adjacent to the area covered by such notification or application and the road is covered by a road maintenance plan approved by the department of natural resources under rules adopted under chapter 76.09 RCW, the forest practices act, or a federally approved habitat conservation plan.

(4) For forest practices notification or applications submitted after January 1, 2000, the department of natural resources shall indicate whether the notification or application is subject to enhanced aquatic resource requirements and, unless notified of a contrary determination by the ~~((forest practices appeals board))~~ pollution control hearings board, the department of revenue shall use such indication in determining the credit to be allowed against the tax assessed under RCW 84.33.041. The department of natural resources shall develop revisions to the form of the forest practices notifications and applications to provide a space for the applicant to indicate and the department of natural resources to confirm or not confirm, whether the notification or application is subject to enhanced aquatic resource requirements. For forest practices notifications or applications submitted before January 1, 2000, the applicant may submit the approved notification or application to the department of natural resources for confirmation that the notification or application is subject to enhanced aquatic resource requirements. Upon any such submission, the department of natural resources will within thirty days confirm or deny that the notification or application is subject to enhanced aquatic resource requirements and will forward separate evidence of each confirmation to the department of revenue. Unless notified of a contrary ruling by the ~~((forest practices appeals board))~~ pollution control hearings board, the department of revenue shall use the separate confirmations in determining the credit to be allowed against the tax assessed under RCW 84.33.041.

(5) A refusal by the department of natural resources to confirm that a notification or application is subject to enhanced aquatic resources requirements may be appealed to the ~~((forest practices appeals board under RCW 76.09.220))~~ pollution control hearings board.

(6) A person receiving approval of credit must keep records necessary for the department of revenue to verify eligibility under this section.

**Sec. 36.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to read as follows:

(1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW 90.58.020; and (ii) after their adoption, the guidelines and rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

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(4) Except as otherwise specifically provided in subsection (11) of this section, the local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that notice of the application is given by at least one of the following methods:

(a) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(b) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection. The local government shall forward, in a timely manner following the issuance of a decision, a copy of the decision to each person who submits a request for the decision.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date ~~((the permit decision was filed))~~ of receipt as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of ~~((filing))~~ receipt as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b) Construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of ~~((filing))~~ receipt, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the

construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(c) If the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date ~~((the permit decision was filed))~~ of receipt as provided in subsection (6) of this section.

If a permittee begins construction pursuant to subsections (a), (b), or (c) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be ~~((filed with))~~ transmitted to the department and the attorney general. A petition for review of such a decision must be commenced within twenty-one days from the date of receipt of the decision. With regard to a permit other than a permit governed by subsection (10) of this section, "date of ~~((filing))~~ receipt" as used herein ~~((means))~~ refers to the date ((of actual receipt by the department)) that the applicant receives written notice from the department that the department has received the decision. With regard to a permit for a variance or a conditional use, "date of ~~((filing))~~ receipt" means the date a local government or applicant receives the written decision of the department rendered on the permit pursuant to subsection (10) of this section ~~((is transmitted by the department to the local government. The department shall notify in writing the local government and the applicant of the date of filing)).~~ For the purposes of this subsection, the term "date of receipt" has the same meaning as provided in RCW 43.21B.001.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.180 (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(10) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval.

(11)(a) An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single family residence and its

appurtenant structures from shoreline erosion shall be subject to the following procedures:

(i) The public comment period under subsection (4) of this section shall be twenty days. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in (i) of this subsection; and

(iii) If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

(b) For purposes of this section, a limited utility extension means the extension of a utility service that:

(i) Is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;

(ii) Will serve an existing use in compliance with this chapter; and

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state.

**Sec. 37.** RCW 90.58.180 and 2003 c 393 s 22 are each amended to read as follows:

(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of ~~((filing))~~ receipt of the decision as ~~((defined))~~ provided for in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and ~~((insure))~~ ensure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date ~~((the final decision was filed))~~ of receipt as provided in RCW 90.58.140(6).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of this section within one hundred eighty days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of thirty days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

(a) Is clearly erroneous in light of the policy of this chapter; or

(b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(c) Is arbitrary and capricious; or

(d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or

(e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board.

**Sec. 38.** RCW 90.58.190 and 2003 c 321 s 4 are each amended to read as follows:

(1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's final decision to approve ~~((;))~~ or reject ~~((; or modify))~~ a proposed master program or master program amendment ~~((adopted))~~ by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board ~~((with jurisdiction over the local government. The appeal shall be initiated))~~ by filing a petition within sixty days from the date of the department's written notice to the local government of the department's final decision to approve or reject a proposed master program or master program amendment, as provided in RCW ~~((36.70A.250 through 36.70A.320))~~ 36.70A.290. The department's written notice must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications under RCW 90.58.090(2).

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.

(e) Any party aggrieved by a final decision of a growth management hearings board under this subsection may appeal the decision to superior court as provided in RCW 36.70A.300.

(3)(a) The department's final decision to approve ~~((;))~~ or reject ~~((; or modify))~~ a proposed master program or master program amendment by a local government not planning under RCW



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36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date of the department's written notice to the local government of the department's final decision to approve(,) or reject(, or modify) a proposed master program or master program amendment ((as provided in RCW 90.58.090(2)). The department's written notice must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications under RCW 90.58.090(2).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act. The aggrieved local government shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program amendment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program amendment.

**Sec. 39.** RCW 90.58.210 and 1995 c 403 s 637 are each amended to read as follows:

(1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ~~((insure))~~ ensure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

(2) Any person who shall fail to conform to the terms of a permit issued under this chapter or who shall undertake development on the shorelines of the state without first obtaining any permit required under this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) ~~((Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department for remission or mitigation of such penalty. Upon receipt of the application, the department or local government may remit or~~

~~mitigate the penalty upon whatever terms the department or local government in its discretion deems proper.))~~ The person incurring the penalty may appeal within thirty days from the date of receipt of the penalty. The term "date of receipt" has the same meaning as provided in RCW 43.21B.001. Any penalty imposed pursuant to this section by the department shall be subject to review by the shorelines hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the shorelines hearings board.

**Sec. 40.** RCW 90.58.560 and 1995 c 403 s 638 are each amended to read as follows:

(1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who violates RCW 90.58.550, or any rule adopted thereunder, is subject to a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided for in this section.

(2) The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the director or the director's representative describing such violation with reasonable particularity. ~~((The director or the director's representative may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section upon such terms as he or she deems proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he or she may deem proper.))~~

(3) Any person incurring any penalty under this section may appeal the penalty to the hearings board as provided for in chapter 43.21B RCW. Such appeals shall be filed within thirty days from the date of receipt of ~~((notice imposing any))~~ the penalty ~~((unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the director or the director's representative setting forth the disposition of the application)).~~ Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless ~~((application for remission or mitigation is made or))~~ an appeal is filed. ~~((When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition.))~~ Whenever an appeal of any penalty incurred under this section is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter ~~((provided))~~. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

**NEW SECTION. Sec. 41.** The following acts or parts of acts are each repealed:

(1) RCW 43.21B.190 (Judicial review--Appeal from board's order) and 2004 c 204 s 2, 1995 c 382 s 4, 1994 c 253 s 7, 1988 c 202 s 43, & 1970 ex.s. c 62 s 49;

(2) RCW 76.09.210 (Forest practices appeals board--Created--Membership--Terms--Vacancies--Removal) and 1979 ex.s. c 47 s 4 & 1974 ex.s. c 137 s 21;

(3) RCW 76.09.220 (Forest practices appeals board--Compensation--Travel expenses--Chair--Office--Quorum--Powers and duties--Jurisdiction--Review) and 2007 c 480 s 8, 2003 c 393 s 20, 1999 sp.s. c 4 s 902, & 1999 c 90 s 1;

(4) RCW 76.09.230 (Forest practices appeals board--Mediation--Appeal procedure--Judicial review) and 1994 c 253 s 9, 1992 c 52 s 23, 1989 c 175 s 165, & 1974 ex.s. c 137 s 23;

(5) RCW 77.55.301 (Hydraulic appeals board--Members--Jurisdiction--Procedures) and 2005 c 146 s 801, 2003 c 393 s 21, 2000 c 107 s 20, 1996 c 276 s 2, 1993 sp.s. c 2 s 37, 1989 c 175 s 160, 1988 c 272 s 3, 1988 c 36 s 37, & 1986 c 173 s 4; and

(6) RCW 77.55.311 (Hydraulic appeals board--Procedures) and 2005 c 146 s 802, 1995 c 382 s 7, 1989 c 175 s 161, & 1986 c 173 s 5.

**NEW SECTION. Sec. 42.** (1) This act applies prospectively only and not retroactively. It applies only to appeals that are commenced on or after the effective date of this section. The repeals in section 41 of this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted under those statutes nor do they affect any proceeding instituted under them.

(2) All pending cases before the forest practices appeals board and the hydraulics appeals board shall be continued and acted upon by those boards. All existing rules of the forest practices appeals board shall remain in effect and be used by the pollution control hearings board until the pollution control hearings board adopts succeeding rules for forest practices appeals.

**NEW SECTION. Sec. 43.** A new section is added to chapter 36.70A RCW to read as follows:

(1) The powers, duties, and functions of the growth management hearings board are hereby transferred to the environmental and land use hearings office.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the growth management hearings board shall be delivered to the custody of the environmental and land use hearings office. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the growth management hearings board shall be made available to the environmental and land use hearings office. All funds, credits, or other assets held by the growth management hearings board shall be assigned to the environmental and land use hearings office.

(b) Any appropriations made to the growth management hearings board shall, on the effective date of this section, be transferred and credited to the environmental and land use hearings office.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the growth management hearings board are transferred to the jurisdiction of the environmental and land use hearings office. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the environmental

and land use hearings office to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All existing rules and all pending cases before the growth management hearings board shall be continued and acted upon by the growth management hearings board located within the environmental and land use hearings office. All pending business, existing contracts, and obligations shall remain in full force and shall be performed by the environmental and land use hearings office.

(5) The transfer of the powers, duties, functions, and personnel of the growth management hearings board shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

**NEW SECTION. Sec. 44.** (1) Sections 1, 3, 5, 7, 9 through 14, and 16 through 42 of this act take effect July 1, 2010.

(2) Sections 2, 4, 6, 15, 43, and 46 of this act take effect July 1, 2011. The chief executive officer of the environmental hearings office may take the necessary steps to ensure that these sections are implemented on their effective date.

(3) Section 8 of this act takes effect June 30, 2019.

**NEW SECTION. Sec. 45.** (1) Sections 3 and 5 of this act expire July 1, 2011.

(2) Section 7 of this act expires June 30, 2019.

**NEW SECTION. Sec. 46.** The following acts or parts of acts are each repealed:

(1) RCW 43.21L.005 (Purpose) and 2003 c 393 s 1;

(2) RCW 43.21L.010 (Definitions) and 2003 c 393 s 2;

(3) RCW 43.21L.020 (Exclusive review process--Exception--Procedural rules) and 2003 c 393 s 3;

(4) RCW 43.21L.030 (Designation as qualifying project--Request for determination--Duties of office of permit assistance) and 2003 c 393 s 4;

(5) RCW 43.21L.040 (Environmental and land use hearings board) and 2003 c 393 s 5;

(6) RCW 43.21L.050 (Review proceedings--Commencement--Rules for filing and service) and 2003 c 393 s 6;

(7) RCW 43.21L.060 (Standing) and 2003 c 393 s 7;

(8) RCW 43.21L.070 (Petition requirements) and 2003 c 393 s 8;

(9) RCW 43.21L.080 (Affidavit certifying applications for permits--Initial hearing on jurisdictional and preliminary matters) and 2003 c 393 s 9;

(10) RCW 43.21L.090 (Expedited review of petitions) and 2003 c 393 s 10;

(11) RCW 43.21L.100 (Stay or suspension of board action) and 2003 c 393 s 11;

(12) RCW 43.21L.110 (Decision record--Certified copy to board--Costs) and 2003 c 393 s 12;

(13) RCW 43.21L.120 (Board review of permit decisions--Correction of errors and omissions--Pretrial discovery--Requests for records under chapter 42.56 RCW) and 2005 c 274 s 295 & 2003 c 393 s 13;

(14) RCW 43.21L.130 (Standards for granting relief--Action by board) and 2003 c 393 s 14;

(15) RCW 43.21L.140 (Judicial review) and 2003 c 393 s 15;

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(16) RCW 43.21L.900 (Implementation--2003 c 393) and 2003 c 393 s 24; and

(17) RCW 43.21L.901 (Effective date--2003 c 393) and 2003 c 393 s 25."

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Substitute House Bill No. 2935.

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 1 of the title, after "boards;" strike the remainder of the title and insert "amending RCW 43.21B.001, 43.21B.010, 43.21B.010, 43.21B.180, 43.21B.230, 43.21B.320, 36.70A.270, 70.95.094, 76.06.180, 76.09.050, 76.09.080, 76.09.090, 76.09.170, 76.09.310, 77.55.011, 77.55.021, 77.55.141, 77.55.181, 77.55.241, 77.55.291, 78.44.270, 78.44.380, 79.100.120, 84.33.0775, 90.58.140, 90.58.180, 90.58.190, 90.58.210, and 90.58.560; reenacting and amending RCW 43.21B.005, 43.21B.005, 43.21B.110, 43.21B.110, 43.21B.300, 43.21B.310, and 76.09.020; adding a new section to chapter 43.21B RCW; adding new sections to chapter 36.70A RCW; adding a new section to chapter 76.09 RCW; creating new sections; repealing RCW 43.21B.190, 76.09.210, 76.09.220, 76.09.230, 77.55.301, 77.55.311, 43.21L.005, 43.21L.010, 43.21L.020, 43.21L.030, 43.21L.040, 43.21L.050, 43.21L.060, 43.21L.070, 43.21L.080, 43.21L.090, 43.21L.100, 43.21L.110, 43.21L.120, 43.21L.130, 43.21L.140, 43.21L.900, and 43.21L.901; providing effective dates; and providing expiration dates."

#### MOTION

On motion of Senator Prentice, the rules were suspended, Substitute House Bill No. 2935 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 Substitute House Bill No. 2935 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2935 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 2; Absent, 0; Excused, 2.

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

Voting nay: Senators Berkey and Honeyford

Excused: Senators McCaslin and Pflug

SUBSTITUTE HOUSE BILL NO. 2935 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

SENATE BILL NO. 6339, by Senators Hobbs and Pridemore

Concerning a sales and use tax exemption for wax and ceramic materials used to create molds for ferrous and nonferrous investment castings.

#### MOTION

On motion of Senator Hobbs, Substitute Senate Bill No. 6339 was substituted for Senate Bill No. 6339 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Hobbs, the rules were suspended, Substitute Senate Bill No. 6339 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hobbs spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6339.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6339 and the bill passed the Senate by the following vote: Yeas, 44; Nays, 3; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Marr, McAuliffe, McDermott, Morton, Murray, Parlette, Prentice, Pridemore, Ranker, Regala, Roach, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Kohl-Welles, Oemig and Rockefeller

Excused: Senators McCaslin and Pflug

SUBSTITUTE SENATE BILL NO. 6339, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 6578, by Senators Swecker, Jacobsen, Kastama, Pflug, Becker and Fraser

Creating an optional multiagency permitting team. Revised for 2nd Substitute: Concerning the creation of optional multiagency permitting teams.

#### MOTION

On motion of Senator Swecker, Second Substitute Senate Bill No. 6578 was substituted for Senate Bill No. 6578 and the second substitute bill was placed on the second reading and read the second time.

On motion of Senator Swecker, the rules were suspended, Second Substitute Senate Bill No. 6578 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Swecker and Rockefeller spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute Senate Bill No. 6578.

#### ROLL CALL

The Secretary called the roll on the final passage of Second Substitute Senate Bill No. 6578 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

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

Excused: Senators McCaslin and Pflug

SECOND SUBSTITUTE SENATE BILL NO. 6578, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 6614, by Senators Pridemore, Zarelli, Morton, Delvin and Marr

Clarifying the applicability of business and occupation tax to conservation programs with the Bonneville power administration.

#### MOTIONS

On motion of Senator Pridemore, Substitute Senate Bill No. 6614 was substituted for Senate Bill No. 6614 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Pridemore, the rules were suspended, Substitute Senate Bill No. 6614 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Pridemore spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6614.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6614 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

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

Excused: Senators McCaslin and Pflug

SUBSTITUTE SENATE BILL NO. 6614, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 6833, by Senator Tom

Addressing the management of funds and accounts by the state treasurer.

The measure was read the second time.

#### MOTION

On motion of Senator Tom, the rules were suspended, Senate Bill No. 6833 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

Senator Zarelli spoke against passage of the bill.

#### POINT OF INQUIRY

Senator Benton: "Would Senator Tom yield to a question? Senator Tom, is there any provision in the bill or mechanism that will allow for the interest earned or the value returned on the gas tax portion of these funds to also be returned to transportation purposes?"

Senator Tom: "That is my understanding."

The President declared the question before the Senate to be the final passage of Senate Bill No. 6833.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 6833 and the bill passed the Senate by the following vote: Yeas, 31; Nays, 16; Absent, 0; Excused, 2.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, Morton, Parlette, Roach, Schoesler, Stevens, Swecker and Zarelli

Excused: Senators McCaslin and Pflug

SENATE BILL NO. 6833, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 6844, by Senator Prentice

Streamlining lottery accounts by transferring local accounts into the treasury custodial accounts, directing transfers of unclaimed prize money, and eliminating obsolete provisions.

#### MOTIONS

On motion of Senator Prentice, Substitute Senate Bill No. 6844 was substituted for Senate Bill No. 6844 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Prentice, the rules were suspended, Substitute Senate Bill No. 6844 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Pridemore spoke in favor of passage of the bill.

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Senator Zarelli spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6844.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6844 and the bill passed the Senate by the following vote: Yeas, 30; Nays, 17; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin, Swecker and Tom

Voting nay: Senators Becker, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, Jacobsen, Kastama, King, Morton, Parlette, Roach, Schoesler, Sheldon, Stevens and Zarelli  
Excused: Senators McCaslin and Pflug

SUBSTITUTE SENATE BILL NO. 6844, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 6609, by Senators Kastama, Delvin, Hobbs, Kilmer, Gordon, Kauffman and Shin

Concerning infrastructure financing for local governments.

MOTION

On motion of Senator Kastama, Second Substitute Senate Bill No. 6609 was substituted for Senate Bill No. 6609 and the second substitute bill was placed on the second reading and read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 39.104.020 and 2009 c 270 s 102 are each amended to read as follows:

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

(1) "Annual state contribution limit" means two million five hundred thousand dollars statewide per fiscal year ~~((and)), plus~~ the additional amounts ~~((designated))~~ approved for demonstration projects in RCW 82.14.505.

(2) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(3) "Bond" means a bond, a note or other evidence of indebtedness, including but not limited to a lease-purchase agreement or an executory conditional sales contract.

~~((4))~~ (4) "Department" means the department of revenue.

~~((4))~~ (5) "Fiscal year" means the twelve-month period beginning July 1st and ending the following June 30th.

~~((5))~~ (6) "Local government" means any city, town, county, and port district.

~~((6))~~ (7) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes

levied on the property tax allocation revenue value and used for local revitalization financing.

~~((7))~~ (8) "Local revitalization financing" means the use of revenues from local public sources, dedicated to pay the principal and interest on bonds authorized under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis, and revenues received from the local option sales and use tax authorized in RCW 82.14.510, dedicated to pay the principal and interest on bonds authorized under RCW 39.104.110.

~~((8))~~ (9) "Local sales and use tax increment" means the estimated annual increase in local sales and use taxes as determined by the local government in the calendar years following the approval of the revitalization area by the department from taxable activity within the revitalization area.

~~((9))~~ (10) "Local sales and use taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030.

~~((10))~~ (11) "Ordinance" means any appropriate method of taking legislative action by a local government.

~~((11))~~ (12) "Participating local government" means a local government having a revitalization area within its geographic boundaries that has taken action as provided in RCW 39.104.070(1) to allow the use of all or some of its local sales and use tax increment or other revenues from local public sources dedicated for local revitalization financing.

~~((12))~~ (13) "Participating taxing district" means a ~~((local government having))~~ taxing district that:

(a) Has a revitalization area wholly or partially within its geographic boundaries ~~((that));~~

(b) Levies or has levied for it regular property taxes as defined in this section; and

(c) Has not taken action as provided in RCW 39.104.060(2).

~~((13))~~ (14) "Property tax allocation revenue base value" means the assessed value of real property located within a revitalization area, less the property tax allocation revenue value.

~~((14))~~ (15)(a)(i) "Property tax allocation revenue value" means seventy-five percent of any increase in the assessed value of real property in a revitalization area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the revitalization area is approved by the department;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the revitalization area is approved by the department;

(C) The cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the revitalization area is approved by the department.

(ii) Increases in the assessed value of real property in a revitalization area resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a revitalization area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when the cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

~~((45))~~ (16) "Public improvement costs" means the costs of:

(a) Design, planning, acquisition, including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements;

(b) Demolishing, relocating, maintaining, and operating property pending construction of public improvements;

(c) Relocating utilities as a result of public improvements;

(d) Financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; and

(e) Administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of local revitalization financing to fund the costs of the public improvements.

~~((46))~~ (17) "Public improvements" means:

(a) Infrastructure improvements within the revitalization area that include:

(i) Street, road, bridge, and rail construction and maintenance;

(ii) Water and sewer system construction and improvements;

(iii) Sidewalks, streetlights, landscaping, and streetscaping;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities, recreational areas, and environmental remediation;

(vii) Storm water and drainage management systems;

(viii) Electric, gas, fiber, and other utility infrastructures; and

(b) Expenditures for any of the following purposes:

(i) Providing environmental analysis, professional management, planning, and promotion within the revitalization area, including the management and promotion of retail trade activities in the revitalization area;

(ii) Providing maintenance and security for common or public areas in the revitalization area; or

(iii) Historic preservation activities authorized under RCW 35.21.395.

~~((47))~~ (18) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation.

~~((48))~~ (19)(a) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: ~~((49))~~ (i) Regular property taxes levied by public utility districts specifically for the purpose of making required payments of principal and interest on

general indebtedness; ~~((50))~~ (ii) regular property taxes levied by the state for the support of common schools under RCW 84.52.065; and ~~((51))~~ (iii) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose.

(b) "Regular property taxes" do not include:

~~((52))~~ (i) Excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043; and

~~((53))~~ (ii) Property taxes that are specifically excluded through an interlocal agreement between the sponsoring local government and a participating taxing district as set forth in RCW 39.104.060(3).

~~((19))~~ (20)(a) "Revenues from local public sources" means:

(i) The local sales and use tax amounts received as a result of interlocal agreement, local sales and use tax amounts from sponsoring local governments based on its local sales and use tax increment, and local property tax allocation revenues, which are dedicated by a sponsoring local government, participating local governments, and participating taxing districts, for payment of bonds under RCW 39.104.110 or public improvement costs within the revitalization area on a pay-as-you-go basis; and

(ii) Any other local revenues, except as provided in (b) of this subsection, including revenues derived from federal and private sources and amounts received by taxing districts as set forth by an interlocal agreement as described in RCW 39.104.060(4), which are dedicated for the payment of bonds under RCW 39.104.110 or public improvement costs within the revitalization area on a pay-as-you-go basis.

(b) Revenues from local public sources do not include any local funds derived from state grants, state loans, or any other state moneys including any local sales and use taxes credited against the state sales and use taxes imposed under chapter 82.08 or 82.12 RCW.

~~((20))~~ (21) "Revitalization area" means the geographic area adopted by a sponsoring local government and approved by the department, from which local sales and use tax increments are estimated and property tax allocation revenues are derived for local revitalization financing.

~~((21))~~ (22) "Sponsoring local government" means a city, town, county, or any combination thereof, that adopts a revitalization area.

~~((22))~~ (23) "State contribution" means the lesser of:

(a) Five hundred thousand dollars;

(b) The project award amount approved by the department as provided in RCW 39.104.100 or 82.14.505; or

(c) The total amount of revenues from local public sources dedicated in the preceding calendar year to the payment of principal and interest on bonds issued under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis. Revenues from local public sources dedicated in the preceding calendar year that are in excess of the project award may be carried forward and used in later years for the purpose of this subsection ~~((22))~~ (23)(c).

~~((23))~~ (24) "State property tax increment" means the estimated amount of annual tax revenues estimated to be received by the state from the imposition of property taxes levied by the state for the support of common schools under RCW 84.52.065 on the property tax allocation revenue value, as determined by the sponsoring local government in an application under RCW 39.104.100 and updated periodically as required in RCW 82.32.765.

~~((24))~~ (25) "State sales and use tax increment" means the estimated amount of annual increase in state sales and use taxes to be received by the state from taxable activity within the revitalization area in the years following the approval of the revitalization area by the department as determined by the sponsoring local government in an application under RCW 39.104.100 and updated periodically as required in RCW 82.32.765.

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~~((25))~~ (26) "State sales and use taxes" means state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1), less the amount of tax distributions from all local retail sales and use taxes, other than the local sales and use taxes authorized by RCW 82.14.510 for the applicable revitalization area, imposed on the same taxable events that are credited against the state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020.

~~((26))~~ (27) "Taxing district" means a government entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved revitalization area.

**Sec. 2.** RCW 39.104.040 and 2009 c 270 s 104 are each amended to read as follows:

(1) Before adopting an ordinance creating the revitalization area, a sponsoring local government must:

(a) Provide notice to all taxing districts that levy or have levied for it regular property taxes and local governments with geographic boundaries within the proposed revitalization area of the sponsoring local government's intent to create a revitalization area. Notice must be provided in writing to the governing body of the taxing districts and local governments at least ~~((thirty))~~ sixty days in advance of the public hearing as required by (b) of this subsection. The notice must include at least the following information:

(i) The name of the proposed revitalization area;

(ii) The date for the public hearing as required by (b) of this subsection;

(iii) The earliest anticipated date when the sponsoring local government will take action to adopt the proposed revitalization area; and

(iv) The name of a contact person with phone number of the sponsoring local government and mailing address where a copy of an ordinance adopted under RCW 39.104.050 and 39.104.060 may be sent; and

(b) Hold a public hearing on the proposed financing of the public improvements in whole or in part with local revitalization financing. Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed revitalization area at least ten days before the public hearing and posted in at least six conspicuous public places located in the proposed revitalization area. Notices must describe the contemplated public improvements, estimate the costs of the public improvements, describe the portion of the costs of the public improvements to be borne by local revitalization financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed revitalization area, and estimate the period during which local revitalization financing is contemplated to be used. The public hearing may be held by either the governing body of the sponsoring local government, or a committee of the governing body that includes at least a majority of the whole governing body.

(2) To create a revitalization area, a sponsoring local government must adopt an ordinance establishing the revitalization area that:

(a) Describes the public improvements proposed to be made in the revitalization area;

(b) Describes the boundaries of the revitalization area, subject to the limitations in RCW 39.104.050;

(c) Estimates the cost of the proposed public improvements and the portion of these costs to be financed by local revitalization financing;

(d) Estimates the time during which local property tax allocation revenues, and other revenues from local public sources, such as amounts of local sales and use taxes from participating local governments, are to be used for local revitalization financing;

(e) Provides the date when the use of local property tax allocation revenues will commence and a list of the participating taxing districts ~~((that have not adopted an ordinance as described in RCW 39.104.060 to be removed as a participating taxing district))~~ and the regular property taxes that must be used to calculate property tax allocation revenues;

(f) Finds that all of the requirements in RCW 39.104.030 are met;

(g) Provides the anticipated rate of sales and use tax under RCW 82.14.510 that the local government will impose if awarded a state contribution under RCW 39.104.100;

(h) Provides the anticipated date when the criteria for the sales and use tax in RCW 82.14.510 will be met and the anticipated date when the sales and use tax in RCW 82.14.510 will be imposed.

(3) The sponsoring local government must deliver a certified copy of the adopted ordinance to the county treasurer, county assessor, the governing body of each participating taxing authority and participating taxing district within which the revitalization area is located, and the department.

**Sec. 3.** RCW 39.104.050 and 2009 c 270 s 105 are each amended to read as follows:

The designation of a revitalization area is subject to the following limitations:

(1)(a) Except as provided in (b) of this subsection, no revitalization area may have within its geographic boundaries any part of a hospital benefit zone under chapter 39.100 RCW, any part of a revenue development area created under chapter 39.102 RCW, any part of an increment area under chapter 39.89 RCW, or any part of another revitalization area under this chapter;

(b) A revitalization area's boundaries may include all or a portion of an existing increment area if:

(i) The state of Washington has loaned money for environmental cleanup on such area in order to stimulate redevelopment of brownfields;

(ii) The environmental cleanup, for which the state's loans were intended, has been completed; and

(iii) The sponsoring local government determines the creation of the revitalization area is necessary for redevelopment and protecting the state's investment by increasing property tax revenue;

(2) A revitalization area is limited to contiguous tracts, lots, pieces, or parcels of land without the creation of islands of property not included in the revitalization area;

(3) The boundaries may not be drawn to purposely exclude parcels where economic growth is unlikely to occur;

(4) The public improvements financed through bonds issued under RCW 39.104.110 must be located in the revitalization area;

(5) A revitalization area cannot comprise an area containing more than twenty-five percent of the total assessed value of the taxable real property within the boundaries of the sponsoring local government at the time the revitalization area is created;

(6) The boundaries of the revitalization area may not be changed for the time period that local property tax allocation revenues, local sales and use taxes of participating local governments, and the local sales and use tax under RCW 82.14.510 are used to pay bonds issued under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis, as provided under this chapter; and

(7) A revitalization area must be geographically restricted to the location of the public improvement and adjacent locations that the sponsoring local government finds to have a high likelihood of receiving direct positive business and economic impacts due to the public improvement, such as a neighborhood or a block.

**Sec. 4.** RCW 39.104.060 and 2009 c 270 s 106 are each amended to read as follows:

(1) Participating taxing districts must allow the use of all of their local property tax allocation revenues for local revitalization financing.

(2)(a) If a taxing district does not want to allow the use of its property tax revenues for the local revitalization financing of public improvements in a revitalization area, its governing body must adopt an ordinance to remove itself as a participating taxing district and must notify the sponsoring local government.

(b) The taxing district must provide a copy of the adopted ordinance and notice to the sponsoring local government creating the revitalization area before the anticipated date that the sponsoring local government proposes to adopt the ordinance creating the revitalization area as provided in the notice required by RCW 39.104.040(1)(a).

(3) If a taxing district wants to become a participating taxing district by allowing one or more but not all of its regular property tax levies to be used for the calculation of local property tax allocation revenues, it may do so through an interlocal agreement specifying the regular property taxes that will be used for calculating its local property tax allocation revenues. This subsection does not authorize a taxing district to allow the use of only part of one or more of its regular property tax levies by the sponsoring local government.

(4) If a taxing district wants to participate on a partial basis by providing a specified amount of money to a sponsoring local government to be used for local revitalization financing for a specified amount of time, it may do so through an interlocal agreement. However, the taxing district must adopt an ordinance as described in subsection (2) of this section to remove itself as a participating taxing district for purposes of calculating property tax allocation revenues and instead partially participate through an interlocal agreement outlining the specifics of its participation.

**Sec. 5.** RCW 39.104.080 and 2009 c 270 s 201 are each amended to read as follows:

(1) Commencing in the second calendar year following the creation of a revitalization area by a sponsoring local government, the county treasurer (~~shall~~) **must** distribute receipts from regular taxes imposed on real property located in the revitalization area as follows:

(a) Each participating taxing district and the sponsoring local government must receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the property tax allocation revenue base value for that local revitalization financing project in the taxing district; and

(b) The sponsoring local government must receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value within the revitalization area. However, if there is no property tax allocation revenue value, the sponsoring local government may not receive any additional regular property taxes under this subsection (1)(b). The sponsoring local government may agree to receive less than the full amount of the additional portion of regular property taxes under this subsection (1)(b) as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the participating taxing districts that levied regular property taxes, or have regular property taxes levied for them, in the revitalization area for collection that year in proportion to their regular tax levy rates for collection that year. The sponsoring local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the sponsoring local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by local revitalization financing.

(2) The county assessor (~~shall~~) **must** determine the property tax allocation revenue value and property tax allocation revenue base value. This section does not authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW or under other authorized revaluation procedures.

(3) The distribution of local property tax allocation revenue to the sponsoring local government must cease when local property tax allocation revenues are no longer obligated to pay the costs of the public improvements. Any excess local property tax allocation revenues, and earnings on the revenues, remaining at the time the distribution of local property tax allocation revenue terminates, must be returned to the county treasurer and distributed to the participating taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the revitalization area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

(4) The allocation to the revitalization area of that portion of the sponsoring local government's and each participating taxing district's regular property taxes levied upon the property tax allocation revenue value within that revitalization area is declared to be a public purpose of and benefit to the sponsoring local government and each participating taxing district.

(5) The distribution of local property tax allocation revenues under this section may not affect or be deemed to affect the rate of taxes levied by or within any sponsoring local government and participating taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution.

(6) This section does not apply to a revitalization area that has boundaries that include all or a portion of the boundaries of an increment area created under chapter 39.89 RCW.

**Sec. 6.** RCW 39.104.100 and 2009 c 270 s 401 are each amended to read as follows:

(1) Prior to applying to the department to receive a state contribution, a sponsoring local government shall adopt a revitalization area within the limitations in RCW 39.104.050 and in accordance with RCW 39.104.040.

(2)(a) As a condition to imposing a sales and use tax under RCW 82.14.510, a sponsoring local government must apply to the department and be approved for a project award amount. The application must be in a form and manner prescribed by the department and include, but not be limited to:

~~((a))~~ (i) Information establishing that over the period of time that the local sales and use tax will be imposed under RCW 82.14.510, increases in state and local property, sales, and use tax revenues as a result of public improvements in the revitalization area will be equal to or greater than the respective state and local contributions made under this chapter;

~~((b))~~ (ii) Information demonstrating that the sponsoring local government will meet the requirements necessary to receive the full amount of state contribution it is requesting on an annual basis;

~~((c))~~ (iii) The amount of state contribution it is requesting;

~~((d))~~ (iv) The anticipated effective date for imposing the tax under RCW 82.14.510;

~~((e))~~ (v) The estimated number of years that the tax will be imposed;

~~((f))~~ (vi) The anticipated rate of tax to be imposed under RCW 82.14.510, subject to the rate-setting conditions in RCW 82.14.510(3), should the sponsoring local government be approved for a project award; and

~~((g))~~ (vii) The anticipated date when bonds under RCW 39.104.110 will be issued.

(b) The department (~~shall~~) **must** make available electronic forms to be used for this purpose. As part of the application, each applicant must provide to the department a copy of the adopted ordinance



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creating the revitalization area as required in RCW 39.104.040, copies of any adopted interlocal agreements from participating local governments, and any notices from taxing districts that elect not to be a participating taxing district.

(3)(a) Project awards must be determined on:

(i) A first-come basis for applications completed in their entirety and submitted electronically;

(ii) The availability of a state contribution;

(iii) Whether the sponsoring local government would be able to generate enough tax revenue under RCW 82.14.510 to generate the amount of project award requested.

(b) The total of all project awards may not exceed the annual state contribution limit.

(c) If the level of available state contribution is less than the amount requested by the next available applicant, the applicant must be given the first opportunity to accept the lesser amount of state contribution but only if the applicant produces a new application within sixty days of being notified by the department and the application describes the impact on the proposed project as a result of the lesser award in addition to new application information outlined in subsection (2) of this section.

(d) Applications that are not approved for a project award due to lack of available state contribution must be retained on file by the department in order of the date of their receipt.

(e) Once total project awards reach the amount of annual state contribution limit, no more applications will be accepted.

(f) If the annual contribution limit is increased by making additional funds available for applicants that apply on a first-come basis, applications will be accepted again beginning sixty days after the effective date of the increase. However, in the time period before any new applications are accepted, all sponsoring local governments with a complete application already on file with the department must be provided an opportunity to either withdraw their application or update the information in the application. The updated application must be for a project that is substantially the same as the project in the original application. The department must consider these applications, in the order originally submitted, for project awards prior to considering any new applications.

(4) The department ~~((shall))~~ must notify the sponsoring local government of approval or denial of a project award within sixty days of the department's receipt of the sponsoring local government's application. Determination of a project award by the department is final. Notification must include the earliest date when the tax authorized under RCW 82.14.510 may be imposed, subject to conditions in chapter 82.14 RCW. The project award notification must specify the rate requested in the application and any adjustments to the rate that would need to be made based on the project award and rate restrictions in RCW 82.14.510.

(5) The department must begin accepting applications on September 1, 2009.

**Sec. 7.** RCW 39.104.110 and 2009 c 270 s 701 are each amended to read as follows:

(1) A sponsoring local government creating a revitalization area and authorizing the use of local revitalization financing may incur general indebtedness, ~~((and issue))~~ including issuing general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from local revitalization financing it receives, subject to the following requirements:

(a)(i) The ordinance adopted by the sponsoring local government creating the revitalization area and authorizing the use of local revitalization financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

~~((b))~~ (ii) The sponsoring local government includes this statement of ~~((the))~~ intent in all notices required by RCW

39.104.040; or

(b) The sponsoring local government adopts a resolution, after opportunity for public comment, that indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated.

(2) The general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the sponsoring local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(3) In addition to the requirements in subsection (1) of this section, a sponsoring local government creating a revitalization area and authorizing the use of local revitalization financing may require any nonpublic participants to provide adequate security to protect the public investment in the public improvement within the revitalization area.

(4) Bonds issued under this section must be authorized by ordinance of the sponsoring local government and may be issued in one or more series and must bear a date or dates, be payable upon demand or mature at a time or times, bear interest at a rate or rates, be in a denomination or denominations, be in a form either coupon or registered as provided in RCW 39.46.030, carry conversion or registration privileges, have a rank or priority, be executed in a manner, be payable in a medium of payment, at a place or places, and be subject to terms of redemption with or without premium, be secured in a manner, and have other characteristics, as may be provided by an ordinance or trust indenture or mortgage issued pursuant thereto.

(5) The sponsoring local government may:

(a) Annually pay into a special fund to be established for the benefit of bonds issued under this section a fixed proportion or a fixed amount of any local property tax allocation revenues derived from property within the revitalization area containing the public improvements funded by the bonds, the payment to continue until all bonds payable from the fund are paid in full(~~—The local government may also~~);

(b) Annually pay into the special fund established ~~((in))~~ pursuant to this section a fixed proportion or a fixed amount of any revenues derived from taxes imposed under RCW 82.14.510, such payment to continue until all bonds payable from the fund are paid in full. Revenues derived from taxes imposed under RCW 82.14.510 are subject to the use restriction in RCW 82.14.515; and

(c) Issue revenue bonds payable from any or all revenues deposited in the special fund established pursuant to this section.

(6) In case any of the public officials of the sponsoring local government whose signatures appear on any bonds or any coupons issued under this chapter cease to be the officials before the delivery of the bonds, the signatures must, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until the delivery. Any provision of any law to the contrary notwithstanding, any bonds issued under this chapter are fully negotiable.

(7) Notwithstanding subsections (4) through (6) of this section, bonds issued under this section may be issued and sold in accordance with chapter 39.46 RCW.

**Sec. 8.** RCW 82.14.505 and 2009 c 270 s 402 are each amended to read as follows:

(1) Demonstration projects are designated to determine the feasibility of local revitalization financing. For the purpose of this section, "annual state contribution limit" means ~~((two million two hundred fifty))~~ four million two hundred thousand dollars statewide per fiscal year.

(a) Notwithstanding RCW 39.104.100, the department ~~((shall))~~ must approve each demonstration project for 2009 as follows:

~~((a))~~ (i) The Whitman county Pullman/Moscow corridor improvement project award ~~((shall))~~ may not exceed two hundred thousand dollars;

~~((b))~~ (ii) The University Place improvement project award ~~((shall))~~ may not exceed five hundred thousand dollars;

~~((c))~~ (iii) The Tacoma international financial services area/Tacoma dome project award ~~((shall))~~ may not exceed five hundred thousand dollars;

~~((d))~~ (iv) The Bremerton downtown improvement project award ~~((shall))~~ may not exceed three hundred thirty thousand dollars;

~~((e))~~ (v) The Auburn downtown redevelopment project award ~~((shall))~~ may not exceed two hundred fifty thousand dollars;

~~((f))~~ (vi) The Vancouver Columbia waterfront/downtown project award ~~((shall))~~ may not exceed two hundred twenty thousand dollars; and

~~((g))~~ (vii) The Spokane University District project award ~~((shall))~~ may not exceed two hundred fifty thousand dollars.

(b) Notwithstanding RCW 39.104.100, the department must approve each demonstration project for 2010 meeting the requirements in subsection (2)(c) of this section as follows:

(i) The Richland revitalization area for industry, science and education project award may not exceed three hundred thirty thousand dollars;

(ii) The Lacey gateway town center project award may not exceed five hundred thousand dollars;

(iii) The Mill Creek east gateway planned urban village revitalization area project award may not exceed three hundred thirty thousand dollars;

(iv) The Puyallup river road revitalization area project award may not exceed two hundred fifty thousand dollars;

(v) The Renton south Lake Washington project award may not exceed five hundred thousand dollars; and

(vi) The New Castle downtown project may not exceed forty thousand dollars.

(2)(a) Local government sponsors of demonstration projects under subsection (1)(a) of this section must submit to the department no later than September 1, 2009, documentation that substantiates that the project has met the conditions, limitations, and requirements provided in chapter 270, Laws of 2009.

(b) Sponsoring local government of demonstration projects under subsection (1)(b) of this section must update and resubmit to the department no later than September 1, 2010, the application already on file with the department to substantiate that the project has met the conditions, limitations, and requirements provided in chapter 270, Laws of 2009 and this act and the project is substantially the same as the project in the original application submitted to the department in 2009.

(c) The department must not approve any resubmitted application unless an economic analysis by a qualified researcher at the department of economics at the University of Washington confirms that there is an eighty-five percent probability that the application's assumptions and estimates of jobs created and increased tax receipts will be achieved by the project and determines that net state tax revenue will increase as a result of the project by an amount that equals or exceeds the award authorized in subsection (1)(b) of this section. Prior to submitting the economic analysis to the department, the qualified researcher must consult with the economic development commission established in chapter 43.162 RCW regarding his or her preliminary findings. The final economic analysis must include comments and recommendations of the economic development commission.

(3) Within ~~((sixty))~~ ninety days of such submittal, the economic analysis in subsection (2)(c) of this section must be completed and

the department ~~((shall))~~ must either approve demonstration projects that have met these conditions, limitations, and requirements or deny resubmitted applications that have not met these conditions, limitations, and requirements.

(4) Local government sponsors of demonstration projects may elect to decline the project awards as designated in this section, and may elect instead to submit applications according to the process described in RCW 39.104.100.

(5) If a demonstration project listed in subsection (1)(b) of this section does not update and resubmit its application to the department by the deadline specified in subsection (2)(b) of this section or if the demonstration project withdraws its application, the associated dollar amounts may not be approved for another project and may not be considered part of the annual state contribution limit under RCW 39.104.020(1).

**Sec. 9.** RCW 82.14.510 and 2009 c 270 s 601 are each amended to read as follows:

(1) Any city or county that has been approved for a project award under RCW 39.104.100 may impose a sales and use tax under the authority of this section in accordance with the terms of this chapter. Except as provided in this section, the tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city or county.

(2) The tax authorized under subsection (1) of this section is credited against the state taxes imposed under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1). The department must perform the collection of such taxes on behalf of the city or county at no cost to the city or county. The taxes must be distributed to cities and counties as provided in RCW 82.14.060.

(3) The rate of tax imposed by a city or county may not exceed the lesser of:

(a) The rate provided in RCW 82.08.020(1), less:

(i) The aggregate rates of all other local sales and use taxes imposed by any taxing authority on the same taxable events;

(ii) The aggregate rates of all taxes under RCW 82.14.465 and 82.14.475 and this section that are authorized but have not yet been imposed on the same taxable events by a city or county that has been approved to receive a state contribution by the department or the community economic revitalization board under chapter 39.104, 39.100, or 39.102 RCW; and

(iii) The percentage amount of distributions required under RCW 82.08.020(5) multiplied by the rate of state taxes imposed under RCW 82.08.020(1); and

(b) The rate, as determined by the city or county in consultation with the department, reasonably necessary to receive the project award under RCW 39.104.100 over ten months.

(4) The department, upon request, must assist a city or county in establishing its tax rate in accordance with subsection (3) of this section. Once the rate of tax is selected through the application process and approved under RCW 39.104.100, it may not be increased.

(5)(a) Except as provided in (c) of this subsection, no tax may be imposed under the authority of this section before:

(i) July 1, 2011;

(ii) July 1st of the second calendar year following the year in which the department approved the application made under RCW 39.104.100;

(iii) The state sales and use tax increment and state property tax increment for the preceding calendar year equal or exceed the amount of the project award approved by the department under RCW 39.104.100; and

(iv) Bonds have been issued according to RCW 39.104.110.

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(b) The tax imposed under this section expires the earlier of the date that the bonds issued under the authority of RCW 39.104.110 are retired or twenty-five years after the tax is first imposed.

(c) For a demonstration project described in RCW 82.14.505(1)(a), no tax may be imposed under the authority of this section before:

(i) July 1, 2010; and

(ii) Bonds have been issued according to RCW 39.104.110.

(6) An ordinance or resolution adopted by the legislative authority of the city or county imposing a tax under this section must provide that:

(a) The tax will first be imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the city or county, in any fiscal year, may not exceed the amount approved by the department under subsection (10) of this section;

(c) The department must cease distributing the tax for the remainder of any fiscal year in which either:

(i) The amount of tax received by the city or county equals the amount of distributions approved by the department for the fiscal year under subsection (10) of this section; or

(ii) The amount of revenue distributed to all sponsoring and cosponsoring local governments from taxes imposed under this section (~~by all cities and counties~~) equals the annual state contribution limit;

(d) The tax will be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) The state is entitled to any revenue generated by the tax in excess of the amounts specified in (c) of this subsection.

(7) If a city or county receives approval for more than one revitalization area within its jurisdiction, the city or county may impose a sales and use tax under this section for each revitalization area.

(8) The department must determine the amount of tax receipts distributed to each city and county imposing a sales and use tax under the authority of this section and must advise a city or county when tax distributions for the fiscal year equal the amount determined by the department in subsection (10) of this section. Determinations by the department of the amount of tax distributions attributable to a city or county are not appealable. The department must remit any tax receipts in excess of the amounts specified in subsection (6)(c) of this section to the state treasurer who must deposit the money in the general fund.

(9) If a city or county fails to comply with RCW 82.32.765, no tax may be distributed in the subsequent fiscal year until such time as the city or county complies and the department calculates the state contribution amount according to subsection (10) of this section for the fiscal year.

(10)(a) For each fiscal year that a city or county imposes the tax under the authority of this section, the department must approve the amount of taxes that may be distributed to the city or county. The amount approved by the department under this subsection is the lesser of:

(i) The state contribution;

(ii) The amount of project award granted by the department as provided in RCW 39.104.100; or

(iii) The total amount of revenues from local public sources dedicated or, in the case of carry forward revenues, deemed dedicated in the preceding calendar year, as reported in the required annual report under RCW 82.32.765.

(b) A city or county may not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department.

(11) The amount of tax distributions received from taxes imposed under the authority of this section by all cities and counties is limited annually to not more than the amount of annual state contribution limit.

(12) The definitions in RCW 39.104.020 apply to this section subject to subsection (13) of this section and unless the context clearly requires otherwise.

(13) For purposes of this section, the following definitions apply:

(a) "Local sales and use taxes" means sales and use taxes imposed by cities, counties, public facilities districts, and other local governments under the authority of this chapter, chapter 67.28 or 67.40 RCW, or any other chapter, and that are credited against the state sales and use taxes.

(b) "State sales and use taxes" means the taxes imposed in RCW 82.08.020(1) and 82.12.020.

**Sec. 10.** RCW 82.32.765 and 2009 c 270 s 501 are each amended to read as follows:

(1) A sponsoring local government receiving a project award under RCW 39.104.100 must provide a report to the department by March 1st of each year beginning March 1st after the project award has been approved. The report must contain the following information:

(a) The amounts of local property tax allocation revenues received in the preceding calendar year broken down by sponsoring local government and participating taxing district;

(b) The amount of state property tax allocation revenues estimated to have been received by the state in the preceding calendar year;

(c) The amount of local sales and use tax and other revenue from local public sources dedicated by any participating local government used for the payment of bonds under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis in the preceding calendar year;

(d) The amount of local sales and use tax dedicated by the sponsoring local government, as it relates to the sponsoring local government's local sales and use tax increment, used for the payment of bonds under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis;

(e) The amounts, other than those listed in (a) through (d) of this subsection, from local public sources, broken down by type or source, used for payment of bonds under RCW 39.104.110 or public improvement costs within the revitalization area on a pay-as-you-go basis in the preceding calendar year;

(f) The anticipated date when bonds under RCW 39.104.110 are expected to be retired;

(g) The names of any businesses locating within the revitalization area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local revitalization financing;

(h) An estimate of the cumulative number of permanent jobs created in the revitalization area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local revitalization financing;

(i) An estimate of the average wages and benefits received by all employees of businesses locating within the revitalization area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local revitalization financing;

(j) A list of public improvements financed by bonds issued under RCW 39.104.110 and the date on which the bonds are anticipated to be retired;

(k) That the sponsoring local government is in compliance with RCW 39.104.030;

(l) At least once every three years, updated estimates of the amounts of state and local sales and use tax increments estimated to have been received since the approval by the department of the project award under RCW 39.104.100; ~~(and)~~

(m) The amount of revenues from local public sources that (i) were expended in prior years for the payment of bonds under RCW 39.104.110 and public improvement costs within the revitalization area on a pay- as-you-go basis in prior calendar years that were in excess of the project award amount for that year and are carried forward for dedication in future years, (ii) are deemed dedicated to payment of bonds or public improvement costs in the calendar year for which the report is prepared, and (iii) remain available for dedication in future years; and

(n) Any other information required by the department to enable the department to fulfill its duties under this chapter and RCW 82.14.510.

(2) The department (~~shall~~) must make a report available to the public and the legislature by June 1st of each year. The report (~~shall~~) must include a summary of the information provided to the department by sponsoring local governments under subsection (1) of this section.

**Sec. 11.** RCW 39.102.020 and 2009 c 267 s 1 are each renumbered and amended to read as follows:

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

(1) "Annual state contribution limit" means seven million five hundred thousand dollars statewide per fiscal year.

(2) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(3) "Board" means the community economic revitalization board under chapter 43.160 RCW.

(4) "Demonstration project" means one of the following projects:

- (a) Bellingham waterfront redevelopment project;
- (b) Spokane river district project at Liberty Lake; and
- (c) Vancouver riverwest project.

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

(6) "Fiscal year" means the twelve-month period beginning July 1st and ending the following June 30th.

(7) "Local excise tax allocation revenue" means an amount of local excise taxes equal to some or all of the sponsoring local government's local excise tax increment, amounts of local excise taxes equal to some or all of any participating local government's excise tax increment as agreed upon in the written agreement under RCW 39.102.080(1), or both, and dedicated to local infrastructure financing.

(8) "Local excise tax increment" means an amount equal to the estimated annual increase in local excise taxes in each calendar year following the approval of the revenue development area by the board from taxable activity within the revenue development area, as set forth in the application provided to the board under RCW 39.102.040, and updated in accordance with RCW 39.102.140(1)(f).

(9) "Local excise taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030.

(10) "Local government" means any city, town, county, port district, and any federally recognized Indian tribe.

(11) "Local infrastructure financing" means the use of revenues received from local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, and revenues received from the local option sales and use tax authorized in RCW 82.14.475, dedicated to pay either the principal and interest on bonds authorized under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both.

(12) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on

the property tax allocation revenue value and used for local infrastructure financing.

(13) "Low-income housing" means residential housing for low-income persons or families who lack the means which is necessary to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding. For the purposes of this subsection, "low income" means income that does not exceed eighty percent of the median family income for the standard metropolitan statistical area in which the revenue development area is located.

(14) "Ordinance" means any appropriate method of taking legislative action by a local government.

(15) "Participating local government" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of all or some of its local excise tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(16) "Participating taxing district" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of some or all of its local property tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(17) "Property tax allocation revenue base value" means the assessed value of real property located within a revenue development area less the property tax allocation revenue value.

(18)(a)(i) "Property tax allocation revenue value" means seventy-five percent of any increase in the assessed value of real property in a revenue development area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the revenue development area is approved by the board;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the revenue development area is approved by the board;

(C) The cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the revenue development area is approved by the board.

(ii) Increases in the assessed value of real property in a revenue development area resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a revenue development area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

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(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(19) "Public improvement costs" means the cost of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and operating property pending construction of public improvements; (c) the local government's portion of relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (e) assessments incurred in revaluing real property for the purpose of determining the property tax allocation revenue base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; (f) administrative expenses and feasibility studies reasonably necessary and related to these costs; and (g) any of the above-described costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of local infrastructure financing to fund the costs of the public improvements.

(20) "Public improvements" means:

(a) Infrastructure improvements within the revenue development area that include:

(i) Street, bridge, and road construction and maintenance, including highway interchange construction;

(ii) Water and sewer system construction and improvements, including wastewater reuse facilities;

(iii) Sidewalks, traffic controls, and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas, including trails; and

(vii) Storm water and drainage management systems;

(b) Expenditures for facilities and improvements that support affordable housing as defined in RCW 43.63A.510.

(21) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation.

(22) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (b) regular property taxes levied by the state for the support of the common schools under RCW 84.52.065; and (c) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose. "Regular property taxes" do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(23) "Relocating a business" means the closing of a business and the reopening of that business, or the opening of a new business that engages in the same activities as the previous business, in a

different location within a one-year period, when an individual or entity has an ownership interest in the business at the time of closure and at the time of opening or reopening. "Relocating a business" does not include the closing and reopening of a business in a new location where the business has been acquired and is under entirely new ownership at the new location, or the closing and reopening of a business in a new location as a result of the exercise of the power of eminent domain.

(24) "Revenue development area" means the geographic area adopted by a sponsoring local government and approved by the board, from which local excise and property tax allocation revenues are derived for local infrastructure financing.

(25)(a) "Revenues from local public sources" means:

(i) Amounts of local excise tax allocation revenues and local property tax allocation revenues, dedicated by sponsoring local governments, participating local governments, and participating taxing districts, for local infrastructure financing; and

(ii) Any other local revenues, except as provided in (b) of this subsection, including revenues derived from federal and private sources.

(b) Revenues from local public sources do not include any local funds derived from state grants, state loans, or any other state moneys including any local sales and use taxes credited against the state sales and use taxes imposed under chapter 82.08 or 82.12 RCW.

(26) "Small business" has the same meaning as provided in RCW 19.85.020.

(27) "Sponsoring local government" means a city, town, or county, and for the purpose of this chapter a federally recognized Indian tribe or any combination thereof, that adopts a revenue development area and applies to the board to use local infrastructure financing.

(28) "State contribution" means the lesser of:

(a) One million dollars;

(b) The total amount of local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources, that are dedicated by a sponsoring local government, any participating local governments, and participating taxing districts, in the preceding calendar year to the payment of principal and interest on bonds issued under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both; ~~((or))~~

(c) The amount of project award granted by the board in the notice of approval to use local infrastructure financing under RCW 39.102.040; or

(d) The highest amount of state excise tax allocation revenues and state property tax allocation revenues for any one calendar year as determined by the sponsoring local government and reported to the board and the department as required by RCW 39.102.140.

(29) "State excise tax allocation revenue" means an amount equal to the annual increase in state excise taxes estimated to be received by the state in each calendar year following the approval of the revenue development area by the board, from taxable activity within the revenue development area as set forth in the application provided to the board under RCW 39.102.040 and periodically updated and reported as required in RCW 39.102.140(1)(f).

(30) "State excise taxes" means revenues derived from state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1), less the amount of tax distributions from all local retail sales and use taxes, other than the local sales and use taxes authorized by RCW 82.14.475 for the applicable revenue development area, imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW.

(31) "State property tax allocation revenue" means an amount equal to the estimated tax revenues derived from the imposition of property taxes levied by the state for the support of common schools under RCW 84.52.065 on the property tax allocation revenue value, as set forth in the application submitted to the board under RCW 39.102.040 and updated annually in the report required under RCW 39.102.140(1)(f).

(32) "Taxing district" means a government entity that levies or has levied for its regular property taxes upon real property located within a proposed or approved revenue development area.

**Sec. 12.** RCW 82.14.475 and 2009 c 267 s 8 are each amended to read as follows:

(1) A sponsoring local government, and any cosponsoring local government, that has been approved by the board to use local infrastructure financing may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and ~~((shall be)) is~~ collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the sponsoring local government or cosponsoring local government.

(2) The tax authorized under subsection (1) of this section ~~((shall be)) is~~ credited against the state taxes imposed under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1). The department ~~((shall)) must~~ perform the collection of such taxes on behalf of the sponsoring local government or cosponsoring local government at no cost to the sponsoring local government or cosponsoring local government and ~~((shall)) must~~ remit the taxes as provided in RCW 82.14.060.

(3) The aggregate rate of tax imposed by the sponsoring local government, and any cosponsoring local government, must not exceed the lesser of:

(a) The rate provided in RCW 82.08.020(1) less:

(i) The aggregate rates of all other local sales and use taxes imposed by any taxing authority on the same taxable events;

(ii) The aggregate rates of all taxes under RCW 82.14.465 and this section that are authorized to be imposed on the same taxable events but have not yet been imposed by a sponsoring local government or cosponsoring local government that has been approved by the department or the community economic revitalization board to receive a state contribution under chapter ~~((chapter))~~ 39.100 or 39.102 RCW; and

(iii) The percentage amount of distributions required under RCW 82.08.020(5) multiplied by the rate of state taxes imposed under RCW 82.08.020(1); and

(b) The rate, as determined by the sponsoring local government, and any cosponsoring local government, in consultation with the department, reasonably necessary to receive the state contribution over ten months.

(4) Sponsoring local governments that have been approved before October 1, 2008, by the community economic revitalization board for a state contribution must select the rate of tax under this section no later than September 1, 2009.

(5) The department, upon request, must assist a sponsoring local government and cosponsoring local government in establishing their tax rate in accordance with subsection (3) of this section. Once the rate of tax is selected, it may not be increased.

(6)(a) No tax may be imposed under the authority of this section:

(i) ~~((Before July 1, 2008;~~

~~((ii)))~~ Before July 1st of the second calendar year following the year approval by the board under RCW 39.102.040 was made; and

~~((iii))~~ Before the state excise tax allocation revenues and state property tax allocation revenues for the preceding calendar year

~~equal or exceed the amount of project award approved by the board under RCW 39.102.040))~~

(ii) Until a sponsoring local government reports to the board and the department as required by RCW 39.102.140 that the state has benefited through the receipt of state excise tax allocation revenues or state property tax allocation revenues, or both.

(b) The tax imposed under this section ~~((shall)) expires~~ when all indebtedness issued under the authority of RCW 39.102.150 is retired and all other contractual obligations relating to the financing of public improvements under chapter 39.102 RCW are satisfied, but not more than twenty-five years after the tax is first imposed.

(7) An ordinance adopted by the legislative authority of a sponsoring local government or cosponsoring local government imposing a tax under this section ~~((shall)) must~~ provide that:

(a) The tax ~~((shall)) is~~ first ~~((be))~~ imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the sponsoring local government, and any cosponsoring local government, in any fiscal year ~~((shall)) may~~ not exceed the amount of the state contribution;

(c) The tax ~~((shall)) will~~ cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax received by the sponsoring local government, and any cosponsoring local government, equals the amount of the state contribution;

(ii) The amount of revenue from taxes imposed under this section by all sponsoring and cosponsoring local governments equals the annual state contribution limit; or

(iii) The amount of tax received by the sponsoring local government equals the amount of project award granted in the approval notice described in RCW 39.102.040;

(d) Neither the local excise tax allocation revenues nor the local property tax allocation revenues may constitute more than eighty percent of the total local funds as described in RCW 39.102.020(28)(b). This requirement applies beginning January 1st of the fifth calendar year after the calendar year in which the sponsoring local government begins allocating local excise tax allocation revenues under RCW 39.102.110;

(e) The tax ~~((shall)) must~~ be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(f) Any revenue generated by the tax in excess of the amounts specified in (c) of this subsection ~~((shall)) belongs~~ to the state of Washington.

(8) If a county and city cosponsor a revenue development area, the combined amount of distributions received by both the city and county may not exceed the state contribution.

(9) The department ~~((shall)) must~~ determine the amount of tax receipts distributed to each sponsoring local government, and any cosponsoring local government, imposing sales and use tax under this section and shall advise a sponsoring or cosponsoring local government when tax distributions for the fiscal year equal the amount of state contribution for that fiscal year as provided in subsection (11) of this section. Determinations by the department of the amount of tax distributions attributable to each sponsoring or cosponsoring local government are final and ~~((shall)) may~~ not be used to challenge the validity of any tax imposed under this section. The department ~~((shall)) must~~ remit any tax receipts in excess of the amounts specified in subsection (7)(c) of this section to the state treasurer who ~~((shall)) must~~ deposit the money in the general fund.

(10) If a sponsoring or cosponsoring local government fails to comply with RCW 39.102.140, no tax may be distributed in the subsequent fiscal year until such time as the sponsoring or cosponsoring local government complies and the department calculates the state contribution amount for such fiscal year.

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(11) Each year, the amount of taxes approved by the department for distribution to a sponsoring or cosponsoring local government in the next fiscal year ~~((shall))~~ must be equal to the state contribution and ~~((shall))~~ may be no more than the total local funds as described in RCW 39.102.020(28)(b). The department ~~((shall))~~ must consider information from reports described in RCW 39.102.140 when determining the amount of state contributions for each fiscal year. A sponsoring or cosponsoring local government ~~((shall))~~ may not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department. The department ~~((shall))~~ may not approve the receipt of more distributions of sales and use tax under this section to a sponsoring or cosponsoring local government than is authorized under subsection (7) of this section.

(12) The amount of tax distributions received from taxes imposed under the authority of this section by all sponsoring and cosponsoring local governments is limited annually to not more than seven million five hundred thousand dollars.

(13) The definitions in RCW 39.102.020 apply to this section unless the context clearly requires otherwise.

(14) If a sponsoring local government is a federally recognized Indian tribe, the distribution of the sales and use tax authorized under this section ~~((shall))~~ must be authorized through an interlocal agreement pursuant to chapter 39.34 RCW.

(15) Subject to RCW 39.102.195, the tax imposed under the authority of this section may be applied either to provide for the payment of debt service on bonds issued under RCW 39.102.150 by the sponsoring local government or to pay public improvement costs on a pay-as-you-go basis, or both.

(16) The tax imposed under the authority of this section ~~((shall))~~ must cease to be imposed if the sponsoring local government or cosponsoring local government fails to issue indebtedness under the authority of RCW 39.102.150, and fails to commence construction on public improvements, by June 30th of the fifth fiscal year in which the local tax authorized under this section is imposed.

(17) For purposes of this section, the following definitions apply:

(a) "Local sales and use taxes" means sales and use taxes imposed by cities, counties, public facilities districts, and other local governments under the authority of this chapter, chapter 67.28 or 67.40 RCW, or any other chapter, and that are credited against the state sales and use taxes.

(b) "State sales and use taxes" means the tax imposed in RCW 82.08.020(1) and the tax imposed in RCW 82.12.020 at the rate provided in RCW 82.08.020(1).

NEW SECTION. **Sec. 13.** Sections 11 and 12 of this act expire June 30, 2039."

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

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Kastama and Fraser to Second Substitute Senate Bill No. 6609.

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

MOTION

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

On page 1, line 1 of the title, after "governments;" strike the remainder of the title and insert "amending RCW 39.104.020, 39.104.040, 39.104.050, 39.104.060, 39.104.080, 39.104.100, 39.104.110, 82.14.505, 82.14.510, 82.32.765, and 82.14.475;

reenacting and amending RCW 39.102.020; and providing an expiration date."

MOTION

On motion of Senator Kastama, the rules were suspended, Engrossed Second Substitute Senate Bill No. 6609 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kastama 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 Senate Bill No. 6609.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 6609 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

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

Excused: Senators McCaslin and Pflug

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6609, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 6870, by Senator Hargrove

Containing costs for services to sexually violent predators.

The measure was read the second time.

MOTION

On motion of Senator Marr, the rules were suspended, Senate Bill No. 6870 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Regala, Hargrove, Stevens and Kohl-Welles spoke in favor of passage of the bill.

Senator Carrell spoke against passage of the bill.

MOTION

On motion of Senator Marr, Senator Kline was excused.

The President declared the question before the Senate to be the final passage of Senate Bill No. 6870.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 6870 and the bill passed the Senate by the following vote: Yeas, 37; Nays, 9; Absent, 0; Excused, 3.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Benton, Carrell, Delvin, Hewitt, Honeyford, Morton, Roach, Schoesler and Sheldon

Excused: Senators Kline, McCaslin and Pflug

SENATE BILL NO. 6870, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## SECOND READING

SENATE BILL NO. 6871, by Senators Hargrove and Regala

Supporting judicial branch and criminal justice funding.

## MOTIONS

On motion of Senator Hargrove, Substitute Senate Bill No. 6871 was substituted for Senate Bill No. 6871 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Hargrove, the rules were suspended, Substitute Senate Bill No. 6871 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.

Senator Schoesler spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6871.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6871 and the bill failed to pass the Senate by the following vote: Yeas, 20; Nays, 26; Absent, 0; Excused, 3.

Voting yea: Senators Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Jacobsen, Keiser, Kohl-Welles, McAuliffe, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller and Tom

Voting nay: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Kastama, Kauffman, Kilmer, King, Marr, McDermott, Morton, Parlette, Roach, Schoesler, Sheldon, Shin, Stevens, Swecker and Zarelli

Excused: Senators Kline, McCaslin and Pflug

SUBSTITUTE SENATE BILL NO. 6871, not having received the constitutional majority, was declared lost.

## MOTION

At 6:27 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 6:48 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 2, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6355 with the following amendment(s): 6355-S AMH WHIT SMIT 289; 6355-S AMH SELL SMIT 286; 6355-S AMH WHIT MASS 095; 6355-S AMH DUNS SNEL 041; 6355-S AMH HE SMIT 275,

On page 5, line 27, after "degrees" insert "; and

(d) Recommendations from the technology transformation task force created in chapter 407, laws of 2009 and institutions of higher education relative to the strategic and operational use of technology in higher education. These and other reports, reviews, and audits shall allow for: The development of enterprise wide digital information technology across educational sectors, systems and delivery methods; the integration and streamlining of administrative tools including but not limited to student information management, financial management, payroll, human resources, data collection, reporting, and analysis; and a determination of the costs of multiple technology platforms, systems, and models"

On page 8, line 5, after "technology" insert "in order to effectively and efficiently share costs, improve the quality of instruction and student, faculty, and administrative services, increase undergraduate and graduate student access, retention and graduation, and enhance transfer capability"

On page 5, line 4, beginning with "significant" strike all material through "centers" and insert "conversion of existing campuses, branches, or centers that would result in a mission change"

On page 5, line 12, after "institutions." insert "Board recommendations regarding proposed major expansion shall be limited to determinations of whether the major expansion is within the scope indicated in the most recent strategic master plan for higher education or most recent system design plan. Recommendations regarding existing capital prioritization processes are not within the scope of the evaluation of major expansion."

On page 8, line 33, after "period." strike all material through "commitment")" on line 35 and insert "Strong priority will be given to proposals that involve more than one sector of education (and to proposals that show substantive institutional commitment))."

On page 10, after line 18, insert the following:

"**Sec. 9.** RCW 43.88D.010 and 2008 c 205 s 2 are each amended to read as follows:

(1) By October 15th of each even-numbered year, the office of financial management shall complete an objective analysis and scoring of all capital budget projects proposed by the public four-year institutions of higher education and submit the results of the scoring process to the legislative fiscal committees, the higher education coordinating board, and the four-year institutions(~~and except that, for 2008, the office of financial management shall complete the objective analysis and scoring by November 1st~~). Each project must be reviewed and scored within one of the following categories, according to the project's principal purpose. Each project may be scored in only one category. The categories are:

(a) Access-related projects to accommodate enrollment growth at main and branch campuses, at existing or new university centers, or through distance learning. Growth projects should provide significant additional student capacity. Proposed projects must demonstrate that they are based on solid enrollment demand projections, more cost-effectively provide enrollment access than



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alternatives such as university centers and distance learning, and make cost-effective use of existing and proposed new space;

(b) Projects that replace failing permanent buildings ~~((or renovate facilities to restore building life and upgrade space to meet current program requirements))~~. Facilities that cannot be economically renovated are considered replacement projects. ~~((Renovation projects should represent a complete renovation of a total facility or an isolated wing of a facility. A reasonable renovation project should cost between sixty to eighty percent of current replacement value and restore the renovated area to at least twenty-five years of useful life.))~~ New space may be programmed for the same or a different use than the space being replaced or renovated and may include additions to improve access and enhance the relationship of program or support space;

(c) Projects that renovate facilities to restore building life and upgrade space to meet current program requirements. Renovation projects should represent a complete renovation of a total facility or an isolated wing of a facility. A reasonable renovation project should cost between sixty to eighty percent of current replacement value and restore the renovated area to at least twenty-five years of useful life. New space may be programmed for the same or a different use than the space being renovated and may include additions to improve access and enhance the relationship of program or support space;

(d) Major stand-alone campus infrastructure projects;

~~((d))~~(e) Projects that promote economic growth and innovation through expanded research activity. The acquisition and installation of specialized equipment is authorized under this category; and

~~((e))~~(f) Other project categories as determined by the office of financial management in consultation with the legislative fiscal committees.

(2) The office of financial management, in consultation with the legislative fiscal committees ~~((and the joint legislative audit and review committee))~~, shall establish a scoring system and process for each four-year project category that is based on the framework used in the community and technical college system of prioritization. Staff from the state board for community and technical colleges, the higher education coordinating board, and the four-year institutions shall provide technical assistance on the development of a scoring system and process.

(3) The office of financial management shall consult with the legislative fiscal committees in the scoring of four-year institution project proposals, and may also solicit participation by ~~((the joint legislative audit and review committee and))~~ independent experts.

(a) For each four-year project category, the scoring system must, at a minimum, include an evaluation of enrollment trends, reasonableness of cost, the ability of the project to enhance specific strategic master plan goals, age and condition of the facility if applicable, and impact on space utilization.

(b) Each four-year project category may include projects at the pre-design, design, or construction funding phase.

(c) To the extent possible, the objective analysis and scoring system of all capital budget projects shall occur within the context of any and all performance agreements between the office of financial management and the governing board of a public, four-year institution of higher education that aligns goals, priorities, desired outcomes, flexibility, institutional mission, accountability, and levels of resources.

(4) In evaluating and scoring four-year institution projects, the office of financial management shall take into consideration project schedules that result in realistic, balanced, and predictable expenditure patterns over the ensuing three biennia.

(5) The office of financial management shall distribute common definitions, the scoring system, and other information required for

the project proposal and scoring process as part of its biennial budget instructions ~~((, except that, for the 2009-2011 budget development cycle, this information must be distributed by July 1, 2008))~~. The office of financial management, in consultation with the legislative fiscal committees ~~((and the joint legislative audit and review committee))~~, shall develop common definitions that four-year institutions must use in developing their project proposals and lists under this section.

(6) In developing any scoring system for capital projects proposed by the four-year institutions, the office of financial management:

(a) Shall be provided with all required information by the four-year institutions as deemed necessary by the office of financial management;

(b) May utilize independent services to verify, sample, or evaluate information provided to the office of financial management by the four-year institutions; and

(c) Shall have full access to all data maintained by the higher education coordinating board and the joint legislative audit and review committee concerning the condition of higher education facilities.

(7) By August 15th of each even-numbered year ~~((, beginning in 2008;))~~ each public four-year higher education institution shall prepare and submit prioritized lists of the individual projects proposed by the institution for the ensuing six-year period in each category. ~~((On a pilot basis, the office of financial management shall require one research university to prepare two separate prioritized lists for each category, one for the main campus, and one covering all of the institution's branch campuses. The office of financial management shall report to the legislative fiscal committees by December 1, 2009, on the effect of this pilot project on capital project financing for all branch campuses.))~~ The lists must be submitted to the office of financial management and the legislative fiscal committees. The four-year institutions may aggregate minor works project proposals by primary purpose for ranking purposes. Proposed minor works projects must be prioritized within the aggregated proposal, and supporting documentation, including project descriptions and cost estimates, must be provided to the office of financial management and the legislative fiscal committees.

(8) The office of financial management shall convene a group by August 15th of each even-numbered year to rank projects in priority order in a single list to be submitted to the legislature for the ensuing biennium. The group shall consist of one representative of the higher education coordinating board, two representatives of the council of presidents, two representatives of the office of financial management, and one representative of the Washington state economic development commission. The council of presidents' representatives must rotate every two years, with each four-year public baccalaureate research institution representing the council of presidents once every two biennia and each four-year public baccalaureate nonresearch institution representing the council of presidents once every four biennia. The Washington state economic development representative shall be appointed by the governor and will change every two years. The governor or a designee may participate in determining the prioritized list.

(9) The priorities set by the group shall consider policies for the state's higher education system to achieve growth and manage existing assets in a responsible manner, biennial budget projections for capital expenditures, and biennial budget projections for student full-time equivalent growth."

Correct the title.

On page 10, after line 18, insert the following:

"NEW SECTION. Sec. 9. A new section is added to chapter 28B.20 RCW to read as follows:

(1) This section provides an alternative process for awarding contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of university buildings and facilities in which critical patient care or highly specialized medical research is located. These provisions may be used, in lieu of other procedures to award contracts for such work, when the estimated cost of the work is equal to or less than five million dollars and the project involves construction, renovation, remodeling, or alteration of improvements within a building that is used directly for critical patient care or highly specialized medical research.

(2) The university may create a single critical patient care or specialized medical research facilities roster or may create multiple critical patient care or specialized medical research facilities rosters for different trade specialties or categories of anticipated work. At least once a year, the university shall publish in a newspaper of general circulation a notice of the existence of the roster or rosters and solicit a statement of qualifications from contractors who wish to be on the roster or rosters of prime contractors. In addition, qualified contractors shall be added to the roster or rosters at any time they submit a written request, necessary records, and meet the qualifications established by the university. The university may require eligible contractors desiring to be placed on a roster to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the university as a condition of being placed on a roster or rosters. Placement on a roster shall be on the basis of qualifications.

(3) The public solicitation of qualifications shall include but not be limited to:

(a) A description of the types of projects to be completed and where possible may include programmatic, performance, and technical requirements and specifications;

(b) The reasons for using the critical patient care and specialized medical research roster process;

(c) A description of the qualifications to be required of a contractor, including submission of an accident prevention program;

(d) A description of the process the university will use to evaluate qualifications, including evaluation factors and the relative weight of factors;

(e) The form of the contract to be awarded;

(f) A description of the administrative process by which the required qualifications, evaluation process, and project types may be appealed; and

(g) A description of the administrative process by which decisions of the university may be appealed.

(4) The university shall establish a committee to evaluate the contractors submitting qualifications. Evaluation criteria for selection of the contractor or contractors to be included on a roster shall include, but not be limited to:

(a) Ability of a contractor's professional personnel;

(b) A contractor's past performance on similar projects, including but not limited to medical facilities, and involving either negotiated work or other public works contracts;

(c) The contractor's ability to meet time and budget requirements;

(d) The contractor's ability to provide preconstruction services, as appropriate;

(e) The contractor's capacity to successfully complete the project;

(f) The contractor's approach to executing projects;

(g) The contractor's approach to safety and the contractor's safety history; and

(h) The contractor's record of performance, integrity, judgment, and skills.

(5) Contractors meeting the evaluation committee's criteria for selection must be placed on the applicable roster or rosters.

(6) When a project is selected for delivery through this roster process, the university must establish a procedure for securing written quotations from all contractors on a roster to assure that a competitive price is established. 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. Plans and specifications must be included in the invitation but may not be detailed. Award of a project must be made to the responsible bidder submitting the lowest responsive bid.

(7) The university shall make an effort to solicit proposals from certified minority or certified woman-owned contractors to the extent permitted by the Washington state civil rights act, RCW 49.60.400.

(8) Beginning in September 2010 and every other year thereafter, the university shall provide a report to the capital projects advisory review board which must, at a minimum, include a list of rosters used, contracts awarded, and a description of outreach to and participation by women and minority-owned businesses.

NEW SECTION. Sec. 10. A new section is added to chapter 43.131 RCW to read as follows:

The alternative process for awarding contracts established in section 9 of this act terminates June 30, 2015, as provided in section 3 of this act.

NEW SECTION. Sec. 11. A new section is added to chapter 43.131 RCW to read as follows:

Section 9 of this act, as now existing or hereinafter amended, is repealed, effective June 30, 2016."

Correct the title and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Kilmer moved that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 6355 and ask the House to recede therefrom.

Senators Kilmer spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Kilmer that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 6355 and ask the House to recede therefrom.

The motion by Senator Kilmer carried and the Senate refused to concur in the House amendment(s) to Substitute Senate Bill No. 6355 and asked the House to recede therefrom by voice vote.

#### MESSAGE FROM THE HOUSE

March 4, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6416 with the following amendment(s): 6416-S AMH APPG H5442.1,

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 13.34 RCW to read as follows:

(1) A caregiver of a dependent child may petition the juvenile court to be heard on a decision by the department or supervising agency to remove the child from the caregiver's home if:

(a) The child has been found to be a dependent child under this chapter;

(b) The child was placed with the caregiver by the department or supervising agency and resided in the caregiver's home for twelve or more continuous months prior to the decision to remove, or the removal of, the child;

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(c) The child is in the custody of the department or supervising agency at the time the petition to be heard is filed;

(d) The department or supervising agency has made the decision to remove or has already removed the child from the caregiver's home; and

(e) The child is not being returned home or moved to a permanent placement that is consistent with the child's permanency plan approved by the court.

(2) The caregiver may file a petition under this section within not more than ten business days after the date the caregiver receives notice of the removal decision, or the child is removed from the caregiver's home, whichever is later.

(3) If the requirements of subsection (1) of this section are met, the court shall grant the petition to be heard on the sole issue of the placement decision and shall schedule an expedited hearing on the matter.

(4) The caregiver has the right to be represented by counsel, at his or her own expense, at the hearing on the issue of the placement decision.

(5) The granting of a petition to be heard under this section does not grant the caregiver party status in the underlying dependency.

(6) The right to file a petition to be heard under this section does not grant a caregiver the right to further review of the placement decision on which the caregiver petitioned to be heard.

(7) For the purposes of this section, "caregiver" means a licensed foster parent, another suitable person as described in RCW 13.34.130(1)(b), or a relative as defined in RCW 74.15.020(2)(a) who is not the child's parent."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 6416 and ask the House to recede therefrom.

The President declared the question before the Senate to be motion by Senator Hargrove that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 6416 and ask the House to recede therefrom.

The motion by Senator Hargrove carried and the Senate refused to concur in the House amendment(s) to Substitute Senate Bill No. 6416 and asked the House to recede therefrom by voice vote.

MOTION

On motion of Senator Hewitt, Senator Roach was excused.

MESSAGE FROM THE HOUSE

March 2, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6192 with the following amendment(s): 6192-S AMH HS H5393.1,

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 13.40.190 and 2004 c 120 s 6 are each amended to read as follows:

(1)(a) In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or

damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted.

(b) Restitution may include the costs of counseling reasonably related to the offense.

(c) The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter.

(d) The court may determine the amount, terms, and conditions of the restitution including a payment plan extending up to ten years if the court determines that the respondent does not have the means to make full restitution over a shorter period. ((Restitution may include the costs of counseling reasonably related to the offense.)) For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday and, during this period, the restitution portion of the dispositional order may be modified as to amount, terms, and conditions at any time. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of restitution for an additional ten years. If the court grants a respondent's petition pursuant to RCW 13.50.050(11), the court's jurisdiction under this subsection shall terminate.

(e) Nothing in this section shall prevent a respondent from petitioning the court pursuant to RCW 13.50.050(11) if the respondent has paid the full restitution amount stated in the court's order and has met the statutory criteria.

(f) If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. ((For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of restitution for an additional ten years.))

(g) At any time, the court may determine that the respondent is not required to pay, or may relieve the respondent of the requirement to pay, full or partial restitution to any insurance provider authorized under Title 48 RCW if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution to the insurance provider and could not reasonably acquire the means to pay the insurance provider the restitution over a ten-year period.

(2) Regardless of the provisions of subsection (1) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the disposition order for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(3) If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

(4) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged. "Victim" may also include a known parent or guardian of a victim who is a minor child or is not a minor child but is incapacitated, incompetent, disabled, or deceased.

(5) A respondent under obligation to pay restitution may petition the court for modification of the restitution order."

Correct the title.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Marr moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6192.

Senator Marr spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Marr that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6192.

The motion by Senator Marr carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6192 by voice vote.

#### MOTION

On motion of Senator Brandland, Senator Benton was excused.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6192, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6192, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

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

Excused: Senators Kline, McCaslin and Pflug

SUBSTITUTE SENATE BILL NO. 6192, as amended by the House, 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.

#### MESSAGE FROM THE HOUSE

March 3, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6202 with the following amendment(s): 6202-S AMH HURS H5420.4,

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 30.22.210 and 1981 c 192 s 21 are each amended to read as follows:

(1) Nothing contained in this chapter shall be deemed to require any financial institution to make any payment from an account to a depositor, or any trust or P.O.D. account beneficiary, or any other person claiming an interest in any funds deposited in the account, if the financial institution has actual knowledge of the existence of a dispute between the depositors, beneficiaries, or other persons

concerning their respective rights of ownerships to the funds contained in, or proposed to be withdrawn, or previously withdrawn from the account, or in the event the financial institution is otherwise uncertain as to who is entitled to the funds pursuant to the contract of deposit. In any such case, the financial institution may, without liability, notify, in writing, all depositors, beneficiaries, or other persons claiming an interest in the account of either its uncertainty as to who is entitled to the distributions or the existence of any dispute, and may also, without liability, refuse to disburse any funds contained in the account to any depositor, and/or trust or P.O.D. account beneficiary thereof, and/or other persons claiming an interest therein, until such time as either:

((4)) (a) All such depositors and/or beneficiaries have consented, in writing, to the requested payment; or

((2)) (b) The payment is authorized or directed by a court of proper jurisdiction.

(2) If a financial institution reasonably believes that financial exploitation of a vulnerable adult, as defined in RCW 74.34.020, may have occurred, may have been attempted, or is being attempted, the financial institution may refuse a transaction as permitted under section 3 of this act.

Sec. 2. RCW 74.34.020 and 2007 c 312 s 1 are each amended to read as follows:

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully

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informed of the nature of the services to be offered and that the receipt of services is voluntary.

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

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

(6) "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

(7) "Financial institution" has the same meaning as in RCW 30.22.040 and 30.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(8) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

~~((8))~~ (9) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

~~((9))~~ (10) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

~~((10))~~ (11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

~~((11))~~ (12) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

~~((12))~~ (13) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

~~((13))~~ (14) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

~~((14))~~ (15) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a

vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

~~((15))~~ (16) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider.

NEW SECTION. Sec. 3. A new section is added to chapter 74.34 RCW to read as follows:

(1) Pending an investigation by the financial institution, the department, or law enforcement, if a financial institution reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, the financial institution may, but is not required to, refuse a transaction requiring disbursement of funds contained in the account:

(a) Of the vulnerable adult;

(b) On which the vulnerable adult is a beneficiary, including a trust or guardianship account; or

(c) Of a person suspected of perpetrating financial exploitation of a vulnerable adult.

(2) A financial institution may also refuse to disburse funds under this section if the department, law enforcement, or the prosecuting attorney's office provides information to the financial institution demonstrating that it is reasonable to believe that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted.

(3) A financial institution is not required to refuse to disburse funds when provided with information alleging that financial exploitation may have occurred, may have been attempted, or is being attempted, but may use its discretion to determine whether or not to refuse to disburse funds based on the information available to the financial institution.

(4) A financial institution that refuses to disburse funds based on a reasonable belief that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted shall:

(a) Make a reasonable effort to notify all parties authorized to transact business on the account orally or in writing; and

(b) Report the incident to the adult protective services division of the department and local law enforcement.

(5) Any refusal to disburse funds as authorized by this section based on the reasonable belief of a financial institution that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted will expire upon the sooner of:

(a) Ten business days after the date on which the financial institution first refused to disburse the funds if the transaction involved the sale of a security or offer to sell a security, as defined in RCW 21.20.005, unless sooner terminated by an order of a court of competent jurisdiction;

(b) Five business days after the date on which the financial institution first refused to disburse the funds if the transaction did not involve the sale of a security or offer to sell a security, as defined in RCW 21.20.005, unless sooner terminated by an order of a court of competent jurisdiction; or

(c) The time when the financial institution is satisfied that the disbursement will not result in financial exploitation of a vulnerable adult.

(6) A court of competent jurisdiction may enter an order extending the refusal by the financial institution to disburse funds based on a reasonable belief that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted. A court of competent jurisdiction may also order other protective relief as authorized by RCW 7.40.010 and 74.34.130.

(7) A financial institution or an employee of a financial institution is immune from criminal, civil, and administrative liability for refusing to disburse funds or disbursing funds under this section and for actions taken in furtherance of that determination if the determination of whether or not to disburse funds was made in good faith.

**Sec. 4.** RCW 74.34.035 and 2003 c 230 s 2 are each amended to read as follows:

(1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment by another person, mandated reporters shall, pursuant to RCW 68.50.020, report the death to the medical examiner or coroner having jurisdiction, as well as the department and local law enforcement, in the most expeditious manner possible. A mandated reporter is not relieved from the reporting requirement provisions of this subsection by the existence of a previously signed death certificate. If abuse, neglect, or abandonment caused or contributed to the death of a vulnerable adult, the death is a death caused by unnatural or unlawful means, and the body shall be the jurisdiction of the coroner or medical examiner pursuant to RCW 68.50.010.

(6) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

~~((6))~~ (7) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

~~((7))~~ (8) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

~~((8))~~ (9) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

**NEW SECTION. Sec. 5.** A new section is added to chapter 74.34 RCW to read as follows:

(1) A financial institution shall provide training concerning the financial exploitation of vulnerable adults to the employees specified in subsection (2) of this section within one year of the effective date of this act and shall thereafter provide such training to the new employees specified in subsection (2) of this section within the first three months of their employment.

(2) A financial institution that is a broker-dealer or investment adviser as defined in RCW 21.20.005 shall provide training concerning the financial exploitation of vulnerable adults to employees who are required to be registered in the state of Washington as salespersons or investment adviser representatives under RCW 21.20.040 and who have contact with customers and access to account information on a regular basis and as part of their job. All other financial institutions shall provide training concerning the financial exploitation of vulnerable adults to employees who have contact with customers and access to account information on a regular basis and as part of their job.

(3) The training must include recognition of indicators of financial exploitation of a vulnerable adult, the manner in which employees may report suspected financial exploitation to the department and law enforcement as permissive reporters, and steps employees may take to prevent suspected financial exploitation of a vulnerable adult as authorized by law or agreements between the financial institution and customers of the financial institution. The office of the attorney general and the department shall develop a standardized training that financial institutions may offer, or the financial institution may develop its own training.

(4) A financial institution may provide access to or copies of records that are relevant to suspected financial exploitation or attempted financial exploitation of a vulnerable adult to the department, law enforcement, or the prosecuting attorney's office, either as part of a referral to the department, law enforcement, or the prosecuting attorney's office, or upon request of the department, law enforcement, or the prosecuting attorney's office pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation.

(5) A financial institution or employee of a financial institution participating in good faith in making a report or providing documentation or access to information to the department, law enforcement, or the prosecuting attorney's office under this chapter shall be immune from criminal, civil, or administrative liability."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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Senator Hargrove moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6202.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6202.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6202 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6202, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6202, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 1; Excused, 3.

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

Absent: Senator Carrell

Excused: Senators Kline, McCaslin and Pflug

SUBSTITUTE SENATE BILL NO. 6202, as amended by the House, 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.

MESSAGE FROM THE HOUSE

March 3, 2010

MR. PRESIDENT:

The House passed SENATE BILL NO. 6206 with the following amendment(s): 6206 AMH FIN H5514.1.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 82.32.590 and 2009 c 461 s 7 are each amended to read as follows:

(1) If the department finds that the failure of a taxpayer to file an annual survey under RCW 82.32... (section 102, chapter... Laws of 2010, (SHB 3066)) or annual report under ((RCW 82.04.4452, 82.32.5351, 82.32.650, 82.32.630, 82.32.610, 82.82.020, 82.32.632, or 82.74.040)) RCW 82.32... (section 103, chapter... Laws of 2010, (SHB 3066)) by the due date was the result of circumstances beyond the control of the taxpayer, the department ((shall)) must extend the time for filing the survey or report. ((Such)) The extension ((shall be)) is for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey or annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department ((shall)) must be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(3)(a) Subject to the conditions in this subsection (3), a taxpayer who fails to file an annual report or annual survey required under subsection (1) of this section by the due date of the report or survey is entitled to an extension of the due date. A request for an extension under this subsection (3) must be made in writing to the department.

(b) To qualify for an extension under this subsection (3), a taxpayer must have filed all annual reports and surveys, if any, due in prior years under subsection (1) of this section by their respective due dates, beginning with annual reports and surveys due in calendar year 2010.

(c) An extension under this subsection (3) is for ninety days from the original due date of the annual report or survey.

(d) No taxpayer may be granted more than one ninety-day extension under this subsection (3).

NEW SECTION. Sec. 2. Section 1 of this act applies to annual surveys and reports due under any of the statutes listed in RCW 82.32.590(1) in calendar year 2011 and thereafter."

Correct the title. and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Haugen moved that the Senate concur in the House amendment(s) to Senate Bill No. 6206.

Senator Haugen spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Haugen that the Senate concur in the House amendment(s) to Senate Bill No. 6206.

The motion by Senator Haugen carried and the Senate concurred in the House amendment(s) to Senate Bill No. 6206 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 6206, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 6206, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

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

Excused: Senators Kline, McCaslin and Pflug

SENATE BILL NO. 6206, as amended by the House, 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.

MESSAGE FROM THE HOUSE

February 28, 2010

MR. PRESIDENT:

The House passed SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 5742 with the following amendment(s): 5742-S.E2 AMH JUDI H5275.3,

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that local governments, landlords, and tenants working together to provide crime-free rental housing is beneficial to the public health, safety, and welfare. The legislature is also concerned about activities and provisions that serve to bar a person with a criminal history from obtaining viable housing regardless of other factors that may indicate rental stability, such as employment, rental references, or time in the community with no further criminal activity. It is therefore the intent of this act to provide certain requirements that a local government must follow in adopting a crime-free rental housing program.

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

(1) "Crime-free rental housing program" means a crime prevention program designed to reduce crime, drugs, and gangs on rental housing premises under the supervision of the local police department or a crime prevention officer. The program may include, but is not limited to: Property management and crime prevention training classes; crime prevention through environmental design surveys; and community awareness training.

(2) "Criminal activity" means a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants, owner, guests, occupants, or property manager.

(3) "Local government" means any city, code city, town, or county.

(4) "Premises" has the same meaning as in RCW 59.18.030.

(5) "Rental housing" means any tenancy subject to chapter 59.12, 59.18, or 59.20 RCW.

**NEW SECTION. Sec. 3.** (1)(a) Except as provided in (b) of this subsection, a local government may adopt and implement a crime-free rental housing program within its jurisdiction in accordance with this chapter.

(b) A crime-free rental housing program adopted and implemented by a county is applicable only to unincorporated areas of the county.

(2) Except as provided in subsection (3) of this section, a crime-free rental housing program must be voluntary.

(3)(a) A local government may require a landlord to participate in a crime-free rental housing program upon exceeding a reasonable threshold of instances of criminal activity on the premises if the landlord has not made a good faith effort to deter the criminal activity.

(b) A good faith effort may include, but is not limited to:

(i) Service of notice on the tenant to comply or quit as allowed by law or the commencement of an unlawful detainer action against the tenant; and

(ii) Attendance and completion of a landlord training program approved by the local government.

(4)(a) As a prerequisite to subsection (3) of this section, upon the occurrence of criminal activity on the premises, the local police department must send a notice to the landlord setting forth the following:

(i) The date and location of the occurrence;

(ii) The nature of the occurrence; and

(iii) The name of the person who engaged in the occurrence.

(b) Notice is deemed properly delivered when it is either served upon the landlord or a property manager of the rental property, or is delivered by first-class mail to the last known address of the landlord.

(5) This section does not prevent a local government from charging a fee for participation in a crime-free rental housing program.

(6) This section does not affect a local government's authority to enforce existing law in regard to rental housing, except in regard to a crime-free rental housing program.

**NEW SECTION. Sec. 4.** A crime-free rental housing program may not prohibit a landlord from hiring or renting to a person solely because of the person's criminal history.

**NEW SECTION. Sec. 5.** (1) Except as provided in subsection (2) of this section, this chapter supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all local governments regarding the same subject matter. The state preemption created in this section applies to all rules, regulations, codes, statutes, and ordinances pertaining to crime-free rental housing programs at any time.

(2) Section 3 of this act does not apply to rules, regulations, codes, statutes, or ordinances adopted by local governments prior to July 1, 2010, except as required by an order issued by a court of competent jurisdiction pursuant to litigation regarding the rules, regulations, codes, statutes, or ordinances.

**NEW SECTION. Sec. 6.** Sections 1 through 5 of this act constitute a new chapter in Title 35 RCW." and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Second Engrossed Substitute Senate Bill No. 5742.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Second Engrossed Substitute Senate Bill No. 5742.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Second Engrossed Substitute Senate Bill No. 5742 by voice vote.

The President declared the question before the Senate to be the final passage of Second Engrossed Substitute Senate Bill No. 5742, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Second Engrossed Substitute Senate Bill No. 5742, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

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

Excused: Senators Kline, McCaslin and Pflug

SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 5742, as amended by the House, 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.



At 7:10 p.m., on motion of Senator Eide, the Senate adjourned until 9:00 a.m. Tuesday, March 9, 2010.

BRAD OWEN, President of the Senate

Draft

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