

1991
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FIFTY-SECOND LEGISLATURE
Convened January 14, 1991. Adjourned April 28, 1991.

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FIFTY-SECOND LEGISLATURE
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DENNIS W. COOPER
Code Reviser

**WASHINGTON SESSION LAWS
GENERAL INFORMATION**

1. EDITIONS AVAILABLE.

(a) *General Information.* The session laws are printed successively in two editions:

- (i) a temporary pamphlet edition consisting of a series of one or more paper bound pamphlets, which are published as soon as possible following the session, at random dates as accumulated; followed by
- (ii) a permanent bound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating code sections affected.

(b) *Temporary pamphlet edition — where and how obtained — price.* The temporary session laws may be ordered from the Statute Law Committee, Legislative Building, Olympia, Washington 98504 at \$5.40 per set (\$5.00 plus \$.40 for state and local sales tax of 7.9%). All orders must be accompanied by payment.

(c) *Permanent bound edition — when and how obtained — price.* The permanent bound edition of the 1991 session laws may be ordered from the State Law Librarian, Temple of Justice, Olympia, Washington 98504 at \$21.58 per volume (\$20.00 plus \$1.58 for state and local sales tax of 7.9%). All orders must be accompanied by payment.

2. PRINTING STYLE — INDICATION OF NEW OR DELETED MATTER

Both editions of the session laws present the laws in the form in which they were adopted by the legislature. This style quickly and graphically portrays the current changes to existing law as follows:

(a) In amendatory sections

- (i) underlined matter is new matter.
- (ii) deleted matter is (~~lined out and bracketed between double parentheses~~).

(b) Complete new sections are prefaced by the words NEW SECTION.

3. PARTIAL VETOS

(a) Vetoes are *printed in bold italics*.

(b) Pertinent excerpts of the governor's explanation of partial vetoes are printed at the end of the chapter concerned.

4. EDITORIAL CORRECTIONS. Words and clauses inserted in the session laws pursuant to the authority of RCW 44.20.060 are enclosed in [brackets].

5. EFFECTIVE DATE OF LAWS

(a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 1991 regular session to be July 28, 1991 (midnight July 27). The pertinent date for the Laws of the 1991 1st special session is September 29, 1991 (midnight September 28th).

(b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.

(c) Laws that prescribe an effective date, take effect upon that date.

6. INDEX AND TABLES

A cumulative index and tables of all 1991 laws may be found at the back of the final pamphlet edition and the permanent bound edition.

TABLE OF CONTENTS

| Chapter No. | Bill No. | Subject | Page |
|----------------|-------------|--|------|
| 1 | SHB 1511 | Exemption of home and work addresses from public disclosure—Effective date | 1 |
| 2 | HB 1818 | State convention and trade center—Completion costs | 4 |
| 3 | HB 1115 | Health department—Revision of statutory references affected by creation of department | 9 |
| 4 | SSB 5806 | Underground petroleum storage tanks—Financial assistance to operators meeting a vital local need | 181 |
| 5 | HB 1060 | Claims against decedent's estate—Filing with court required | 187 |
| 6 | SHB 1062 | Trusts—Power of fiduciary to divide | 188 |
| 7 | HB 1063 | Wills—Disposition of disclaimed interest | 190 |
| 8 | HB 1195 | Irrigation districts—Authority to establish consolidated local improvement districts | 191 |
| 9 | SHB 1702 | Beef commission membership—Revised provisions | 192 |
| 10 | HB 1267 | Forest lands—Reconveyance of state lands leased for sanitary landfills | 193 |
| 11 | SHB 1304 | Recycling—State parks, marinas, and airports—Requirements | 194 |
| 12 | SHB 1200 | Physical therapists | 195 |
| 13 | EHB 1450 | Business and occupation tax—Public safety testing laboratories—Credit for services provided to state | 198 |
| 14 | SSB 5090 | Foster family home license renewal applications | 199 |
| 15 | SSB 5383 | Prevailing wage—Statement of intent to pay—Alternative procedure | 199 |
| 16 | SSB 5796 | Nursing assistants—Certification and registration | 201 |
| 17 | SB 5036 | Livestock market net worth requirement | 208 |
| 18 | SSB 5357 | Public water systems—Qualified satellite system management agencies | 211 |
| 19 | SB 5103 | Engineer—Registration requirements | 212 |
| 20 | SSB 5276 | Impounded vehicles—Revised provisions | 222 |
| 21 | SB 5219 | Common carriers—Limit on liability for loss or damage to baggage | 223 |
| 22 | SSB 5106 | Transportation budget—1991 supplemental | 224 |
| 23 | ESB 5906 | Domestic violence—Disclosure of victims' addresses prevention program | 228 |
| 24 | PV SHB 1800 | Office of international relations and protocol | 235 |
| 25 | HB 1364 | Public employees—Military leave | 240 |
| 26 | HB 1716 | Recording of documents—Revised procedures | 241 |
| 27 | HB 1812 | Forest lands—Stewardship assistance for owners of nonindustrial forests and woodlands | 245 |
| 28 | SHB 1460 | Drainage districts—Dissolution—Alternative procedure | 248 |
| 29 | SHB 1915 | Mental health services—Employment services to be provided | 249 |
| 30 | SHB 1789 | Out-of-state prescriptions—Time limit on filling removed | 259 |
| 31 | HB 1625 | Unemployment compensation—Agricultural employees—Combined reporting requirement removed | 260 |
| 32 | HB 2073 | Drugs—Sale of controlled or counterfeit substances for profit—Penalties increased | 261 |
| 33 | ESHB 1824 | District court jurisdictional amount increased | 276 |
| 34 | EHB 1244 | Contractor avoidance of workers' compensation and unemployment compensation payments study | 280 |
| 35 | SHB 1270 | Retirement system—Reorganization of statutes governing | 280 |
| 36 | HB 1607 | Storm water and sewer facilities—Liens for delinquent service charges | 361 |
| 37 | SB 5982 | School food programs—Continuation through teachers' work stoppage | 362 |
| 38 | SSB 5030 | Protection of recording rights | 363 |
| 39 | SSB 5645 | Low-level radioactive materials task force | 367 |
| 40 | SSB 5003 | Adult family homes—Operation without license | 369 |

TABLE OF CONTENTS

| Chapter No. | Bill No. | Subject | Page | |
|----------------|-------------|---------|--|-----|
| 41 | SB | 5221 | Motor carriers—Transportation contracts to accompany permit applications | 370 |
| 42 | SSB | 5450 | Beer—References to pasteurization removed from licensing statutes | 370 |
| 43 | SB | 5586 | State militia code—Technical corrections | 372 |
| 44 | SSB | 5577 | Board of medical examiners | 380 |
| 45 | ESB | 5311 | Bare-boat charter boats | 382 |
| 46 | SB | 5220 | Railroad crossing inspection fees | 384 |
| 47 | SSB | 5381 | Veterinarians—Authority to dispense legend drugs prescribed by another veterinarian | 384 |
| 48 | SB | 5391 | Utilities and transportation commission—Emergency adjudications—Designation of person to preside | 385 |
| 49 | SB | 5434 | Railroads—Repeal of state regulations | 386 |
| 50 | SB | 5630 | Licenses and permits issued by wildlife and fisheries departments and by parks and recreation commission are not fees | 386 |
| 51 | SHB | 2187 | Business and occupation tax and sales tax exemptions for auctions conducted by nonprofit organizations | 387 |
| 52 | SSB | 5928 | Property tax—Interest and penalties not to be charged on delinquent 1991 taxes of operation desert shield and desert storm personnel | 388 |
| 53 | SB | 5042 | Commission on efficiency and accountability in government extended | 390 |
| 54 | ESHB | 1938 | State-wide 911 enhanced service | 391 |
| 55 | ESHB | 2095 | Veterans—Counseling services for veterans and their dependents | 397 |
| 56 | SSB | 5288 | American veterans memorial highway | 398 |
| 57 | SB | 5678 | National guard day | 399 |
| 58 | HB | 1143 | Honorary degrees—Authorizing colleges and universities to grant | 401 |
| 59 | SB | 5004 | Out-of-state public records as evidence | 405 |
| 60 | HB | 1176 | School board directors—Vacancies | 405 |
| 61 | EHB | 1177 | School board directors—Duty to adopt policies | 406 |
| 62 | SB | 5047 | State tartan | 408 |
| 63 | HB | 1057 | Lieutenant-governor—Security and protection for | 408 |
| 64 PV | SB | 5722 | Natural resources department—Interest rates | 409 |
| 65 | SB | 5779 | Schools for the deaf and the blind—Appropriations to be made directly to | 412 |
| 66 | SB | 5190 | School directors' association—Compensation for board members | 413 |
| 67 | SSB | 5626 | Hardwood commission—Revised provisions relating to | 414 |
| 68 | SHB | 1008 | Over-the-counter medications label information | 416 |
| 69 | SB | 5015 | Volunteer cooperative projects—Immunity for landowners allowing use of land for projects | 417 |
| 70 | SB | 5023 | Frivolous lawsuits—Recovery of defense expenses | 418 |
| 71 | SSB | 5027 | Small claims court—Jurisdiction and appearances | 419 |
| 72 | SB | 5107 | Corporations—Revised provisions | 419 |
| 73 | SB | 5290 | Drivers' licenses—Residency and application requirements | 455 |
| 74 | SB | 5767 | Public utility districts—Borrowing and credit line authority | 457 |
| 75 | SSB | 5835 | Ski areas—Sign requirements | 458 |
| 76 | EHB | 1277 | Geothermal account extension | 460 |
| 77 | HB | 1372 | Interstate parole and probation hearing procedures repeal | 461 |
| 78 | HB | 1946 | Erwin O. Rieger Memorial Highway | 462 |
| 79 | SHB | 1082 | State health care authority and state employees benefit board—Information exempt from public disclosure | 463 |
| 80 | ESHB | 2137 | Carbonated beverage tax—Revised provisions | 463 |
| 81 | HB | 1072 | Election laws—Revised provisions | 467 |

TABLE OF CONTENTS

| Chapter No. | Bill No. | Subject | Page |
|-------------|-----------|--|------|
| 82 | ESHB 1031 | Water and sewer districts—Powers revised | 485 |
| 83 | SHB 1454 | Underground storage tanks—Limits on preemption of uniform fire code | 490 |
| 84 | SSB 5204 | Practical nurses—Licensing requirements | 491 |
| 85 | EHB 1228 | Government receivables—Collection procedures | 497 |
| 86 | HB 1377 | Scoliosis screening—Revised provisions | 498 |
| 87 | SB 5684 | Pharmacies—Licensing of nonresident pharmacies | 499 |
| 88 | HB 1206 | Workers' compensation—Recovery of overpayments | 507 |
| 89 | EHB 1352 | Labor and industries department—Protection of confidential information | 515 |
| 90 | ESHB 1571 | Elections—Recount procedures revised | 517 |
| 91 | SB 5528 | Libraries—Learn-in-libraries program expanded | 518 |
| 92 | SHB 1358 | School and educational service districts—Remuneration for unused sick leave | 519 |
| 93 | ESSB 5363 | Criminal offenders—Payment of legal financial obligations—Revised provisions | 522 |
| 94 | SSB 5720 | Motorist information signs—Revised provisions | 531 |
| 95 | SB 5041 | Motorcyclists—Use of state patrol approved audio headsets .. | 538 |
| 96 | SHB 2056 | Vital statistics—Requirements for certificates and documents | 538 |
| 97 | HB 1470 | Public works projects—Appropriations for public works board approved projects | 540 |
| 98 | EHB 1723 | Fund for excellence in higher education program | 545 |
| 99 | HB 1458 | Limousine charter party carriers—Exclusion from definition of "for hire vehicle" | 547 |
| 100 | SSB 5260 | Nonmunicipal water systems—Regulation by utilities and transportation commission | 547 |
| 101 | HB 1581 | Utilities—Operations exempt from regulation—Burden of proof on utility | 552 |
| 102 | SB 5449 | School employees—Notice of discharge—Contents | 554 |
| 103 | HB 1125 | Public assistance—Billing period for vendors extended | 554 |
| 104 | HB 1371 | Probation—Monthly assessment for costs of supervision | 555 |
| 105 | ESSB 5672 | Administration of antipsychotic medicines | 565 |
| 106 | EHB 1071 | Precinct election officers—Appointment | 570 |
| 107 | SHB 1112 | State parks—Environmental interpretation activities | 572 |
| 108 | HB 1355 | Industrial safety and health violations—Civil penalties | 573 |
| 109 | SSB 5713 | Agriculture department—Administration of licenses by | 575 |
| 110 | SHB 1958 | Livestock brands—Revised provisions | 590 |
| 111 | SHB 1054 | Abuse reporting—Revised requirements | 594 |
| 112 | SHB 1059 | Judgments—Personal property exempt from enforcement | 597 |
| 113 | EHB 1118 | Motor vehicles—Maximum lengths | 598 |
| 114 | HB 1224 | School district indebtedness—Authority to contract for | 600 |
| 115 | HB 1263 | Teachers—Citizenship requirements | 602 |
| 116 | HB 1264 | Education laws—Revised provisions | 602 |
| 117 | HB 1339 | Unemployment compensation—Revised provisions | 621 |
| 118 | HB 1431 | Model traffic ordinance—Revised provisions | 626 |
| 119 | HB 1536 | Hospice services—Extension | 629 |
| 120 | HB 1910 | Medicare supplemental insurance—Conformance to federal law required | 631 |
| 121 | SSB 5536 | Telecommunications devices for the deaf task force | 631 |
| 122 | ESSB 5770 | Electric utilities—Energy code and ratemaking—Revised provisions | 633 |
| 123 | ESHB 1105 | Judgment for out-of-state income tax on pension benefits—Washington property exempt from execution | 635 |
| 124 | SHB 1771 | First class cities—Transportation authority revised | 636 |
| 125 | SB 5821 | Air pollution control authorities—Withdrawal by county from multicounty authority | 637 |
| 126 PV | SHB 1052 | Public assistance statutes—Revised provisions | 639 |

TABLE OF CONTENTS

| Chapter No. | Bill No. | Subject | Page |
|----------------|-------------|--|------|
| 127 | 2SSB | 5127 Foster care citizen review boards | 649 |
| 128 PV | SHB | 1051 International student exchange programs | 657 |
| 129 | SHB | 2069 Unemployment compensation—Employer relief from benefit charges | 664 |
| 130 | ESHB | 1777 Prison construction—Alternative methods of public works contracting authorized | 666 |
| 131 | SHB | 1208 Interstate forest fire suppression compact | 669 |
| 132 | SHB | 1265 Easements established by dedication | 672 |
| 133 | SB | 5111 Inmate testimony—Moneys received to go to crime victims compensation account | 673 |
| 134 | SSB | 5045 Drinking water quality—Investigation of consumer complaints | 674 |
| 135 | SHB | 1852 Fire services trust fund | 676 |
| 136 | ESHB | 1287 Adoption—Revised provisions | 678 |
| 137 | SHB | 1957 Food processing plants—Licensing requirements | 684 |
| 138 | SHB | 1050 Emergency medical services districts—Excess levies | 688 |
| 139 | SSB | 5322 Housing for indigents—Emergency exemptions from building codes and construction standards | 689 |
| 140 | HB | 1878 Motor vehicle dealer license plates | 690 |
| 141 | SHB | 1274 Street utilities—Revised provisions | 696 |
| 142 | SHB | 101 Taxpayer rights and responsibilities | 701 |
| 143 | HB | 1991 Vehicle size and weight restrictions—Exemption from | 706 |
| 144 | SSB | 5501 Commercial salmon fishing licenses—Evaluation of number to be issued | 707 |
| 145 PV | EHB | 1883 Gasohol use encouraged | 708 |
| 146 | SHB | 2005 Freight brokers and forwarders—Proof of financial responsibility | 709 |
| 147 | SSB | 5128 Drug offenders—Notice of release | 710 |
| 148 | SB | 5367 Recovered materials—Transportation of | 711 |
| 149 | SSB | 5520 Out-of-state wine shipments into state | 713 |
| 150 | SSB | 5762 Water companies—Financing of safety facilities | 714 |
| 151 | SHB | 1019 Aquifer protection areas—Imposition and use of fees | 714 |
| 152 | HB | 1040 Municipal utilities—Administration costs—Payment to city | 715 |
| 153 | HB | 1091 Uniform foreign-money claims act | 717 |
| 154 | EHB | 1096 Smoke detectors—Landlord and tenant duties | 722 |
| 155 | EHB | 1139 Educational staff associates—Continuing education requirements | 725 |
| 156 | SHB | 1196 Washington state center for environmental and molecular sciences | 726 |
| 157 | HB | 1312 Campaign contribution reporting—Special reports | 729 |
| 158 | SHB | 1586 Nursing homes owned by continuing care communities—Exemption from certificate of need requirements | 731 |
| 159 | SHB | 1721 Judicial retirement system—Refund of contributions | 737 |
| 160 | SHB | 1861 Osteopathic medicine and surgery—State board and licensing provisions revised | 738 |
| 161 | SHB | 1931 Raffles conducted by nonprofit organizations—Limits | 745 |
| 162 | HB | 1955 Washington food, drug, and cosmetic act—Revised provisions | 746 |
| 163 | HB | 1995 Converter gears—Licensing exemptions | 748 |
| 164 | ESHB | 2027 Colleges and universities—Financial provisions for students unable to finish term because of military service in Persian Gulf | 755 |
| 165 | HB | 2059 Low-income weatherization and energy assistance—Revised provisions | 762 |
| 166 | ESSB | 5114 School bus safety equipment | 768 |
| 167 | EHB | 1740 Public housing authorities—Powers and duties | 770 |
| 168 | ESSB | 5494 Dishonored checks—Revised collection procedures | 778 |

TABLE OF CONTENTS

| Chapter No. | Bill No. | Subject | Page |
|----------------|-------------|---|------|
| 169 | SHB 1830 | Testimony of child regarding acts of sexual contact— Admissibility | 779 |
| 170 | SSB 5261 | Schools—Fire safety standards | 780 |
| 171 | ESHB 1727 | Speech impaired persons—Appointment of interpreters for .. | 781 |
| 172 | SSB 5374 | Industrial insurance labor-management cooperation program .. | 784 |
| 173 | SHB 1342 | Motor vehicle fuels—Local taxation of sales and distribution .. | 786 |
| 174 | SHB 1142 | Processor and preparer liens | 787 |
| 175 | SHB 1635 | Emergency medical services—Local taxing authority | 791 |
| 176 | HB 1032 | Death investigations and responsibility for costs of transporting human remains | 793 |
| 177 | HB 1748 | Small business export finance assistance center continued .. | 796 |
| 178 | ESSB 5156 | Candidate residency requirements | 796 |
| 179 | SB 5264 | Community and urban forestry program | 798 |
| 180 PV | SSB 5632 | Ocularists—Revised regulatory provisions | 800 |
| 181 | ESHB 1780 | Offender work crews | 805 |
| 182 | SHB 1911 | Massage practitioners—Local regulation of state licensed practitioners | 823 |
| 183 | EHB 1500 | Jail labor—Reduction of outstanding fines and costs for— Rate | 824 |
| 184 | SB 5834 | State archivist—Rule-making authority | 825 |
| 185 | SHB 1858 | Cities and towns—Cashing of employee checks | 827 |
| 186 | SB 5043 | Election documents—Facsimile filing | 828 |
| 187 | SB 5473 | Tort claims revolving fund | 829 |
| 188 | SB 5077 | Real property—Perfection of security interests in | 830 |
| 189 | SSB 5466 | Pharmacists—Limitations on liability for dispensing of prescription | 831 |
| 190 | SB 5512 | Sewer and water districts—Revised provisions | 834 |
| 191 | SSB 5518 | Deceptive pay-per-call information delivery services— Violation of consumer protection act | 844 |
| 192 | SSB 5776 | Alcoholic beverage control—Revised provisions | 848 |
| 193 | ESHB 1088 | Uniform transfers to minors act | 855 |
| 194 | SHB 1336 | Tenant application fees | 871 |
| 195 | HB 1527 | Physicians—Continuing education requirements | 873 |
| 196 | HB 1558 | State patrol compensation survey | 873 |
| 197 | HB 1675 | Civil docket priority | 875 |
| 198 | SHB 1739 | Homeless persons—Property tax exemption for nonprofit organizations housing | 875 |
| 199 PV | ESHB 1028 | Air pollution reduction | 876 |
| 200 PV | ESHB 1027 | Oil and hazardous substance spill response and prevention .. | 943 |
| 201 | ESSB 5245 | State energy policy | 1021 |
| 202 PV | 2SHB 1671 | Highway access control and transportation demand management | 1039 |
| 203 | SSB 5110 | Property tax—Exemptions for senior citizens and disabled persons | 1055 |
| 204 | SSB 5332 | Disabled persons—Residential care—Real property inventory—Requirements | 1059 |
| 205 | HB 2198 | Joint center for higher education | 1062 |
| 206 | SB 5651 | Scenic river system—Little Spokane river added | 1066 |
| 207 | HB 2057 | Public facilities districts—Sales and use taxing authority .. | 1067 |
| 208 | SHB 1743 | High risk consumer loans | 1069 |
| 209 | SHB 1936 | College and university admissions standards | 1080 |
| 210 | SHB 2042 | Forfeiture of earnest money deposits | 1082 |
| 211 | HB 2163 | Assaults on wildlife agents and other law enforcement officers | 1083 |
| 212 | ESHB 2058 | Childhood sexual abuse—Statute of limitations for actions based on | 1084 |
| 213 | HB 1299 | Property tax—Exemptions for senior citizens and disabled | |

TABLE OF CONTENTS

| Chapter No. | Bill No. | Subject | Page |
|----------------|-------------|---|------|
| | | persons—Income amounts increased | 1086 |
| 214 | ESHB 1081 | Bicycle safety | 1090 |
| 215 | ESHB 2071 | Medical disciplinary board—Revised provisions | 1093 |
| 216 | HB 2106 | Homeless persons—Donations of personal property by department of general administration | 1096 |
| 217 | SHB 1919 | Driver education—Alcohol and drug use instruction required | 1098 |
| 218 | SHB 1301 | Study of property tax administration system | 1099 |
| 219 | HB 1642 | Property tax relief for senior citizens | 1102 |
| 220 | SHB 1326 | Landlords—Tenant property—Drayage and storage costs | 1103 |
| 221 | ESSB 5825 | Firearms—Restrictions on possession by offenders supervised by department of corrections | 1105 |
| 222 | HB 2037 | Radiological technologists | 1114 |
| 223 | HR 1853 | Nonprofit corporations—Fees | 1118 |
| 224 | HB 1400 | Rural health care projects | 1121 |
| 225 | SB 5231 | Real estate brokers and salespersons—Continuing education requirements | 1122 |
| 226 PV | ESSB 5256 | Franchise investment protection | 1123 |
| 227 | SSB 5108 | Prizes—Regulation of promotional advertising of | 1142 |
| 228 PV | SB 5475 | Colleges and universities—Graduate assistants—English competency required | 1148 |
| 229 | SHB 2048 | Pharmacists—License renewal fees | 1153 |
| 230 | ESHB 1172 | School pathway and bus stop improvement program | 1156 |
| 231 | SHB 1452 | High-speed transportation system assessment | 1158 |
| 232 | EHB 1572 | Salmon—Labeling requirements | 1162 |
| 233 | SSB 5010 | Occupational therapy | 1163 |
| 234 | 2SSB 5167 | Juvenile issues task force | 1166 |
| 235 PV | SB 5474 | Children's education and well-being—Data collection and reporting system | 1163 |
| 236 | SHB 1712 | Athlete agent registration | 1171 |
| 237 | EHB 2141 | State oral political history program | 1174 |
| 238 | ESSB 5184 | Work force training and education | 1177 |
| 239 | ESB 5476 | Milk marketing—Pricing and pooling arrangements | 1244 |
| 240 | SB 5477 | "Veteran" redefined | 1254 |
| 241 | SSB 5295 | Truck identification—Requirements | 1255 |
| 242 | ESHB 1729 | Expanded jury source list | 1257 |
| 243 | HB 1024 | Law enforcement officers and fire fighters—Information excluded from driving record | 1258 |
| 244 | SSB 5611 | Fleet rental vehicles—Analysis of taxes on | 1260 |
| 245 | SHB 1316 | County treasurers—Revised provisions | 1261 |
| 246 | ESSB 5837 | Unemployment compensation—Covered employment— Revised provisions | 1291 |
| 247 | SHB 1189 | Misdemeanors—Payment of costs as condition of deferred prosecution or for evaluation or supervision services | 1297 |
| 248 | SSB 5583 | Child care facility fund | 1299 |
| 249 | ESHB 1214 | Attendance incentive program—Reimbursement for unused sick leave | 1300 |
| 250 | SHB 1317 | Oxygen—Sales and use tax exemption | 1302 |
| 251 | SSB 5008 | Pacific northwest economic region | 1303 |
| 252 | SHB 1885 | Teachers recruiting future teachers | 1306 |
| 253 | SHB 1416 | Game fish mitigation—Purchase of fish from aquatic farmers | 1306 |
| 254 PV | SSB 5873 | School district employees—Insurance coverage for retired and disabled employees | 1308 |
| 255 | 2SSB 5022 | Award for excellence in education | 1310 |
| 256 | ESHB 1686 | Correctional industries—Site-specific plans | 1315 |
| 257 | SHB 1956 | Horticultural pest and disease control | 1317 |
| 258 | SSB 5504 | Student teaching centers | 1328 |

TABLE OF CONTENTS

| Chapter No. | Bill No. | Subject | Page |
|----------------|-------------|---|------|
| 259 PV | SHB 1243 | Teacher preparation programs—Faculty instruction in the public schools | 1332 |
| 260 | SB 5053 | Juvenile driving privileges—Authority to revoke under municipal ordinance | 1333 |
| 261 | SB 5441 | Bookmaking—Revised provisions | 1335 |
| 262 | 2SSB 5667 | Mental health—Local evaluation and treatment centers | 1339 |
| 263 | SB 5778 | Pesticide damage reporting | 1348 |
| 264 | EHB 1156 | Structural pest control inspectors | 1349 |
| 265 | ESHB 1329 | Special educational services demonstration projects | 1356 |
| 266 | HB 1480 | Reciprocal insurers—Powers regarding real property | 1359 |
| 267 | ESHB 1534 | Sexual assault investigation and prosecution training | 1360 |
| 268 | SHB 1971 | Alien insurers—Regulation of | 1362 |
| 269 PV | SB 5148 | Limited partnerships—Revised provisions | 1366 |
| 270 | ESHB 1120 | Horse racing—Revised provisions | 1391 |
| 271 | ESHB 2100 | Nursing home care for underserved ethnic minorities | 1399 |
| 272 | ESSB 5756 | Low-level waste sites—Rate setting | 1401 |
| 273 | HB 2021 | Joint select committee on water resource policy | 1420 |
| 274 | SHB 1997 | Sex offender registration requirements | 1422 |
| 275 | SHB 2132 | Business and occupation tax exemption for life insurance salespersons | 1426 |
| 276 | HB 1262 | Tow truck height, weight, and length restrictions | 1427 |
| 277 | SHB 1496 | Licensing fees—Real estate brokers and salespersons and professional engineers | 1427 |
| 278 | SSB 5359 | Teachers' retirement—Transfer of credits from out-of-state plans | 1428 |
| 279 | ESSB 5624 | Bulkhead or rockwall construction—Hydraulic permits for | 1429 |
| 280 | E2SSB 5096 | Department of agriculture—Duty to promote agriculture | 1430 |
| 281 | SSB 5497 | Construction liens | 1431 |
| 282 | HB 2142 | Public employees—Retirement—Notice of accumulated service credit | 1450 |
| 283 | 2SSB 5341 | Foster parent insurance | 1451 |
| 284 | EHB 1428 | Capital budgets—Documentation requirements | 1453 |
| 285 | ESHB 1813 | Centers for the improvement of teaching | 1456 |
| 286 | SSB 5628 | Crop liens | 1458 |
| 287 | ESB 5745 | Special amusement games licenses | 1462 |
| 288 | SHB 1222 | School district directors' districts | 1464 |
| 289 | ESHB 1510 | Guardianship | 1471 |
| 290 | HB 1757 | Driving under the influence of intoxicating liquor or any drug | 1492 |
| 291 | HB 1992 | Advance right-of-way acquisition | 1501 |
| 292 | SB 5049 | Disposal of abandoned junk vehicles | 1503 |
| 293 | SSB 5266 | Driver's license suspension or revocation for habitual offenders | 1507 |
| 294 | SSB 5456 | Colleges and universities—Faculty tenure—Revised provisions | 1517 |
| 295 | SSB 5669 | Housing trust fund—Priority for projects submitted by regional support networks | 1520 |
| 296 | 2SSB 5830 | Youth gang violence reduction | 1524 |
| 297 | 2SSB 5143 | Recycled products—State and local government procurement requirements | 1529 |
| 298 | SSB 5478 | Curbside recycling for multifamily residences | 1538 |
| 299 | ESHB 1127 | Superior court judges—New positions | 1542 |
| 300 | SHB 1782 | County court commissioners | 1545 |
| 301 | ESHB 1884 | Domestic violence prevention and treatment | 1549 |
| 302 PV | ESHB 1389 | Freshwater aquatic weed control | 1566 |
| 303 PV | SB 5558 | Child labor laws enforcement | 1568 |
| 304 | SHB 1709 | Public water systems—Annual operating permits | 1572 |

TABLE OF CONTENTS

| Chapter No. | Bill No. | Subject | Page | |
|----------------|-------------|---------|--|------|
| 305 | SHB | 1710 | Water systems operator certification | 1578 |
| 306 PV | SSB | 5670 | Children—Mental health—Screening and treatment services | 1583 |
| 307 | SHB | 1649 | Municipal water discharge permit fees | 1597 |
| 308 | SHB | 2044 | Transportation improvement board membership | 1599 |
| 309 | ESHB | 1677 | High capacity transportation planning and funding | 1601 |
| 310 | SHB | 2050 | County ferry system funding | 1608 |
| 311 PV | SHB | 1137 | "Criminal justice purposes" defined for provision assistance to local governments | 1610 |
| 312 | HB | 1489 | Telecommunications—Right of privacy—Exceptions | 1617 |
| 313 PV | ESHB | 1881 | District court judges—Determination of number | 1617 |
| 314 | ESHB | 1341 | Timber impact areas—Economic growth and development programs | 1621 |
| 315 | ESSB | 5555 | Timber impact areas—Training and retraining programs and coordination of noneconomic development programs | 1641 |
| 316 | ESHB | 1877 | Olympic natural resources center | 1658 |
| 317 PV | SHB | 1954 | Agricultural nuisances | 1660 |
| 318 | ESHB | 2151 | High capacity transportation development | 1662 |
| 319 PV | 2SSB | 5591 | Solid waste reduction through recycling | 1677 |
| 320 | SHB | 1629 | Chiropractic peer review committee | 1702 |
| 321 | SB | 5147 | Mediation—Privileged information | 1706 |
| 322 PV | ESSB | 5411 | Flood control management and protection | 1707 |
| 323 | SSB | 5613 | Pawnbrokers and second-hand dealers | 1729 |
| 324 PV | ESHB | 1136 | Cosmetology—Revised licensing requirements | 1737 |
| 325 | ESSB | 5629 | Crimes—Acts against animal facilities | 1751 |
| 326 PV | ESHB | 1608 | Services for children | 1754 |
| 327 | ESHB | 1440 | Mobile home relocation assistance | 1764 |
| 328 | ESHB | 1181 | Private detectives—Licensing requirements | 1775 |
| 329 | ESHB | 1938 | State-wide enhanced 911 system | 1789 |
| 330 | ESHB | 1357 | Tax information—Restrictions on public disclosure of | 1791 |
| 331 | SSB | 5301 | Lodging tax in counties bordering Pacific Ocean | 1795 |
| 332 PV | ESHB | 1960 | Health professions regulation—Revised provisions | 1796 |
| 333 | HB | 1986 | Developmentally disabled persons—Protection and advocacy of their rights | 1826 |
| 334 | 2SSB | 5124 | Security guards—Licensing requirements | 1827 |
| 335 | SHB | 1828 | Uniform health care information act | 1840 |
| 336 | EHB | 2093 | Lodging tax—Distribution of revenues | 1851 |
| 337 | ESHB | 1864 | Sand and gravel removal—No charge when used for public purposes | 1855 |
| 338 PV | SB | 5170 | District judges—Salaries | 1856 |
| 339 PV | SHB | 1704 | Motor vehicles—Revised provisions | 1858 |
| 340 | SEB | 5916 | Social and health services department—Grievance procedures | 1891 |
| 341 | ESHB | 1426 | Center for sustaining agriculture and natural resources | 1893 |
| 342 | ESB | 5801 | State highway routes—Revisions to | 1901 |
| 343 | SHB | 1268 | Public employees and teachers retirement—Revised provisions | 1922 |
| 344 | SB | 5141 | County commissioners—Five-member boards | 1950 |
| 345 | 2SSB | 5882 | Drugs assets property forfeiture | 1951 |
| 346 | SB | 5766 | Project dream | 1952 |
| 347 PV | ESHB | 2026 | Water resource management | 1956 |
| 348 PV | SHB | 1886 | Vehicular homicide or assault—Alcohol and drug evaluation and treatment of offenders | 1975 |
| 349 | SHB | 1194 | Special districts—Election procedures | 1991 |
| 350 | 2SSB | 5358 | Public water system interties | 2004 |
| 351 | SSB | 5418 | Task force on sentencing of adult criminal offenders | 2008 |
| 352 | SSB | 5612 | Natural resource conservation areas | 2009 |
| 353 | ESB | 5824 | Community colleges—Summer school operation | 2013 |

TABLE OF CONTENTS

| Chapter No. | Bill No. | Subject | Page |
|----------------------------|-------------|---|------|
| 354 | HB 1467 | District court judges—New positions | 2016 |
| 355 | HB 1487 | Check cashers and sellers—Regulation of | 2016 |
| 356 | ESHB 1624 | Housing assistance program | 2025 |
| 357 | SHB 1993 | Convention facilities in counties located in national scenic area | 2032 |
| 358 | SHB 2140 | Budgets—Six-year program and financial plans | 2033 |
| 359 | HB 2147 | Lottery—Prohibited forms of play | 2046 |
| 360 PV | HB 1013 | Cities and towns—Incorporation proceedings | 2047 |
| 361 PV | HB 2082 | District court judges—Qualifications | 2054 |
| 362 PV | SSB 5082 | Professional salmon guides—Licensing requirements | 2055 |
| 363 PV | SHB 1201 | Counties—Classification based on population rather than formal classes | 2057 |
| 364 PV | E2SSB 5025 | Youth and family services | 2155 |
| 365 | ESHB 1211 | Assignment of retirement benefits | 2168 |
| 366 PV | 2SSB 5568 | Hunger and nutrition programs | 2203 |
| 367 PV | E2SSB 5120 | Child support—Uniform economic table and revised provisions | 2206 |
| 1991 FIRST SPECIAL SESSION | | | |
| 1 | | State elected officials—Salaries | 2259 |
| 2 | ReSSB 5395 | Supplemental operating budget, fiscal biennium 1989-91 .. | 2262 |
| 3 | ESB 5960 | Capital budget, appropriations and reappropriations for projects approved in 1989-91 budget | 2338 |
| 4 | HB 1891 | Basic health plan—Coordination with medical assistance .. | 2341 |
| 5 | SHB 1909 | Insurance companies—Paid-in capital stock requirements .. | 2346 |
| 6 | EHB 2231 | Fire protection sprinkler system contractors—Surety bond requirements | 2349 |
| 7 | EHB 2235 | Hunting and fishing license and personalized license plate fee increases to fund wildlife programs | 2351 |
| 8 | EHB 1390 | Nursing homes—Revised regulatory provisions | 2357 |
| 9 | HB 2237 | Medically needy—Revised funding and hospital service provisions | 2379 |
| 10 | ESB 5959 | Public assistance—Eligibility based on incapacity—Revised requirements | 2382 |
| 11 | SB 5997 | Correction of double amendments | 2388 |
| 12 | ESB 5998 | Law enforcement officers' and fire fighters' retirement system—When divorced spouse treated as surviving spouse .. | 2398 |
| 13 PV | ReSHB 1058 | Treasurer—managed funds and accounts—Revised provisions relating to | 2406 |
| 14 PV | ESHB 1427 | Capital budget for period ending June 30, 1993 | 2487 |
| 15 PV | ESHB 1231 | Transportation budget for period ending June 30, 1993 .. | 2656 |
| 16 PV | ESHB 1330 | Operating budget for fiscal biennium 1991-93 | 2687 |
| 17 | SB 5988 | Library improvement tax levies | 2813 |
| 18 PV | ESSB 5149 | Public officers—Gift reporting and public office fund requirements | 2813 |
| 19 | SB 5444 | Checks—Unauthorized signatures and alterations—Time for bank customer to discover and report | 2821 |
| 20 | SB 5718 | Purple heart recipient recognition day | 2822 |
| 21 | HB 1095 | Uniform commercial code—Article 4a—Funds transfers .. | 2824 |
| 22 | ESHB 1831 | Real estate excise tax—Ownership changes subject to tax .. | 2847 |
| 23 | ESHB 1856 | Weights and measures—Revised provisions | 2848 |
| 24 | HB 2242 | Homes for the aging—Partial property tax exemptions— Extension | 2856 |
| 25 | ESSB 5790 | Motor vehicle liability insurance—Proof of financial responsibility requirements | 2857 |
| 26 PV | HB 2214 | Municipal criminal justice assistance account—Criminal justice purposes defined | 2859 |

TABLE OF CONTENTS

| Chapter No. | Bill No. | Subject | Page |
|----------------|-------------|---|------|
| 27 PV | ESB 5985 | Higher education health training and education programs— Institutional plan requirements | 2862 |
| 28 | ESSB 5996 | Child support | 2864 |
| 29 | EHB 1376 | Taxation of computer software | 2873 |
| 30 | ESHB 1907 | Regulation of local government self-insurance | 2877 |
| 31 | ReSHB 1430 | State general obligation revenue bonds | 2895 |
| 32 PV | ReSHB 1025 | Growth management—Revised provisions | 2903 |

STATE MEASURES

PROPOSED CONSTITUTIONAL AMENDMENTS

| | |
|--|------|
| HOUSE JOINT RESOLUTION 4218 | 2927 |
| SUBSTITUTE HOUSE JOINT RESOLUTION 4221 | 2927 |
| SENATE JOINT RESOLUTION 8203 | 2929 |

INDEX AND TABLES

TABLES

| | |
|--|------|
| BILL NO. TO CHAPTER NO. | 2931 |
| RCW SECTIONS AFFECTED BY 1991 STATUTES | 2937 |
| UNCODIFIED SESSION LAW SECTIONS AFFECTED BY 1991 STATUTES .. | 2977 |
| SUBJECT INDEX OF 1991 STATUTES | 2979 |
| HISTORY OF STATE MEASURES | 3045 |

1991 LAWS REGULAR SESSION, FIRST SPECIAL SESSION

| | <i>Page</i> |
|---|-------------|
| TEXT | |
| 1991 Regular Sess. Chapters 1-307 (starts) | 1 |
| 1991 1st Special Sess. Chapters 1-32 (starts) | 2259 |
| Proposed Constitutional Amendments (starts) | 2927 |
| TABLES | |
| Cross reference—Bill no. to chapter no. | 2931 |
| RCW sections affected | 2937 |
| Uncodified session law sections affected..... | 2977 |
| Subject Index | 2979 |
| History of State Measures..... | 3045 |

CHAPTER 1

[Substitute House Bill 1511]

EXEMPTION OF HOME AND WORK ADDRESSES
FROM PUBLIC DISCLOSURE—EFFECTIVE DATE

Effective Date: 3/1/91

AN ACT Relating to the disclosure of information from public records by state and local agencies; amending RCW 42.17.310; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 42.17.310 and 1990 2nd ex.s. c 1 s 1103 are each amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

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

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the

sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) 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.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

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

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) 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.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Information obtained by the board of pharmacy and its representatives as provided in RCW 69.41.044 and 69.41.280.

(y) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(z) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(aa) Financial and valuable trade information under RCW 51.36.120.

(bb) Effective (~~March 1~~) April 19, 1991, the work and home addresses, other than the city of residence, of a person shall remain undisclosed or be omitted from all documents made available for public review if that person requests in writing, under oath, that these addresses be kept private because disclosure would endanger his or her life, physical safety, or property. This provision does not in any way restrict the sharing or collection of information by state and local governmental agencies required for the daily administration of their duties. The secretary of state shall administer this provision and establish the procedures and rules that are necessary for its operation. An agency that has not been furnished with a request for confidentiality of address information is not liable for damages resulting from its disclosure of the information. For purpose of service of process, the secretary of state shall serve as agent for each person who submits a request under this subsection. A request shall be of no force or effect if the requester does not include a statement, along with or part of the request, designating the secretary of state as agent of the requester for purposes of service of process.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal

privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

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 shall take effect immediately.

Passed the House March 1, 1991.

Passed the Senate February 27, 1991.

Approved by the Governor March 1, 1991.

Filed in Office of Secretary of State March 1, 1991.

CHAPTER 2

[House Bill 1818]

STATE CONVENTION AND TRADE CENTER—COMPLETION COSTS

Effective Date: 3/13/91

AN ACT Relating to the state convention and trade center; amending RCW 67.40.045 and 67.40.090; amending 1990 c 181 s 4 (uncodified); making an appropriation; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 67.40.045 and 1990 c 181 s 3 are each amended to read as follows:

(1) The director of financial management, in consultation with the chairpersons of the ways and means committees of the senate and house of representatives, may authorize temporary borrowing from the state treasury for the purpose of covering cash deficiencies in the state convention and trade center account resulting from project completion costs. Subject to the conditions and limitations provided in this section, lines of credit may be authorized at times and in amounts as the director of financial management determines are advisable to meet current and/or anticipated cash deficiencies. Each authorization shall distinctly specify the maximum amount of

cash deficiency which may be incurred and the maximum time period during which the cash deficiency may continue. The total amount of borrowing outstanding at any time shall never exceed the lesser of:

(a) \$58,275,000; or

(b) An amount, as determined by the director of financial management from time to time, which is necessary to provide for payment of project completion costs.

(2) Unless the due date under this subsection is extended by statute, all amounts borrowed under the authority of this section shall be repaid to the state treasury by June 30, ~~((1991))~~ 1993, together with interest at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. Borrowing may be authorized from any excess balances in the state treasury, except the agricultural permanent fund, the Millersylvania park permanent fund, the state university permanent fund, the normal school permanent fund, the permanent common school fund, and the scientific permanent fund.

(3) As used in this section, "project completion" means:

(a) All remaining development, construction, and administrative costs related to completion of the convention center; and

(b) Costs of the McKay building demolition, Eagles building rehabilitation, development of low-income housing, and construction of rentable retail space and an operable parking garage.

(4) It is the intent of the legislature that project completion costs be paid ultimately from the following sources:

(a) \$29,250,000 to be received by the corporation under an agreement and settlement with Industrial Indemnity Co.;

(b) \$1,070,000 to be received by the corporation as a contribution from the city of Seattle;

(c) \$20,000,000 from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(d) \$4,765,000 for contingencies and project reserves from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(e) \$13,000,000 for conversion of various retail and other space to meeting rooms, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(f) \$13,300,000 for expansion at the 900 level of the facility, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(g) \$10,400,000 for purchase of the land and building known as the McKay Parcel ~~((and))~~, for development of low-income housing, and for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to

construction litigation, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090; ~~((and))~~

(h) \$300,000 for Eagles building exterior cleanup and repair, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090; and

(i) The proceeds of the sale of any properties owned by the state convention and trade center that are not planned for use for state convention and trade center operations, with the proceeds to be used for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction litigation.

(5) The borrowing authority provided in this section is in addition to the authority to borrow from the general fund to meet the bond retirement and interest requirements set forth in RCW 67.40.060. To the extent the specific conditions and limitations provided in this section conflict with the general conditions and limitations provided for temporary cash deficiencies in RCW 43.88.260 (section 7, chapter 502, Laws of 1987), the specific conditions and limitations in this section shall govern.

Sec. 2. 1990 c 181 s 4 (uncodified) is amended to read as follows:

There is appropriated to the state convention and trade center corporation from the state convention and trade center account, for the fiscal period beginning on the effective date of this section and ending June 30, 1991, the following amounts:

(1) \$51,618,000 for development, construction, and administrative costs of completion;

(2) \$4,765,000 for project reserves and contingency funds;

(3) \$13,000,000 for conversion of various retail and other space to meeting rooms;

(4) \$13,300,000 for expansion at the 900 level of the facility;

(5) \$8,950,000 for purchase of the land and building known as the McKay Parcel;

(6) \$3,000,000 for development of low-income housing. Low-income housing as used in this section shall mean all of the rentable housing units heretofore or hereafter developed by or on behalf of the state convention and trade center located in the city of Seattle which (i) do not exceed an aggregate expenditure by the convention center of three million dollars; (ii) have been defined by the United States department of housing and urban development as affordable to tenants of low income; and (iii) have been found by the state convention and trade center corporation board of directors to be (A) owned and operated by a public or a nonprofit private organization dedicated to low-income housing and (B) reasonably related to effects, of the construction and operation of the convention center upon the availability of low-income housing in the city of Seattle. However, if and when the state convention and trade center has expended at least

\$3,000,000 for low-income housing from any and all sources available to it during the 1985-91 biennia, any remaining unexpended amounts from the appropriation in this subsection, up to a maximum of \$2,200,000, may be expended for the purpose of settlement costs related to any construction litigation to which the state convention and trade center is a party; ((and))

(7) \$300,000 for Eagles building exterior cleanup and repair; and
(8) \$2,990,000, or as much thereof as may be necessary, for settlement costs related to construction litigation.

Sec. 3. RCW 67.40.090 and 1988 ex.s. c 1 s 6 are each amended to read as follows:

(1) Commencing April 1, 1982, there is imposed, and the department of revenue shall collect, in King county a special excise tax on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, or trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, except that no such tax may be levied on any premises having fewer than sixty lodging units. It shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes rental or lease of real property and not a mere license to use or enjoy the same. The legislature on behalf of the state pledges to maintain and continue this tax until the bonds authorized by this chapter are fully redeemed, both principal and interest.

(2) The rate of the tax imposed under this section shall be as provided in this subsection.

(a) From April 1, 1982, through December 31, 1982, inclusive, the rate shall be three percent in the city of Seattle and two percent in King county outside the city of Seattle.

(b) From January 1, 1983, through June 30, 1988, inclusive, the rate shall be five percent in the city of Seattle and two percent in King county outside the city of Seattle.

(c) From July 1, 1988, through December 31, 1992, inclusive, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(d) From January 1, 1993, until the change date, the rate shall be seven percent in the city of Seattle and two and eight-tenths percent in King county outside the city of Seattle.

(e) On and after the change date, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(f) As used in this section, "change date" means the October 1st next occurring after certification occurs under (g) of this subsection.

(g) On August 1st of ((1993)) 1998 and of each year thereafter until certification occurs under this subsection, the state treasurer shall determine

whether seventy-one and forty-three one-hundredths percent of the revenues actually collected and deposited with the state treasurer for the tax imposed under this section during the twelve months ending June 30th of that year, excluding penalties and interest, exceeds the amount actually paid in debt service during the same period for bonds issued under RCW 67.40-.030 by at least two million dollars. If so, the state treasurer shall so certify to the department of revenue.

(3) The proceeds of the special excise tax shall be deposited as provided in this subsection.

(a) Through June 30, 1988, inclusive, all proceeds shall be deposited in the state convention and trade center account.

(b) From July 1, 1988, through December 31, 1992, inclusive, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(c) From January 1, 1993, until the change date, eighty-five and seventy-one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(d) On and after the change date, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(4) Chapter 82.32 RCW applies to the tax imposed under this section.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 5. 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.

Passed the House March 11, 1991.

Passed the Senate March 12, 1991.

Approved by the Governor March 13, 1991.

Filed in Office of Secretary of State March 13, 1991.

CHAPTER 3

[House Bill 1115]

HEALTH DEPARTMENT—REVISION OF STATUTORY
REFERENCES AFFECTED BY CREATION OF DEPARTMENT

Effective Date: 7/28/91

AN ACT Relating to the correction of references that are incorrect or obsolete as a result of the creation of the department of health by chapter 9, Laws of 1989 1st ex.s.; amending RCW 15.36.425, 16.70.010, 16.70.020, 18.06.010, 18.06.020, 18.06.030, 18.06.050, 18.06.060, 18.06.070, 18.06.080, 18.06.110, 18.06.120, 18.06.130, 18.06.140, 18.06.160, 18.06.170, 18.06.180, 18.06.190, 18.19.020, 18.19.030, 18.19.050, 18.19.070, 18.19.080, 18.19.090, 18.19.100, 18.19.110, 18.19.120, 18.19.130, 18.19.140, 18.19.150, 18.19.160, 18.19.170, 18.19.180, 18.20.020, 18.20.060, 18.25.006, 18.25.017, 18.25.020, 18.25.040, 18.25.070, 18.25.075, 18.25.100, 18.26.020, 18.26.050, 18.26.070, 18.29.021, 18.29.045, 18.29.060, 18.29.071, 18.29.100, 18.29.110, 18.29.120, 18.29.130, 18.29.140, 18.29.150, 18.29.160, 18.29.180, 18.32.010, 18.32.030, 18.32.037, 18.32.040, 18.32.100, 18.32.110, 18.32.120, 18.32.160, 18.32.170, 18.32.180, 18.32.190, 18.32.195, 18.32.220, 18.32.520, 18.32.534, 18.32.745, 18.34.020, 18.34.030, 18.34.070, 18.34.080, 18.34.110, 18.34.120, 18.35.010, 18.35.040, 18.35.060, 18.35.080, 18.35.090, 18.35.240, 18.35.250, 18.36A.020, 18.36A.030, 18.36A.040, 18.36A.050, 18.36A.060, 18.36A.070, 18.36A.080, 18.36A.090, 18.36A.100, 18.36A.110, 18.36A.120, 18.36A.130, 18.36A.140, 18.46.010, 18.46.050, 18.50.005, 18.50.010, 18.50.020, 18.50.034, 18.50.040, 18.50.045, 18.50.050, 18.50.060, 18.50.102, 18.50.105, 18.50.115, 18.50.135, 18.50.140, 18.50.150, 18.52.020, 18.52.060, 18.52.070, 18.52.100, 18.52.110, 18.52.130, 18.52A.020, 18.52A.030, 18.52B.050, 18.52B.080, 18.52B.110, 18.52B.120, 18.52B.150, 18.52B.160, 18.52C.020, 18.52C.030, 18.52C.040, 18.53.021, 18.53.050, 18.53.060, 18.53.070, 18.53.100, 18.53.140, 18.54.050, 18.54.070, 18.54.140, 18.55.020, 18.55.030, 18.55.040, 18.55.050, 18.55.060, 18.57.001, 18.57.020, 18.57.050, 18.57.080, 18.57.130, 18.59.020, 18.59.080, 18.59.090, 18.59.110, 18.59.150, 18.71.010, 18.71.015, 18.71.040, 18.71.050, 18.71.051, 18.71.080, 18.71.095, 18.71.200, 18.72.100, 18.72.120, 18.72.155, 18.72.306, 18.72.380, 18.72.400, 18.74.010, 18.74.010, 18.74.020, 18.74.023, 18.74.035, 18.74.040, 18.74.050, 18.74.060, 18.74.070, 18.74.090, 18.74.095, 18.74.120, 18.76.020, 18.78.010, 18.78.050, 18.78.060, 18.78.080, 18.78.100, 18.78.110, 18.78.225, 18.83.010, 18.83.025, 18.83.045, 18.83.050, 18.83.060, 18.83.072, 18.83.080, 18.83.090, 18.83.105, 18.83.170, 18.83.190, 18.84.020, 18.84.040, 18.84.050, 18.84.060, 18.84.070, 18.84.080, 18.84.090, 18.84.100, 18.84.110, 18.88.030, 18.88.080, 18.88.090, 18.88.160, 18.88.175, 18.88.190, 18.88.200, 18.88.220, 18.88A.020, 18.88A.050, 18.88A.070, 18.88A.080, 18.88A.090, 18.88A.100, 18.89.020, 18.89.050, 18.89.060, 18.89.070, 18.89.080, 18.89.090, 18.89.100, 18.89.110, 18.89.120, 18.89.130, 18.89.140, 18.92.015, 18.92.035, 18.92.040, 18.92.047, 18.92.070, 18.92.100, 18.92.115, 18.92.120, 18.92.130, 18.92.140, 18.92.145, 18.104.040, 18.104.080, 18.104.110, 18.108.010, 18.108.020, 18.108.025, 18.108.040, 18.108.060, 18.108.070, 18.108.073, 18.108.085, 18.122.040, 18.122.060, 18.122.070, 18.122.080, 18.122.090, 18.122.120, 18.122.130, 18.122.140, 18.122.150, 18.130.060, 18.130.175, 18.135.020, 18.135.030, 18.135.050, 18.135.055, 18.135.065, 18.135.080, 18.138.010, 18.138.020, 18.138.030, 18.138.040, 18.138.050, 18.138.060, 18.138.070, 18.138.080, 18.138.090, 19.32.110, 26.33.300, 28A.210.030, 28A.210.090, 28A.210.110, 28B.104.060, 43.03.028, 43.20B.020, 43.20B.110, 43.59.030, 43.70.320, 43.83B.380, 43.99D.025, 43.99E.025, 69.30.010, 69.30.080, 70.05.053, 70.05.054, 70.05.055, 70.05.060, 70.05.070, 70.05.080, 70.05.090, 70.05.100, 70.05.130, 70.08.050, 70.12.015, 70.12.070, 70.22.020, 70.22.030, 70.22.040, 70.22.050, 70.22.060, 70.24.017, 70.24.100, 70.24.120, 70.24.130, 70.24.150, 70.24.400, 70.24.410, 70.30.081, 70.33.010, 70.40.020, 70.40.030, 70.40.150, 70.41.020, 70.41.130, 70.41.200, 70.41.230, 70.41.240, 70.47.060, 70.50.010, 70.54.040, 70.58.005, 70.58.107, 70.58.310, 70.58.320, 70.58.340, 70.62.210, 70.83.020, 70.83.030, 70.83.040, 70.83B.020, 70.90.110, 70.90.130, 70.90.210, 70.98.030, 70.104.010, 70.104.030, 70.104.040, 70.104.050, 70.104.055, 70.104.060, 70.104.080, 70.104.090, 70.116.010, 70.116.030, 70.118.020, 70.118.040, 70.119.020, 70.119A.020, 70.119A.080, 70.121.020, 70.127.010, 70.142.020, 70.142.050, and 74.15.060; reenacting and amending RCW 18.57A.040, 18.78.090, 18.130.190, 42.17.2401, and 43.43.735; and adding new sections to chapter 43.70 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.36.425 and 1989 c 354 s 20 are each amended to read as follows:

The health authority or a physician authorized by him or her shall examine and take careful morbidity history of every person connected with a pasteurization plant, or about to be employed, whose work brings him or her in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history suggests that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he or she shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or her or by the state department of (~~social and health services~~) health for such examinations, and if the results justify such persons shall be barred from such employment.

Such persons shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the health official may require for the purpose of determining freedom from infection.

Sec. 2. RCW 16.70.010 and 1971 c 72 s 2 are each amended to read as follows:

The incidence of disease communicated to human beings by contact with pet animals has shown an increase in the past few years. The danger to human beings from such pets infected with disease communicable to humans has demonstrated the necessity for legislation to authorize the secretary of the department of (~~social and health services~~) health and the state board of health to take such action as is necessary to control the sale, importation, movement, transfer, or possession of such animals where it becomes necessary in order to protect the public health and welfare.

Sec. 3. RCW 16.70.020 and 1971 c 72 s 2 are each amended to read as follows:

The following words or phrases as used in this chapter shall have the following meanings unless the context indicates otherwise:

(1) "Pet animals" means dogs (Canidae), cats (Felidae), monkeys and other similar primates, turtles, psittacine birds, skunks, or any other species of wild or domestic animals sold or retained for the purpose of being kept as a household pet.

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

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

(4) "Board" means the Washington state board of health.

(5) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(6) "Quarantine" means the placing and restraining of any pet animal or animals by direction of the secretary, either within a certain described

and designated enclosure or area within this state, or the restraining of any such pet animal or animals from entering this state.

Sec. 4. RCW 18.06.010 and 1985 c 326 s 1 are each amended to read as follows:

The following terms in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:

(1) "Acupuncture" means a health care service based on a traditional Oriental system of medical theory utilizing Oriental diagnosis and treatment to promote health and treat organic or functional disorders by treating specific acupuncture points or meridians. Acupuncture includes but is not necessarily limited to the following techniques:

(a) Use of acupuncture needles to stimulate acupuncture points and meridians;

(b) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;

(c) Moxibustion;

(d) Acupressure;

(e) Cupping;

(f) Dermal friction technique (gwa hsa);

(g) Infra-red;

(h) Sonopuncture;

(i) Laserpuncture;

(j) Dietary advice based on traditional Chinese medical theory; and

(k) Point injection therapy (aquapuncture).

(2) "Acupuncturist" means a person certified under this chapter.

(3) "Department" means the department of ~~((licensing))~~ health.

(4) ~~(("Director" means the director of licensing or the director's designee))~~ "Secretary" means the secretary of health or the secretary's designee.

Sec. 5. RCW 18.06.020 and 1985 c 326 s 2 are each amended to read as follows:

(1) No one may hold themselves out to the public as an acupuncturist or certified acupuncturist or any derivative thereof which is intended to or is likely to lead the public to believe such a person is an acupuncturist or certified acupuncturist unless certified as provided for in this chapter.

(2) No one may use any configuration of letters after their name (including Ac.) which indicates a degree or formal training in acupuncture unless certified as provided for in this chapter.

(3) The ~~((director))~~ secretary may by rule proscribe or regulate advertising and other forms of patient solicitation which are likely to mislead or deceive the public as to whether someone is certified under this chapter.

Sec. 6. RCW 18.06.030 and 1985 c 326 s 3 are each amended to read as follows:

Any person certified as provided for in this chapter may practice acupuncture irrespective of any other occupational licensing law. This authorization also extends to:

(1) The practice of acupuncture by a person who is a regular student in a school of acupuncture approved by the ((director)) secretary: PROVIDED, HOWEVER, That the performance of such services be pursuant only to a regular course of instruction or assignments from his or her instructor and that such services are performed only under the direct supervision and control of a person certified pursuant to this chapter or licensed under any other healing art whose scope of practice includes acupuncture; and

(2) The practice of acupuncture by any person licensed or certified to perform acupuncture in any other jurisdiction where such person is doing so in the course of regular instruction of a school of acupuncture approved by the ((director)) secretary or in an educational seminar sponsored by a professional organization of acupuncture: PROVIDED, That in the latter case, the practice is supervised directly by a person certified pursuant to this chapter or licensed under any other healing art whose scope of practice includes acupuncture.

Sec. 7. RCW 18.06.050 and 1987 c 447 s 15 are each amended to read as follows:

Any person seeking to be examined shall present to the ((director)) secretary at least forty-five days before the commencement of the examination:

(1) A written application on a form or forms provided by the ((director)) secretary setting forth under affidavit such information as the ((director)) secretary may require; and

(2) Proof that the candidate has:

(a) Successfully completed a course, approved by the ((director)) secretary, of didactic training in basic sciences and acupuncture over a minimum period of two academic years. The training shall include such subjects as anatomy, physiology, bacteriology, biochemistry, pathology, hygiene, and a survey of western clinical sciences. The basic science classes must be equivalent to those offered at the collegiate level. However, if the applicant is a licensed chiropractor under chapter 18.25 RCW or a naturopath licensed under chapter 18.36A RCW, the requirements of this subsection relating to basic sciences may be reduced by up to one year depending upon the extent of the candidate's qualifications as determined under rules adopted by the ((director)) secretary;

(b) Successfully completed a course, approved by the ((director)) secretary, of clinical training in acupuncture over a minimum period of one academic year. The training shall include a minimum of: (i) Twenty-nine quarter credits of supervised practice, consisting of at least four hundred separate patient treatments involving a minimum of one hundred different

patients, and (ii) one hundred hours or nine quarter credits of observation which shall include case presentation and discussion.

Sec. 8. RCW 18.06.060 and 1985 c 326 s 6 are each amended to read as follows:

The department shall consider for approval any school, program, apprenticeship, or tutorial which meets the requirements outlined in this chapter and provides the training required under RCW 18.06.050. Clinical and didactic training may be approved as separate programs or as a joint program. The process for approval shall be established by the ~~((director))~~ secretary by rule.

Sec. 9. RCW 18.06.070 and 1985 c 326 s 7 are each amended to read as follows:

No applicant may be permitted to take an examination under this chapter until the ~~((director))~~ secretary has approved his or her application and the applicant has paid an examination fee as prescribed under RCW ~~((43.24.086))~~ 43.70.250. The examination fee shall accompany the application.

Sec. 10. RCW 18.06.080 and 1985 c 326 s 8 are each amended to read as follows:

(1) The ~~((director of licensing))~~ secretary is hereby authorized and empowered to execute the provisions of this chapter and shall offer examinations in acupuncture at least twice a year at such times and places as the ~~((director))~~ secretary may select. The examination shall be a written examination in English and may include a practical examination.

(2) The ~~((director))~~ secretary shall develop or approve a licensure examination in the subjects that the ~~((director))~~ secretary determines are within the scope of and commensurate with the work performed by certified acupuncturists and shall include but not necessarily be limited to anatomy, physiology, bacteriology, biochemistry, pathology, hygiene, and acupuncture. All application papers shall be deposited with the ~~((director))~~ secretary and there retained for ~~((a- at))~~ at least one year, when they may be destroyed.

(3) If the examination is successfully passed, the ~~((director))~~ secretary shall confer on such candidate the title of Certified Acupuncturist.

Sec. 11. RCW 18.06.110 and 1987 c 150 s 9 are each amended to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of certificates, and the disciplining of certificate holders under this chapter. The ~~((director))~~ secretary shall be the disciplining authority under this chapter.

Sec. 12. RCW 18.06.120 and 1985 c 326 s 12 are each amended to read as follows:

(1) Every person certified in acupuncture shall register with the ~~((director))~~ secretary annually and pay an annual renewal registration fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250 on or before the certificate holder's birth anniversary date. The certificate of the person shall be renewed for a period of one year or longer in the discretion of the ~~((director))~~ secretary.

(2) Any failure to register and pay the annual renewal registration fee shall render the certificate invalid. The certificate shall be reinstated upon: (a) Written application to the ~~((director))~~ secretary; (b) payment to the state of a penalty fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250; and (c) payment to the state of all delinquent annual certificate renewal fees.

(3) Any person who fails to renew his or her certification for a period of three years shall not be entitled to renew such certification under this section. Such person, in order to obtain a certification in acupuncture in this state, shall file a new application under this chapter, along with the required fee, and shall meet examination or continuing education requirements as the ~~((director))~~ secretary, by rule, provides.

(4) All fees collected under this section and RCW 18.06.060 shall be credited to the health professions account as required under RCW ~~((43.24.072))~~ 43.70.320.

Sec. 13. RCW 18.06.130 and 1985 c 326 s 13 are each amended to read as follows:

The ~~((director))~~ secretary shall develop a form to be used by an acupuncturist to inform the patient of the acupuncturist's scope of practice and qualifications. All certificate holders shall bring the form to the attention of the patients in whatever manner the ~~((director))~~ secretary, by rule, provides.

Sec. 14. RCW 18.06.140 and 1985 c 326 s 14 are each amended to read as follows:

Every certified acupuncturist shall develop a written plan for consultation, emergency transfer, and referral to other health care practitioners operating within the scope of their authorized practices. The written plan shall be submitted with the initial application for certification as well as annually thereafter with the certificate renewal fee to the department. The department may withhold certification or renewal of certification if the plan fails to meet the standards contained in rules promulgated by the ~~((director))~~ secretary.

When the acupuncturist sees patients with potentially serious disorders such as cardiac conditions, acute abdominal symptoms, and such other conditions, the acupuncturist shall immediately request a consultation or recent written diagnosis from a physician licensed under chapter 18.71 or 18.57 RCW. In the event that the patient with the disorder refuses to authorize

such consultation or provide a recent diagnosis from such physician, acupuncture treatment shall not be continued.

Sec. 15. RCW 18.06.160 and 1985 c 326 s 16 are each amended to read as follows:

The ((director)) secretary shall adopt rules in the manner provided by chapter 34.05 RCW as are necessary to carry out the purposes of this chapter.

Sec. 16. RCW 18.06.170 and 1985 c 326 s 17 are each amended to read as follows:

(1) The acupuncture advisory committee is created. The committee shall be composed of one physician licensed under chapter 18.71 or 18.57 RCW, three acupuncturists certified under this chapter, and one public member, who does not have any financial interest in the rendering of health services.

(2) The ((director)) secretary shall appoint members to staggered terms so as to provide continuity in membership. Members shall serve at the pleasure of the ((director)) secretary but may not serve more than five years total. Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(3) Each member of the committee shall receive fifty dollars for each day ((during which)) the member attends an official meeting of the group or performs statutorily prescribed duties approved by the ((director)) secretary.

(4) The committee shall meet only on the request of the ((director)) secretary and consider only those matters referred to it by the ((director)) secretary.

Sec. 17. RCW 18.06.180 and 1985 c 326 s 18 are each amended to read as follows:

All persons registered as acupuncture assistants pursuant to chapter 18.71A or 18.57A RCW on July 28, 1985, shall be certified under this chapter by the ((director)) secretary without examination if they otherwise would qualify for certification under this chapter and apply for certification within one hundred twenty days of July 28, 1985.

Sec. 18. RCW 18.06.190 and 1985 c 326 s 19 are each amended to read as follows:

The ((director)) secretary may certify a person without examination if such person is licensed or certified as an acupuncturist in another jurisdiction if, in the ((director's)) secretary's judgment, the requirements of that jurisdiction are equivalent to or greater than those of Washington state.

Sec. 19. RCW 18.19.020 and 1987 c 512 s 3 are each amended to read as follows:

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

(1) "Certified marriage and family therapist" means a person certified to practice marriage and family therapy pursuant to RCW 18.19.130.

(2) "Certified mental health counselor" means a person certified to practice mental health counseling pursuant to RCW 18.19.120.

(3) "Certified social worker" means a person certified to practice social work pursuant to RCW 18.19.110.

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

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

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

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

(8) ~~((¹Director¹))~~ "Secretary" means the ~~((director))~~ secretary of the department or the ~~((director's))~~ secretary's designee.

Sec. 20. RCW 18.19.030 and 1987 c 512 s 2 are each amended to read as follows:

No person may, for a fee or as a part of his or her position as an employee of a state agency, practice counseling without being registered to practice by the department ~~((of licensing))~~ under this chapter unless exempt under RCW 18.19.040. No person may represent himself or herself as a certified social worker, certified mental health counselor, or certified marriage and family therapist without being so certified by the department ~~((of licensing))~~ under this chapter.

Sec. 21. RCW 18.19.050 and 1987 c 512 s 5 are each amended to read as follows:

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

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

(b) To set all certification, registration, and renewal fees in accordance with RCW ~~((43.24.086))~~ 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW ~~((43.24.072))~~ 43.70.320;

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

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

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

(f) To set educational, ethical, and professional standards of practice for certification;

(g) To prepare and administer or cause to be prepared and administered an examination for all qualified applicants for certification;

(h) To establish criteria for evaluating the ability and qualifications of persons applying for a certificate, including standards for passing the examination and standards of qualification for certification to practice;

(i) To evaluate and designate those schools from which graduation will be accepted as proof of an applicant's eligibility to receive a certificate and to establish standards and procedures for accepting alternative training in lieu of such graduation;

(j) To issue a certificate to any applicant who has met the education, training, and conduct requirements for certification;

(k) To set competence requirements for maintaining certification; and

(l) To develop a dictionary of recognized professions and occupations providing counseling services to the public included under this chapter.

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

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

Sec. 22. RCW 18.19.070 and 1987 c 512 s 7 are each amended to read as follows:

(1) Within sixty days of July 26, 1987, the ~~((director))~~ secretary shall have authority to appoint advisory committees to further the purposes of this chapter. Each such committee shall be composed of five members, one member initially appointed for a term of one year, two for terms of two

years, and two for terms of three years. No person may serve as a member of the committee for more than two consecutive terms.

The ((director)) secretary may remove any member of the advisory committees for cause as specified by rule. In the case of a vacancy, the ((director)) secretary shall appoint a person to serve for the remainder of the unexpired term.

(2) The advisory committees shall each meet at the times and places designated by the ((director)) secretary and shall hold meetings during the year as necessary to provide advice to the ((director)) secretary.

Each member of an advisory committee shall be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060. In addition, members of the committees shall be compensated in accordance with RCW 43.03.240 when engaged in the authorized business of their committee.

(3) Members of an advisory committee shall be residents of this state. Each committee shall be composed of four individuals registered or certified in the category designated by the committee title, and one member who is a member of the public.

Sec. 23. RCW 18.19.080 and 1987 c 512 s 8 are each amended to read as follows:

The ((director)) secretary shall keep an official record of all proceedings, a part of which record shall consist of a register of all applicants for registration or certification under this chapter, with the result of each application.

Sec. 24. RCW 18.19.090 and 1987 c 512 s 9 are each amended to read as follows:

The ((director)) secretary shall issue a registration to any applicant who submits, on forms provided by the ((director)) secretary, the applicant's name, address, occupational title, name and location of business, and other information as determined by the ((director)) secretary, including information necessary to determine whether there are grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW. Applicants for registration shall register as counselors or may register as hypnotherapists if employing hypnosis as a modality. Applicants shall, in addition, provide in their titles a description of their therapeutic orientation, discipline, theory, or technique. Each applicant shall pay a fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250, which shall accompany the application.

Sec. 25. RCW 18.19.100 and 1987 c 512 s 10 are each amended to read as follows:

The ((director)) secretary shall establish by rule the procedural requirements and fees for renewal of registrations. Failure to renew shall invalidate the registration and all privileges granted by the registration. Subsequent registration will require application and payment of a fee as

determined by the ((director)) secretary under RCW ((43.24.086)) 43.70.250.

Sec. 26. RCW 18.19.110 and 1987 c 512 s 12 are each amended to read as follows:

(1) The department shall issue a certified social worker certificate to any applicant meeting the following requirements:

(a) A minimum of a master's degree from an accredited graduate school of social work approved by the ((director)) secretary;

(b) A minimum of two years of post-master's degree social work practice under the supervision of a social worker certified under this chapter or a person deemed acceptable to the ((director)) secretary, such experience consisting of at least thirty hours per week for two years or at least twenty hours per week for three years; and

(c) Successful completion of the examination in RCW 18.19.150, unless the applicant qualified under an exemption pursuant to subsection (2) of this section or RCW 18.19.160.

Applicants shall be subject to the grounds for denial or issuance of a conditional certificate in chapter 18.130 RCW.

(2) Except as provided in RCW 18.19.160, an applicant is exempt from the examination provisions of this chapter under the following conditions if application for exemption is made within twelve months after July 26, 1987:

(a) The applicant shall establish to the satisfaction of the ((director)) secretary that he or she has been engaged in the practice of social work as defined in this chapter for two of the previous four years; and

(b) The applicant has the following academic qualifications: (i) A doctorate or master's degree in social work from an accredited graduate school of social work or comparable and equivalent educational attainment as determined by the ((director)) secretary in consultation with the advisory committee; and (ii) two years of postgraduate social work experience under the supervision of a social worker who qualifies for certification under this chapter or under the supervision of any other professional deemed appropriate by the ((director)) secretary.

(3) Certified social work practice is that aspect of counseling that involves the professional application of social work values, principles, and methods by individuals trained in accredited social work graduate programs and requires knowledge of human development and behavior, knowledge of social systems and social resources, an adherence to the social work code of ethics, and knowledge of and sensitivity to ethnic minority populations. It includes, but is not limited to, evaluation, assessment, treatment of psychopathology, consultation, psychotherapy and counseling, prevention and educational services, administration, policy-making, research, and education directed toward client services.

Sec. 27. RCW 18.19.120 and 1987 c 512 s 13 are each amended to read as follows:

(1) The department shall issue a certified mental health counselor certificate to any applicant meeting the following requirements:

(a) A master's or doctoral degree in mental health counseling or a related field from an approved school, or completion of at least thirty graduate semester hours or forty-five graduate quarter hours in the field of mental health counseling or the substantial equivalent in both subject content and extent of training;

(b) Postgraduate supervised mental health counseling practice that meets standards established by the ((director)) secretary;

(c) Qualification by an examination, submission of all necessary documents, and payment of required fees; and

(d) Twenty-four months of postgraduate professional experience working in a mental health counseling setting that meets the requirements established by the ((director)) secretary.

(2) No applicant may come before the ((director)) secretary for examination without the initial educational and supervisory credentials as required by this chapter, except that applicants completing a master's or doctoral degree program in mental health counseling or a related field from an approved graduate school before or within eighteen months of July 26, 1987, may qualify for the examination.

(3) For one year beginning on July 26, 1987, a person may apply for certification without examination. However, if the applicant's credentials are not adequate to establish competence to the ((director's)) secretary's satisfaction, the ((director)) secretary may require an examination of the applicant during the initial certification period. For the initial certification period, an applicant shall:

(a) Submit a completed application as required by the ((director)) secretary, who may require that the statements on the application be made under oath, accompanied by the application fee set by the ((director)) secretary in accordance with RCW ((43-24-036)) 43.70.250;

(b) Have a master's or doctoral degree in counseling or a related field from an approved school; and

(c) Have submitted a completed application as required by the ((director)) secretary accompanied by the application fee set by the ((director)) secretary and a request for waiver from the requirements of (b) of this subsection, with documentation to show that the applicant has alternative training and experience equivalent to formal education and supervised experience required for certification.

(4) Certified mental health practice is that aspect of counseling that involves the rendering to individuals, groups, organizations, corporations, institutions, government agencies, or the general public a mental health counseling service emphasizing a wellness model rather than an illness

model in the application of therapeutic principles, methods, or procedures of mental health counseling to assist the client in achieving effective personal, organizational, institutional, social, educational, and vocational development and adjustment and to assist the client in achieving independence and autonomy in the helping relationship.

Sec. 28. RCW 18.19.130 and 1987 c 512 s 14 are each amended to read as follows:

(1) The department shall issue a certified marriage and family therapist certificate to any applicant meeting the following requirements:

(a)(i) A master's or doctoral degree in marriage and family therapy or its equivalent from an approved school that shows evidence of the following course work: (A) Marriage and family systems, (B) marriage and family therapy, (C) individual development, (D) assessment of psychopathology, (E) human sexuality, (F) research methods, (G) professional ethics and laws, and (H) a minimum of one year in the practice of marriage and family therapy under the supervision of a qualified marriage and family therapist;

(ii) Two years of postgraduate practice of marriage and family therapy under the supervision of a qualified marriage and family therapist; and

(iii) Passing scores on both written and oral examinations administered by the department for marriage and family therapists; or

(b) In the alternative, an applicant completing a master's or doctoral degree program in marriage and family therapy or its equivalent from an approved graduate school before or within eighteen months of July 26, 1987, may qualify for the examination.

(2) Except as provided in RCW 18.19.160, an applicant is exempt from the examination provisions of this section under the following conditions if application for exemption is made within twelve months after July 26, 1987:

(a) The applicant shall establish to the satisfaction of the ~~((director))~~ secretary that he or she has been engaged in the practice of marriage and family therapy as defined in this chapter for two of the previous four years; and

(b) The applicant has the following academic qualifications: (i) A doctorate or master's degree in marriage and family therapy or its equivalent from an approved graduate school; and (ii) two years of postgraduate experience under the supervision of a marriage and family therapist who qualifies for certification under this chapter or under the supervision of any other professional deemed appropriate by the ~~((director))~~ secretary.

(3) The practice of marriage and family therapy is that aspect of counseling that involves the assessment and treatment of impaired marriage or family relationships including, but not limited to, premarital and postdivorce relationships and the enhancement of marital and family relationships

via use of educational, sociological, and psychotherapeutic theories and techniques.

Sec. 29. RCW 18.19.140 and 1987 c 512 s 17 are each amended to read as follows:

Applications for certification shall be submitted on forms provided by the ((director)) secretary. The ((director)) secretary may require any information and documentation which reasonably relates to the need to determine whether the applicant meets the criteria for certification provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250, which shall accompany the application. The department shall not knowingly permit access to or use of its mailing list of certificate holders for commercial purposes.

Sec. 30. RCW 18.19.150 and 1987 c 512 s 16 are each amended to read as follows:

(1) The date and location of the examinations required under this chapter shall be established by the ((director)) secretary. Applicants who have been found by the ((director)) secretary to meet the other requirements for certification will be scheduled for the next examination following the filing of the application. However, the applicant will not be scheduled for any examination taking place sooner than sixty days after the application is filed.

(2) The ((director)) secretary shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice. The examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading thereon, and the grading of any practical work shall be preserved for a period of not less than one year after the ((director)) secretary has published the results. All examinations shall be conducted by the ((director)) secretary by means of fair and wholly impartial methods.

(4) Any applicant who fails to make the required grade in the first examination is entitled to take up to three subsequent examinations as the applicant desires upon the prepayment of a fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250 for each subsequent examination. Upon failure of four examinations, the ((director)) secretary may invalidate the original application and require remedial education prior to admittance to future examinations.

(5) The ((director)) secretary may approve an examination prepared or administered, or both, by a private testing agency or association of licensing agencies for use by an applicant in meeting the licensing requirement.

Sec. 31. RCW 18.19.160 and 1987 c 512 s 19 are each amended to read as follows:

(1) Upon receiving a written application, evidence of qualification and the required fee, the department shall issue a certificate for certification without examination to an applicant who is currently credentialed under the laws of another jurisdiction, if the requirements of the other jurisdiction are substantially equal to the requirements of this chapter.

(2) A person certified under this chapter who is or desires to be temporarily retired from practice in this state shall send written notice to the ((director)) secretary. Upon receipt of the notice, the person shall be placed upon the nonpracticing list. While on the list, the person is not required to pay the renewal fees and shall not engage in any such practice. In order to resume practice, application for renewal shall be made in the ordinary course with the renewal fee for the current period. Persons in a nonpracticing status for a period exceeding five years shall provide evidence of current knowledge or skill, by examination, as the ((director)) secretary may require.

Sec. 32. RCW 18.19.170 and 1987 c 512 s 15 are each amended to read as follows:

A certificate issued under this chapter shall be renewed as determined by the ((director)) secretary who may establish rules governing continuing competence requirements. An additional fee may be set by the ((director)) secretary as a renewal requirement when certification has lapsed due to failure to renew prior to the expiration date.

Sec. 33. RCW 18.19.180 and 1987 c 512 s 11 are each amended to read as follows:

An individual registered or certified under this chapter shall not disclose the written acknowledgment of the disclosure statement pursuant to RCW 18.19.060 nor any information acquired from persons consulting the individual in a professional capacity when that information was necessary to enable the individual to render professional services to those persons except:

(1) With the written consent of that person or, in the case of death or disability, the person's personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health, or physical condition;

(2) That a person registered or certified under this chapter is not required to treat as confidential a communication that reveals the contemplation or commission of a crime or harmful act;

(3) If the person is a minor, and the information acquired by the person registered or certified under this chapter indicates that the minor was the victim or subject of a crime, the person registered or certified may testify fully upon any examination, trial, or other proceeding in which the commission of the crime is the subject of the inquiry;

(4) If the person waives the privilege by bringing charges against the person registered or certified under this chapter;

(5) In response to a subpoena from a court of law or the ~~((director))~~ secretary. The ~~((director))~~ secretary may subpoena only records related to a complaint or report under chapter 18.130 RCW; or

(6) As required under chapter 26.44 RCW.

Sec. 34. RCW 18.20.020 and 1989 c 329 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Aged person" means a person of the age sixty-five years or more, or a person of less than sixty-five years who by reason of infirmity requires domiciliary care.

(2) "Boarding home" means any home or other institution, however named, which is advertised, announced or maintained for the express or implied purpose of providing board and domiciliary care to three or more aged persons not related by blood or marriage to the operator. It shall not include facilities certified as group training homes pursuant to RCW 71A-.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the department of housing and urban development.

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(4) "Secretary" means the secretary of ~~((social and health services))~~ health.

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

(6) "Authorized department" means any city, county, city-county health department or health district authorized by the secretary of ~~((social and health services))~~ health to carry out the provisions of this chapter.

Sec. 35. RCW 18.20.060 and 1989 c 175 s 60 are each amended to read as follows:

The department or the department and authorized department jointly, as the case may be, may deny, suspend, or revoke a license in any case in which it finds there has been a failure or refusal to comply with the requirements established under this chapter or the rules adopted under it. ~~((RCW 43.20A.205))~~ Section 377 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 36. RCW 18.25.006 and 1989 c 258 s 12 are each amended to read as follows:

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

(1) "Department" means the department of ~~((licensing))~~ health.

(2) ~~((^aDirector^a))~~ "Secretary" means the ~~((director))~~ secretary of the department of ~~((licensing))~~ health or the ~~((director's))~~ secretary's designee.

(3) "Chiropractor" means an individual licensed under this chapter.

(4) "Board" means the Washington state board of chiropractic examiners.

Sec. 37. RCW 18.25.017 and 1986 c 259 s 23 are each amended to read as follows:

The board shall meet as soon as practicable after appointment, and shall elect a chairman and a secretary from its members. Meetings shall be held at least once a year at such place as the ~~((director of licensing))~~ secretary shall determine, and at such other times and places as he or she deems necessary.

The board may make such rules ~~((and regulations))~~, not inconsistent with this chapter, as it deems necessary to carry out the provisions of this chapter.

Each member 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, all to be paid out of the general fund on vouchers approved by the ~~((director))~~ secretary, but not to exceed in the aggregate the amount of fees collected as provided in this chapter.

Sec. 38. RCW 18.25.020 and 1989 c 258 s 3 are each amended to read as follows:

(1) Any person not now licensed to practice chiropractic in this state and who desires to practice chiropractic in this state, before it shall be lawful for him or her to do so, shall make application therefor to the ~~((director))~~ secretary, upon such form and in such manner as may be adopted and directed by the ~~((director))~~ secretary. Each applicant who matriculates to a chiropractic college after January 1, 1975, shall have completed not less than one-half of the requirements for a baccalaureate degree at an accredited and approved college or university and shall be a graduate of a chiropractic school or college accredited and approved by the board of chiropractic examiners and shall show satisfactory evidence of completion by each applicant of a resident course of study of not less than four thousand classroom hours of instruction in such school or college. Applications shall be in writing and shall be signed by the applicant in his or her own handwriting and shall be sworn to before some officer authorized to administer oaths, and shall recite the history of the applicant as to his or her educational advantages, his or her experience in matters pertaining to a

knowledge of the care of the sick, how long he or she has studied chiropractic, under what teachers, what collateral branches, if any, he or she has studied, the length of time he or she has engaged in clinical practice; accompanying the same by reference therein, with any proof thereof in the shape of diplomas, certificates, and shall accompany said application with satisfactory evidence of good character and reputation.

(2) There shall be paid to the ((director)) secretary by each applicant for a license, a fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250 which shall accompany application and a fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250, which shall be paid upon issuance of license. Like fees shall be paid for any subsequent examination and application.

Sec. 39. RCW 18.25.040 and 1985 c 7 s 15 are each amended to read as follows:

Persons licensed to practice chiropractic under the laws of any other state having equal requirements of this chapter, may, in the discretion of the board of chiropractic examiners, and after examination by the board in principles of chiropractic, x-ray, and adjusting, as taught by chiropractic schools and colleges, be issued a license to practice in this state without further examination, upon payment of a fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250.

Sec. 40. RCW 18.25.070 and 1989 c 258 s 5 are each amended to read as follows:

(1) Every person practicing chiropractic shall, as a prerequisite to annual renewal of license, submit to the ((director)) secretary at the time of application therefor, satisfactory proof showing attendance of at least twenty-five hours during the preceding twelve-month period, at one or more chiropractic symposiums which are recognized and approved by the board of chiropractic examiners: PROVIDED, That the board may, for good cause shown, waive said attendance. The following guidelines for such symposiums shall apply:

(a) The board shall set criteria for the course content of educational symposia concerning matters which are recognized by the state of Washington chiropractic licensing laws; it shall be the licensee's responsibility to determine whether the course content meets these criteria;

(b) The board shall adopt standards for distribution of annual continuing education credit requirements;

(c) Rules shall be adopted by the board for licensees practicing and residing outside the state who shall meet all requirements established by the board by rules and regulations.

(2) Every person practicing chiropractic within this state shall pay on or before his or her birth anniversary date, after a license is issued to him or her as herein provided, to said ((director)) secretary a renewal license fee to

be determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250. The ((director)) secretary shall, thirty days or more before the birth anniversary date of each chiropractor in the state, mail to that chiropractor a notice of the fact that the renewal fee will be due on or before his or her birth anniversary date. Nothing in this chapter shall be construed so as to require that the receipts shall be recorded as original licenses are required to be recorded.

The failure of any licensed chiropractor to pay his or her annual license renewal fee within thirty days of license expiration shall work a forfeiture of his or her license. It shall not be reinstated except upon evidence that continuing educational requirements have been fulfilled and the payment of a penalty to be determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250, together with all annual license renewal fees delinquent at the time of the forfeiture, and those for each year thereafter up to the time of reinstatement. Should the licentiate allow his or her license to elapse for more than three years, he or she may be reexamined as provided for in RCW 18.25.040 at the discretion of the board.

Sec. 41. RCW 18.25.075 and 1989 c 258 s 14 are each amended to read as follows:

(1) An individual may place his or her license on inactive status. The holder of an inactive license shall not practice chiropractic in this state without first activating the license.

(2) The inactive renewal fee shall be established by the ((director)) secretary pursuant to RCW ((43.24.086)) 43.70.250. Failure to renew an inactive license shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with the rules established by the board.

(4) The provisions relating to the denial, suspension, and revocation of a license shall be applicable to an inactive license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed.

Sec. 42. RCW 18.25.100 and 1919 c 5 s 16 are each amended to read as follows:

It shall be the duty of the several prosecuting attorneys of this state to prosecute all persons charged with the violation of any of the provisions of this chapter. It shall be the duty of the ((director of licensing)) secretary to aid said attorneys of this state in the enforcement of this chapter.

Sec. 43. RCW 18.26.020 and 1989 c 258 s 8 are each amended to read as follows:

Terms used in this chapter shall have the meaning set forth in this section unless the context clearly indicates otherwise:

(1) "Board" means the chiropractic disciplinary board;

(2) "License" means a certificate of license to practice chiropractic in this state as provided for in chapter 18.25 RCW;

(3) "Members" means members of the chiropractic disciplinary board;

(4) "Department" means the department of ~~((licensing))~~ health;

(5) ~~((^ADirector^B))~~ "Secretary" means the ~~((director))~~ secretary of the department of ~~((licensing))~~ health or the ~~((director's))~~ secretary's designee;

(6) "Chiropractor" means a person licensed under chapter 18.25 RCW.

Sec. 44. RCW 18.26.050 and 1979 c 158 s 21 are each amended to read as follows:

Vacancies on the board shall be filled as provided for initially for the position for which a vacancy exists. The vacancy shall be filled within thirty days of the existence thereof and the ~~((director of licensing))~~ secretary shall be informed of the name and address of the person named to fill the vacancy.

Sec. 45. RCW 18.26.070 and 1984 c 287 s 28 are each amended to read as follows:

Members of the board may be compensated in accordance with RCW 43.03.240 and may be paid their travel expenses while engaged in the business of the board in accordance with RCW 43.03.050 and 43.03.060, with such reimbursement to be paid out of the general fund on vouchers signed by the ~~((director of licensing))~~ secretary.

Sec. 46. RCW 18.29.021 and 1989 c 202 s 1 are each amended to read as follows:

(1) The department shall issue a license to any applicant who, as determined by the ~~((director))~~ secretary:

(a) Has successfully completed an educational program approved by the ~~((director))~~ secretary. This educational program shall include course work encompassing the subject areas within the scope of the license to practice dental hygiene in the state of Washington;

(b) Has successfully completed an examination administered by the dental hygiene examining committee; and

(c) Has not engaged in unprofessional conduct or is not unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

(2) Applications for licensure shall be submitted on forms provided by the department. The department may require any information and documentation necessary to determine if the applicant meets the criteria for licensure as provided in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250. The fee shall be submitted with the application.

Sec. 47. RCW 18.29.045 and 1989 c 202 s 29 are each amended to read as follows:

An applicant holding a valid license and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the ~~((director))~~ secretary in consultation with the advisory committee determines that the other state's licensing standards are substantively equivalent to the standards in this state: PROVIDED, That the ~~((director))~~ secretary in consultation with the advisory committee may require the applicant to: (1) File with the ~~((director))~~ secretary documentation certifying the applicant is licensed to practice in another state; and (2) provide information as the ~~((director))~~ secretary deems necessary pertaining to the conditions and criteria of the uniform disciplinary act, chapter 18.130 RCW and to demonstrate to the ~~((director))~~ secretary a knowledge of Washington law pertaining to the practice of dental hygiene.

Sec. 48. RCW 18.29.060 and 1989 c 202 s 12 are each amended to read as follows:

Upon passing an examination and meeting the requirements as provided in RCW 18.29.021, the ~~((director-of-licensing))~~ secretary of health shall issue to the successful applicant a license as dental hygienist. The license shall be displayed in a conspicuous place in the operation room where such licensee shall practice.

Sec. 49. RCW 18.29.071 and 1989 c 202 s 2 are each amended to read as follows:

The ~~((director))~~ secretary shall establish by rule the requirements for renewal of licenses. The ~~((director))~~ secretary shall establish a renewal and late renewal penalty fee as provided in RCW ~~((43-24-086))~~ 43.70.250. Failure to renew invalidates the license and all privileges granted by the license. The ~~((director))~~ secretary shall determine by rule whether a license shall be canceled for failure to renew and shall establish procedures and requirements for relicensure.

Sec. 50. RCW 18.29.100 and 1979 c 158 s 34 are each amended to read as follows:

Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor. It shall be the duty of the prosecuting attorney of each county to prosecute all cases involving a violation of this chapter arising within his or her county. The attorney general may assist in such prosecutions and shall appear at all hearings when requested to do so by the ~~((director-of-licensing))~~ secretary of health.

Sec. 51. RCW 18.29.110 and 1989 c 202 s 3 are each amended to read as follows:

There shall be a dental hygiene examining committee consisting of three practicing dental hygienists and one public member appointed by the

((director)) secretary, to be known as the Washington dental hygiene examining committee. Each dental hygiene member shall be licensed and have been actively practicing dental hygiene for a period of not less than five years immediately before appointment and shall not be connected with any dental hygiene school. The public member shall not be connected with any dental hygiene program or engaged in any practice or business related to dental hygiene. Members of the committee shall be appointed by the ((director)) secretary to prepare and conduct examinations for dental hygiene licensure. Members shall be appointed to serve for terms of three years from October 1 of the year in which they are appointed. Terms of the members shall be staggered. Each member shall hold office for the term of his or her appointment and until his or her successor is appointed and qualified. Any member of the committee may be removed by the ((director)) secretary for neglect of duty, misconduct, malfeasance, or misfeasance in office, after being given a written statement of the charges against him or her and sufficient opportunity to be heard thereon. Members of the committee 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. 52. RCW 18.29.120 and 1989 c 202 s 4 are each amended to read as follows:

The ((director)) secretary in consultation with the Washington dental hygiene examining committee shall:

- (1) Adopt rules in accordance with chapter 34.05 RCW necessary to prepare and conduct examinations for dental hygiene licensure;
- (2) Require an applicant for licensure to pass an examination consisting of written and practical tests upon such subjects and of such scope as the committee determines;
- (3) Set the standards for passage of the examination;
- (4) Administer at least two examinations each calendar year in conjunction with examinations for licensure of dentists under chapter 18.32 RCW. Additional examinations may be given as necessary; and
- (5) Establish by rule the procedures for an appeal of an examination failure.

Sec. 53. RCW 18.29.130 and 1989 c 202 s 5 are each amended to read as follows:

In addition to any other authority provided by law, the ((director)) secretary may:

- (1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;
- (2) Establish forms necessary to administer this chapter;
- (3) Issue a license to any applicant who has met the education and examination requirements for licensure and deny a license to applicants who

do not meet the minimum qualifications for licensure. Proceedings concerning the denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) Employ clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;

(5) Maintain the official departmental record of all applicants and licensees;

(6) Establish, by rule, the minimum education requirements for licensure, including but not limited to approval of educational programs; and

(7) Establish and implement by rule a continuing education program.

Sec. 54. RCW 18.29.140 and 1989 c 202 s 6 are each amended to read as follows:

The ~~((director))~~ secretary shall establish by rule the standards and procedures for approval of educational programs and may contract with individuals or organizations having expertise in the profession or in education to report to the ~~((director))~~ secretary information necessary for the ~~((director))~~ secretary to evaluate the educational programs. The ~~((director))~~ secretary may establish a fee for educational program evaluation. The fee shall be set to defray the administrative costs for evaluating the educational program, including, but not limited to, costs for site evaluation.

Sec. 55. RCW 18.29.150 and 1989 c 202 s 7 are each amended to read as follows:

(1) The ~~((director))~~ secretary shall establish the date and location of the examination. Applicants who meet the education requirements for licensure shall be scheduled for the next examination following the filing of the application. The ~~((director))~~ secretary shall establish by rule the examination application deadline.

(2) The examination shall contain subjects appropriate to the scope of practice and on laws in the state of Washington regulating dental hygiene practice.

(3) The committee shall establish by rule the requirements for a reexamination if the applicant has failed the examination.

(4) The committee may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

Sec. 56. RCW 18.29.160 and 1989 c 202 s 8 are each amended to read as follows:

The ~~((director))~~ secretary, members of the committee, and individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties.

Sec. 57. RCW 18.29.180 and 1989 c 202 s 10 are each amended to read as follows:

The following practices, acts, and operations are excepted from the operation of this chapter:

(1) The practice of dental hygiene in the discharge of official duties by dental hygienists in the United States armed services, coast guard, public health services, veterans' bureau, or bureau of Indian affairs;

(2) Dental hygiene programs approved by the (~~director~~) secretary and the practice of dental hygiene by students in dental hygiene programs approved by the (~~director~~) secretary, when acting under the direction and supervision of persons licensed under chapter 18.29 or 18.32 RCW acting as instructors.

Sec. 58. RCW 18.32.010 and 1935 c 112 s 1 are each amended to read as follows:

Words used in the singular in this chapter may also be applied to the plural of the persons and things; words importing the plural may be applied to the singular; words importing the masculine gender may be extended to females also; the term "board" used in this chapter shall mean the Washington state board of dental examiners and the term (~~"director"~~) "secretary" shall mean the (~~director of licensing~~) secretary of health of the state of Washington.

Sec. 59. RCW 18.32.030 and 1989 c 202 s 13 are each amended to read as follows:

The following practices, acts, and operations are excepted from the operation of the provisions of this chapter:

(1) The rendering of dental relief in emergency cases in the practice of his or her profession by a physician or surgeon, licensed as such and registered under the laws of this state, unless the physician or surgeon undertakes to or does reproduce lost parts of the human teeth in the mouth or to restore or to replace in the human mouth lost or missing teeth;

(2) The practice of dentistry in the discharge of official duties by dentists in the United States federal services on federal reservations, including but not limited to the armed services, coast guard, public health service, veterans' bureau, or bureau of Indian affairs;

(3) Dental schools or colleges approved under RCW 18.32.040, and the practice of dentistry by students in Washington state dental schools or colleges approved by the board, when acting under the direction and supervision of Washington state-licensed dental school faculty;

(4) The practice of dentistry by licensed dentists of other states or countries while appearing as clinicians at meetings of the Washington state dental association, or component parts thereof, or at meetings sanctioned by them, or other groups approved by the board of dental examiners;

(5) The use of roentgen and other rays for making radiographs or similar records of dental or oral tissues, under the supervision of a licensed dentist or physician;

(6) The making, repairing, altering, or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts; providing the same are made, repaired, altered, or supplied pursuant to the written instructions and order of a licensed dentist which may be accompanied by casts, models, or impressions furnished by the dentist, and the prescriptions shall be retained and filed for a period of not less than three years and shall be available to and subject to the examination of the ~~((director of licensing))~~ secretary or the ~~((director's))~~ secretary's authorized representatives;

(7) The removal of deposits and stains from the surfaces of the teeth, the application of topical preventative or prophylactic agents, and the polishing and smoothing of restorations, when performed or prescribed by a dental hygienist licensed under the laws of this state;

(8) A qualified and licensed physician and surgeon extracting teeth or performing oral surgery pursuant to the scope of practice under chapter 18.71 or 18.57 RCW;

(9) The performing of dental operations or services by persons not licensed under this chapter when performed under the supervision of a licensed dentist: PROVIDED HOWEVER, That such nonlicensed person shall in no event perform the following dental operations or services unless permitted to be performed by the person under this chapter or chapters 18.29, 18.57, 18.71, and 18.88 RCW:

(a) Any removal of or addition to the hard or soft tissue of the oral cavity;

(b) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure;

(c) Any administration of general or injected local anaesthetic of any nature in connection with a dental operation, including intravenous sedation;

(d) Any oral prophylaxis;

(e) The taking of any impressions of the teeth or jaw or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis.

Sec. 60. RCW 18.32.037 and 1989 c 202 s 15 are each amended to read as follows:

The board shall designate one of its members as chairperson and one as secretary, and it shall meet at least once in each year, and more often if necessary, at the discretion of the ~~((director))~~ secretary or board, and at such times and places as the ~~((director))~~ secretary or the board deems

proper. A majority of the members of the board currently serving constitutes a quorum for the transaction of the business of the board.

Sec. 61. RCW 18.32.040 and 1989 c 202 s 16 are each amended to read as follows:

The board shall require that every applicant for a license to practice dentistry shall:

(1) Present satisfactory evidence of graduation from a dental college, school, or dental department of an institution approved by the board;

(2) Submit, for the files of the board, a recent picture duly identified and attested; and

(3) Pass an examination prepared or approved by and administered under the direction of the board. The dentistry licensing examination shall consist of practical and written tests upon such subjects and of such scope as the board determines. The board may accept, in lieu of all or part of a written examination, a certificate granted by a national or regional testing organization approved by the board. The board shall set the standards for passing the examination. The ~~((director of licensing))~~ secretary shall keep on file the examination papers and records of examination for at least one year. This file shall be open for inspection by the applicant or the applicant's agent unless the disclosure will compromise the examination process as determined by the board or is exempted from disclosure under RCW 42.17.250 through 42.17.340.

Sec. 62. RCW 18.32.100 and 1989 c 202 s 18 are each amended to read as follows:

The applicant for a dentistry license shall file an application on a form furnished by the ~~((director))~~ secretary, stating the applicant's name, age, place of residence, the name of the school or schools attended by the applicant, the period of such attendance, the date of the applicant's graduation, whether the applicant has ever been the subject of any disciplinary action related to the practice of dentistry, and shall include a statement of all of the applicant's dental activities. This shall include any other information deemed necessary by the board.

The application shall be signed by the applicant and sworn to by the applicant before some person authorized to administer oaths, and shall be accompanied by proof of the applicant's school attendance and graduation.

Sec. 63. RCW 18.32.110 and 1989 c 202 s 19 are each amended to read as follows:

~~((Except as otherwise provided in RCW 18.32.210;))~~ Each applicant shall pay a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250, which shall accompany the application.

Sec. 64. RCW 18.32.120 and 1989 c 202 s 20 are each amended to read as follows:

When the application and the accompanying proof are found satisfactory, the ((director)) secretary shall notify the applicant to appear before the board at a time and place to be fixed by the board.

The examination papers, and all grading thereon, and the grading of the practical work, shall be preserved for a period of not less than one year after the board has made and published its decisions thereon. All examinations shall be conducted by the board under fair and wholly impartial methods.

Any applicant who fails to make the required grade by his or her fourth examination may be reexamined only under rules adopted by the board.

Applicants for examination or reexamination shall pay a fee as determined by the ((director)) secretary as provided in RCW ((43-24-086)) 43.70.250.

Sec. 65. RCW 18.32.160 and 1989 c 202 s 21 are each amended to read as follows:

All licenses issued by the ((director)) secretary on behalf of the board shall be signed by the ((director)) secretary or chairperson and secretary of the board.

Sec. 66. RCW 18.32.170 and 1985 c 7 s 25 are each amended to read as follows:

A fee determined by the ((director)) secretary as provided in RCW ((43-24-086)) 43.70.250 shall be charged for every duplicate license issued by the ((director)) secretary.

Sec. 67. RCW 18.32.180 and 1989 c 202 s 22 are each amended to read as follows:

(1) Every person licensed to practice dentistry in this state shall register with the ((director-of-licensing)) secretary, and pay a renewal registration fee determined by the ((director)) secretary as provided in RCW ((43-24-086)) 43.70.250. Any failure to register and pay the renewal registration fee renders the license invalid, and the practice of dentistry shall not be permitted. The license shall be reinstated upon written application to the ((director)) secretary and payment to the state of a penalty fee determined by the ((director)) secretary as provided in RCW ((43-24-086)) 43.70.250, together with all delinquent license renewal fees.

(2) A person who fails to renew the license for a period of three years may not renew the license under subsection (1) of this section. In order to obtain a license to practice dentistry in this state, such a person shall file an original application as provided for in this chapter, along with the requisite fees. The board, in its sole discretion, may permit the applicant to be licensed without examination, and with or without conditions, if it is satisfied that the applicant meets all the requirements for licensure in this state and is competent to engage in the practice of dentistry.

Sec. 68. RCW 18.32.190 and 1981 c 277 s 7 are each amended to read as follows:

Every person who engages in the practice of dentistry in this state shall cause his or her license to be, at all times, displayed in a conspicuous place, in his or her office wherein he or she shall practice such profession, and shall further, whenever requested, exhibit such license to any of the members of said board, or its authorized agent, and to the ((director)) secretary or his or her authorized agent. Every licensee shall notify the ((director)) secretary of the address or addresses, and of every change thereof, where the licensee shall engage in the practice of dentistry.

Sec. 69. RCW 18.32.195 and 1985 c 111 s 1 are each amended to read as follows:

The board may, without examination, issue a license to persons who possess the qualifications set forth in this section.

(1) The board may, upon written request of the dean of the school of dentistry of the University of Washington, issue a license to practice dentistry in this state to persons who have been licensed or otherwise authorized to practice dentistry in another state or country and who have been accepted for employment by the school of dentistry as full-time faculty members. For purposes of this section, this means teaching members of the faculty of the school of dentistry of the University of Washington who are so employed on a one hundred percent of work time basis. Such license shall permit the holder thereof to practice dentistry within the confines of the university facilities for a period of one year while he or she is so employed as a full-time faculty member by the school of dentistry of the University of Washington. It shall terminate whenever the holder ceases to be such a full-time faculty member. Such license shall permit the holder thereof to practice dentistry only in connection with his or her duties in employment with the school of dentistry of the University of Washington. This limitation shall be stated on the license.

(2) The board may condition the granting of such license with terms the board deems appropriate. All persons licensed under this section shall be subject to the jurisdiction of the dental disciplinary board to the same extent as other members of the dental profession, in accordance with this chapter, and in addition the licensee may be disciplined by the dental disciplinary board after a hearing has been held in accordance with the provisions set forth in this chapter, and determination by the dental disciplinary board that such licensee has violated any of the restrictions set forth in this section.

(3) Persons applying for licensure pursuant to this section shall pay the application fee determined by the ((director)) secretary and, in the event the license applied for is issued, a license fee at the rate provided for licenses generally. After review by the board of dental examiners, licenses issued under this section may be renewed annually if the licensee continues to be

employed as a full-time faculty member of the school of dentistry of the University of Washington and otherwise meets the requirements of the provisions and conditions deemed appropriate by the board of dental examiners. Any person who obtains a license pursuant to this section may, without an additional application fee, apply for licensure under this chapter, in which case the applicant shall be subject to examination and the other requirements of this chapter.

Sec. 70. RCW 18.32.220 and 1989 c 202 s 23 are each amended to read as follows:

Anyone who is a licensed dentist in the state of Washington who desires to change residence to another state or territory, shall, upon application to the ~~((director))~~ secretary and payment of a fee as determined by the ~~((director))~~ secretary under RCW ~~((43.24.086))~~ 43.70.250, receive a certificate over the signature of the ~~((director))~~ secretary or ~~((the director's))~~ his or her designee, which shall attest to the facts mentioned in this section, and giving the date upon which the dentist was licensed.

Sec. 71. RCW 18.32.520 and 1989 c 202 s 25 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions contained in this section shall apply throughout RCW 18.32.510 through 18.32.755.

(1) "Board" means the dental disciplinary board created in RCW 18.32.560.

(2) "License" means a certificate or license to practice dentistry in this state as provided for in this chapter.

(3) "Member" means member of the dental disciplinary board.

(4) "Secretary" means the secretary of the dental disciplinary board.

(5) ~~(("Director" means the director of licensing))~~ "Secretary of health" means the secretary of the department of health of the state of Washington.

(6) "To practice dentistry" means to engage in the practice of dentistry as defined in RCW 18.32.020.

Sec. 72. RCW 18.32.534 and 1989 c 125 s 1 are each amended to read as follows:

(1) To implement an impaired dentist program as authorized by RCW 18.130.175, the dental disciplinary board shall enter into a contract with a voluntary substance abuse monitoring program. The impaired dentist program may include any or all of the following:

(a) Contracting with providers of treatment programs;

(b) Receiving and evaluating reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment;

(d) Referring impaired dentists to treatment programs;

(e) Monitoring the treatment and rehabilitation of impaired dentists including those ordered by the board;

(f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired dentists; and

(g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to fifteen dollars on each license issuance or renewal to be collected by the department of (~~(licensing)~~) health from every dentist licensed under chapter 18.32 RCW. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired dentist program.

Sec. 73. RCW 18.32.745 and 1977 ex.s. c 5 s 31 are each amended to read as follows:

No manager, proprietor, partnership, or association owning, operating, or controlling any room, office, or dental parlors, where dental work is done, provided, or contracted for, shall employ or retain any unlicensed person or dentist as an operator; nor shall fail, within ten days after demand made by the (~~(director)~~) secretary of health, the state board of dental examiners, or the dental disciplinary board in writing sent by certified mail, addressed to any such manager, proprietor, partnership, or association at said room, office, or dental parlor, to furnish the (~~(director)~~) secretary of health, the state board of dental examiners, or the dental disciplinary board with the names and addresses of all persons practicing or assisting in the practice of dentistry in his or her place of business or under his or her control, together with a sworn statement showing by what license or authority said persons are practicing dentistry.

The sworn statement shall not be used as evidence in any subsequent court proceedings, except in a prosecution for perjury connected with its execution.

Any violation of the provisions of this section shall constitute improper, unprofessional, and dishonorable conduct; it shall also constitute grounds for injunction proceedings as provided by this chapter and in addition shall constitute a gross misdemeanor, except that the failure to furnish the information as may be requested in accordance with this section shall constitute a misdemeanor.

Sec. 74. RCW 18.34.020 and 1979 c 158 s 37 are each amended to read as follows:

The term (~~(^adirector^a)~~) "secretary" wherever used in this chapter shall mean the (~~(director of licensing)~~) secretary of health of the state of Washington. The term "apprentice" wherever used in this chapter shall mean a person who shall be designated an apprentice in the records of the (~~(director)~~) secretary at the request of a physician, registered optometrist or licensee hereunder, and who shall thereafter receive from such physician,

registered optometrist or licensee hereunder training and direct supervision in the work of a dispensing optician.

Sec. 75. RCW 18.34.030 and 1957 c 43 s 3 are each amended to read as follows:

No licensee hereunder may have more than two apprentices in training at one time: PROVIDED, That the licensee shall be responsible for the acts of his or her apprentices in the performance of their work in the apprenticeship program: PROVIDED FURTHER, That apprentices shall complete their apprenticeship in six years and shall not work longer as an apprentice unless the ((director)) secretary determines, after a hearing, that the apprentice was prevented by causes beyond his or her control from completing his or her apprenticeship and becoming a licensee hereunder in six years.

Sec. 76. RCW 18.34.070 and 1985 c 7 s 29 are each amended to read as follows:

Any applicant for a license shall be examined if he or she pays an examination fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250 and certifies under oath that he or she:

- (1) ((He)) Is eighteen years or more of age; and
- (2) ((He)) Has graduated from an accredited high school; and
- (3) ((He)) Is a citizen of the United States or has declared his or her intention of becoming such citizen in accordance with law; and
- (4) ((He)) Is of good moral character; and
- (5) ((He)) Has either:
 - (a) Had at least three years of apprenticeship training; or
 - (b) Successfully completed a prescribed course in opticianry in a college or university approved by the ((director)) secretary; or
 - (c) Been principally engaged in practicing as a dispensing optician not in the state of Washington for five years.

Sec. 77. RCW 18.34.080 and 1957 c 43 s 8 are each amended to read as follows:

The examination shall determine whether the applicant has a thorough knowledge of the principles governing the practice of a dispensing optician which is hereby declared necessary for the protection of the public health. The ((director)) secretary shall license successful examinees and the license shall be conspicuously displayed in the place of business of the licensee.

Sec. 78. RCW 18.34.110 and 1957 c 43 s 11 are each amended to read as follows:

The ((director)) secretary shall issue a license without examination to any person who makes application therefor within six months after ((the effective date of this chapter)) June 12, 1957, pays a fee of fifty dollars and certifies under oath that he or she is of good moral character and has been actually and principally engaged in the practice of a dispensing optician in

the state of Washington for a period of not less than six months immediately preceding ~~((the effective date of this chapter))~~ June 12, 1957.

Sec. 79. RCW 18.34.120 and 1984 c 279 s 52 are each amended to read as follows:

Each licensee hereunder shall pay an annual renewal registration fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250, on or before the first day of July of each year, and thereupon the license of such person shall be renewed for a period of one year. Any failure to pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the ~~((director))~~ secretary and payment of a penalty determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250, together with all delinquent annual license renewal fees. In addition, the ~~((director of licensing))~~ secretary may adopt rules establishing mandatory continuing education requirements to be met by persons applying for license renewal.

Sec. 80. RCW 18.35.010 and 1983 c 39 s 1 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Department" means the department of ~~((licensing))~~ health.

(2) "Council" means the council on hearing aids.

(3) "Hearing aid" means any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords and ear molds.

(4) "Fitting and dispensing of hearing aids" means the sale, lease, or rental or attempted sale, lease, or rental of hearing aids together with the selection and adaptation of hearing aids and the use of those tests and procedures essential to the performance of these functions. It includes the taking of impressions for ear molds for these purposes.

(5) ~~(("Director" means the director of licensing))~~ "Secretary" means the secretary of health.

(6) "Establishment" means any facility engaged in the fitting and dispensing of hearing aids.

Sec. 81. RCW 18.35.040 and 1989 c 198 s 2 are each amended to read as follows:

An applicant for license shall be at least eighteen years of age and shall pay a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250. An applicant shall not be issued a license under the provisions of this chapter unless the applicant:

(1) Satisfactorily completes the examination required by this chapter;
or

(2) Holds a current, unsuspended, unrevoked license or certificate from a state or jurisdiction with which the department has entered into a reciprocal agreement, and shows evidence satisfactory to the department that the applicant is licensed in good standing in the other jurisdiction.

Sec. 82. RCW 18.35.060 and 1985 c 7 s 31 are each amended to read as follows:

(1) The department shall issue a trainee license to any applicant who has shown to the satisfaction of the department that:

(a) The applicant is at least eighteen years of age;

(b) If issued a trainee license, would be employed and directly supervised in the fitting and dispensing of hearing aids by a person licensed in good standing as a fitter–dispenser for at least one year unless otherwise approved by the council; and

(c) Has paid an application fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250, to the department.

The provisions of RCW 18.35.030, 18.35.110, and 18.35.120 shall apply to any person issued a trainee license. Pursuant to the provisions of this section, a person issued a trainee license may engage in the fitting and dispensing of hearing aids without having first passed the examination provided under this chapter.

(2) The trainee license shall contain the name of the person licensed under this chapter who is employing and supervising the trainee and that person shall execute an acknowledgment of responsibility for all acts of the trainee in connection with the fitting and dispensing of hearing aids.

(3) A trainee may fit and dispense hearing aids, but only if the trainee is under the direct supervision of a person licensed under this chapter in a capacity other than as a trainee. Direct supervision by a licensed fitter–dispenser shall be required whenever the trainee is engaged in the fitting or dispensing of hearing aids during the trainee's first three months of full-time employment. The council shall develop and adopt guidelines on any additional supervision or training it deems necessary.

(4) The trainee license shall expire one year from the date of its issuance except that on recommendation of the council the license may be reissued for one additional year only.

(5) No person licensed under this chapter may assume the responsibility for more than two trainees at any one time, except that the department may approve one additional trainee if none of the trainees is within the initial ninety–day period of direct supervision and the licensee demonstrates to the department's satisfaction that adequate supervision will be provided for all trainees.

Sec. 83. RCW 18.35.080 and 1989 c 198 s 4 are each amended to read as follows:

The department shall license each applicant, without discrimination, who satisfactorily completes the required examination and, upon payment of

a fee determined by the ((director)) secretary as provided in RCW ((~~43-24-086~~)) 43.70.250 to the department, shall issue to the applicant a license. If a person does not apply for a license within three years of the successful completion of the license examination, reexamination is required for licensure. The license shall be effective until the licensee's next birthday at which time it is subject to renewal. Subsequent renewal dates shall coincide with the licensee's birthday.

Sec. 84. RCW 18.35.090 and 1989 c 198 s 5 are each amended to read as follows:

Each person who engages in the fitting and dispensing of hearing aids shall as the department prescribes by rule, pay to the department a fee established by the ((director)) secretary under RCW ((~~43-24-086~~)) 43.70.250 for a renewal of the license and shall keep the license conspicuously posted in the place of business at all times. Any person who fails to renew his or her license prior to the expiration date must pay a penalty fee in addition to the renewal fee and satisfy the requirements that may be set forth by rule promulgated by the ((director)) secretary for reinstatement. The ((director)) secretary may by rule establish mandatory continuing education requirements and/or continued competency standards to be met by licensees as a condition for license renewal.

Sec. 85. RCW 18.35.240 and 1989 c 198 s 10 are each amended to read as follows:

(1) Every establishment engaged in the fitting and dispensing of hearing aids shall file with the department a surety bond in the sum of ten thousand dollars, running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the establishment's employees or agents of any of the provisions of this chapter or rules adopted by the ((director)) secretary.

(2) In lieu of the surety bond required by this section, the establishment may file with the department a cash deposit or other negotiable security acceptable to the department. All obligations and remedies relating to surety bonds shall apply to deposits and security filed in lieu of surety bonds.

(3) If a cash deposit is filed, the department shall deposit the funds with the state treasurer. The cash or other negotiable security deposited with the department shall be returned to the depositor one year after the establishment has discontinued the fitting and dispensing of hearing aids if no legal action has been instituted against the establishment, its agents or employees, or the cash deposit or other security. The establishment owners shall notify the department if the establishment is sold or has discontinued the fitting and dispensing of hearing aids in order that the cash deposit or other security may be released at the end of one year from that date.

(4) A surety may file with the department notice of withdrawal of the bond of the establishment. Upon filing a new bond, or upon the expiration

of sixty days after the filing of notice of withdrawal by the surety, the liability of the former surety for all future acts of the establishment terminates.

(5) Upon the filing with the department notice by a surety of withdrawal of the surety on the bond of an establishment or upon the cancellation by the department of the bond of a surety under this section, the department shall immediately give notice to the establishment by certified or registered mail with return receipt requested addressed to the establishment's last place of business as filed with the department.

(6) The department shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.

Sec. 86. RCW 18.35.250 and 1989 c 198 s 11 are each amended to read as follows:

(1) In addition to any other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond, cash deposit, or security in lieu of a surety bond required by this chapter, by any person having a claim against a licensee, agent, or establishment for any violation of this chapter or any rule adopted under this chapter. The aggregate liability of the surety to all claimants shall in no event exceed the sum of the bond. Claims shall be satisfied in the order of judgment rendered.

(2) An action upon the bond shall be commenced by serving and filing the complaint within one year from the date of the cancellation of the bond. An action upon a cash deposit or other security shall be commenced by serving and filing the complaint within one year from the date of notification to the department of the change in ownership of the establishment or the discontinuation of the fitting and dispensing of hearing aids by that establishment. Two copies of the complaint shall be served by registered or certified mail, return receipt requested, upon the department at the time the suit is started. The service constitutes service on the surety. The ~~((director))~~ secretary shall transmit one copy of the complaint to the surety within five business days after the copy has been received.

(3) The ~~((director))~~ secretary shall maintain a record, available for public inspection, of all suits commenced under this chapter under surety bonds, or the cash or other security deposited in lieu of the surety bond. In the event that any final judgment impairs the liability of the surety upon a bond so furnished or the amount of the deposit so that there is not in effect a bond undertaking or deposit in the full amount prescribed in this section, the department shall suspend the license until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(4) If a judgment is entered against the deposit or security required under this chapter, the department shall, upon receipt of a certified copy of

a final judgment, pay the judgment from the amount of the deposit or security.

Sec. 87. RCW 18.36A.020 and 1987 c 447 s 4 are each amended to read as follows:

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

(1) "Department" means the department of ~~((licensing))~~ health.

(2) ~~((^aDirector means the director of licensing or the director's designee))~~ "Secretary" means the secretary of health or the secretary's designee.

(3) "Naturopath" means an individual licensed under this chapter.

(4) "Committee" means the Washington state naturopathic practice advisory committee.

(5) "Educational program" means a program preparing persons for the practice of naturopathy.

(6) "Nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of foods, water, herbs, roots, bark, or natural food elements.

(7) "Manual manipulation" or "mechanotherapy" means manipulation of a part or the whole of the body by hand or by mechanical means.

(8) "Physical modalities" means use of physical, chemical, electrical, and other noninvasive modalities including, but not limited to heat, cold, air, light, water in any of its forms, sound, massage, and therapeutic exercise.

(9) "Homeopathy" means a system of medicine based on the use of infinitesimal doses of medicines capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopeia of the United States.

(10) "Medicines of mineral, animal, and botanical origin" means medicines derived from animal organs, tissues, and oils, minerals, and plants administered orally and topically, excluding legend drugs with the following exceptions: Vitamins, minerals, whole gland thyroid, and substances as exemplified in traditional botanical and herbal pharmacopoeia, and nondrug contraceptive devices excluding interuterine devices. The use of intermuscular injections are limited to vitamin B-12 preparations and combinations when clinical and/or laboratory evaluation has indicated vitamin B-12 deficiency. The use of controlled substances is prohibited.

(11) "Hygiene and immunization" means the use of such preventative techniques as personal hygiene, asepsis, public health, and immunizations, to the extent allowed by rule ~~((and regulation))~~.

(12) "Minor office procedures" means care incident thereto of superficial lacerations and abrasions, and the removal of foreign bodies located in superficial structures, not to include the eye; and the use of antiseptics and topical local anesthetics in connection therewith.

(13) "Common diagnostic procedures" means the use of venipuncture to withdraw blood, commonly used diagnostic modalities consistent with naturopathic practice, health history taking, physical examination, radiography, examination of body orifices excluding endoscopy, and laboratory medicine which obtains samples of human tissue products, including superficial scrapings but excluding procedures which would require surgical incision.

(14) "Suggestion" means techniques including but not limited to counseling, biofeedback, and hypnosis.

(15) "Radiography" means the ordering but not the interpretation of radiographic diagnostic studies and the taking and interpretation of standard radiographs.

Sec. 88. RCW 18.36A.030 and 1987 c 447 s 2 are each amended to read as follows:

(1) No person may practice naturopathy or represent himself or herself as a naturopath without first applying for and receiving a license from the ~~((director))~~ secretary to practice naturopathy.

(2) A person represents himself or herself as a naturopath when that person adopts or uses any title or any description of services that incorporates one or more of the following terms or designations: Naturopath or doctor of naturopathic medicine.

Sec. 89. RCW 18.36A.040 and 1988 c 246 s 1 are each amended to read as follows:

Naturopathic medicine or naturopathy is the practice by naturopaths of the art and science of the diagnosis, prevention, and treatment of disorders of the body by stimulation or support, or both, of the natural processes of the human body. A naturopath((s)) is responsible and accountable to the consumer for the quality of naturopathic care rendered.

The practice of naturopathy includes manual manipulation (mechanotherapy), the prescription, administration, dispensing, and use, except for the treatment of malignancies or neoplastic disease, of nutrition and food science, physical modalities, homeopathy, certain medicines of mineral, animal, and botanical origin, hygiene and immunization, common diagnostic procedures, and suggestion; however, nothing in this chapter shall prohibit consultation and treatment of a patient in concert with a practitioner licensed under chapter 18.57 or 18.71 RCW. No person licensed under this chapter may employ the term "chiropractic" to describe any services provided by a naturopath under this chapter.

~~((The state health coordinating council shall study and make recommendations on the qualifications of naturopaths in practicing manual manipulation (mechanotherapy), including the minimum educational standards comparable to the educational requirements of other health professions, and verification of qualifications by examination of applicants for naturopathic~~

licensure. The report shall be presented to the legislature by January 1, 1989.)

Sec. 90. RCW 18.36A.050 and 1987 c 447 s 5 are each amended to read as follows:

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

(1) The practice of a profession by individuals who are licensed, certified, or registered under other laws of this state who are performing services within their authorized scope of practice;

(2) The practice of naturopathic medicine by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed for him or her by the laws and regulations of the United States;

(3) The practice of naturopathic medicine by students enrolled in a school approved by the ((director)) secretary. The performance of services shall be pursuant to a course of instruction or assignments from an instructor and under the supervision of the instructor. The instructor shall be a naturopath licensed pursuant to this chapter; or

(4) The practice of oriental medicine or oriental herbology, or the rendering of other dietary or nutritional advice.

Sec. 91. RCW 18.36A.060 and 1987 c 447 s 6 are each amended to read as follows:

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

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

(b) Set all license, examination, and renewal fees in accordance with RCW ((43.24.086)) 43.70.250;

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

(d) Determine the minimum education and experience requirements for licensure in conformance with RCW 18.36A.090, including but not limited to approval of educational programs;

(e) Prepare and administer or approve the preparation and administration of examinations for licensure;

(f) Issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure; except that denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(g) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and to hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;

(h) Maintain the official department record of all applicants and licensees;

(i) Determine whether alternative methods of training are equivalent to formal education, and establish forms, procedures, and criteria for evaluation of an applicant's equivalent alternative training to determine the applicant's eligibility to take the examination;

(j) Establish by rule the procedures for an appeal of examination failure;

(k) Conduct a hearing on an appeal of a denial of a license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to chapter 34.05 RCW; and

(l) Adopt rules implementing a continuing competency program.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses and the discipline of licensees under this chapter. The ((director)) secretary shall be the disciplining authority under this chapter.

Sec. 92. RCW 18.36A.070 and 1987 c 447 s 7 are each amended to read as follows:

(1) There is hereby created the Washington state naturopathic advisory committee consisting of five members appointed by the ((director)) secretary who shall advise the ((director)) secretary concerning the administration of this chapter. Three members of the initial committee shall be persons who would qualify for licensing under this chapter. Their successors shall be naturopaths who are licensed under this chapter. Two members of the committee shall be individuals who are unaffiliated with the profession. For the initial committee, one unaffiliated member and one naturopath shall serve four-year terms, one unaffiliated member and one naturopath shall serve three-year terms, and one naturopath shall serve a two-year term. The term of office for committee members after the initial committee is four years. Any committee member may be removed for just cause including a finding of fact of unprofessional conduct, impaired practice, or more than three unexcused absences. The ((director)) secretary may appoint a new member to fill any vacancy on the committee for the remainder of the unexpired term.

No committee member may serve more than two consecutive terms, whether full or partial.

(2) Committee members shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(3) The committee may elect annually a chair and vice-chair to direct the meetings of the committee. The committee shall meet at least once each year, and may hold additional meetings as called by the ((director)) secretary or the chair.

Sec. 93. RCW 18.36A.080 and 1987 c 447 s 8 are each amended to read as follows:

The ((director)) secretary, members of the committee, or individuals acting on their behalf, are immune from suit in any civil action based on any act performed in the course of their duties.

Sec. 94. RCW 18.36A.090 and 1987 c 447 s 9 are each amended to read as follows:

The department shall issue a license to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the ((director)) secretary, the minimum standard of which shall be the successful completion of a doctorate degree program in naturopathy which includes a minimum of two hundred post-graduate hours in the study of mechanotherapy from an approved educational program, or successful completion of equivalent alternate training that meets the criteria established by the ((director)) secretary. The requirement for two hundred post-graduate hours in the study of mechanotherapy shall expire June 30, 1989;

(2) Successful completion of any equivalent experience requirement established by the ((director)) secretary;

(3) Successful completion of an examination administered or approved by the ((director)) secretary;

(4) Good moral character; and

(5) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

The ((director)) secretary shall establish what constitutes adequate proof of meeting the above requirements. Any person holding a valid license to practice drugless therapeutics under chapter 18.36 RCW upon January 1, 1988, shall be deemed licensed pursuant to this chapter.

Sec. 95. RCW 18.36A.100 and 1987 c 447 s 10 are each amended to read as follows:

The ((director)) secretary shall establish by rule the standards for approval of educational programs and alternate training and may contract with individuals or organizations having expertise in the profession and/or in education to report to the ((director)) secretary the information necessary for the ((director)) secretary to evaluate the educational programs. The standards for approval shall be based on the minimal competencies necessary for safe practice. The standards and procedures for approval shall apply equally to educational programs and equivalent alternate training within the United States and those in foreign jurisdictions. The ((director)) secretary may establish a fee for educational program evaluation. The fee shall be determined by the administrative costs for the educational program evaluation, including, but not limited to, costs for site evaluation.

Sec. 96. RCW 18.36A.110 and 1987 c 447 s 11 are each amended to read as follows:

(1) The date and location of the examination shall be established by the ((director)) secretary. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The ((director)) secretary shall establish by rule the examination application deadline.

(2) The examination shall contain subjects appropriate to the standards of competency and scope of practice.

(3) The ((director)) secretary shall establish by rule the requirements for a reexamination if the applicant has failed the examination.

(4) The committee may recommend to the ((director)) secretary an examination prepared or administered, or both, by a private testing agency or association of licensing boards.

Sec. 97. RCW 18.36A.120 and 1987 c 447 s 12 are each amended to read as follows:

The ((director)) secretary shall establish by rule the standards for licensure of applicants licensed in another jurisdiction. However, the standards for reciprocity of licensure shall not be less than required for licensure in the state of Washington.

Sec. 98. RCW 18.36A.130 and 1987 c 447 s 13 are each amended to read as follows:

Applications for licensure shall be submitted on forms provided by the department. The department may require any information and documentation needed to determine if the applicant meets the criteria for licensure as provided in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the ((director)) secretary as provided in RCW ((~~43-24-086~~)) 43.70.250. The fee shall be submitted with the application.

Sec. 99. RCW 18.36A.140 and 1987 c 447 s 14 are each amended to read as follows:

The ((director)) secretary shall establish by rule the requirements for renewal of licenses. The ((director)) secretary shall establish a renewal and late renewal penalty fee as provided in RCW ((~~43-24-086~~)) 43.70.250. Failure to renew shall invalidate the license and all privileges granted by the license. The ((director)) secretary shall determine by rule whether a license shall be canceled for failure to renew and shall establish procedures and prerequisites for relicensure.

Sec. 100. RCW 18.46.010 and 1985 c 213 s 8 are each amended to read as follows:

(1) "Maternity home" means any home, place, hospital or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery: PROVIDED, HOWEVER, That this chapter

shall not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association or its successor.

(2) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

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

Sec. 101. RCW 18.46.050 and 1989 c 175 s 63 are each amended to read as follows:

The department may deny, suspend, or revoke a license in any case in which it finds that there has been failure or refusal to comply with the requirements established under this chapter or the rules adopted under it.

~~((RCW 43.20A.205))~~ Section 377 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 102. RCW 18.50.005 and 1987 c 467 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) "Department" means the department of ~~((licensing))~~ health.

(2) ~~(("Director" means the director of licensing))~~ "Secretary" means the secretary of health.

(3) "Midwife" means a midwife licensed under this chapter.

(4) "Physician" means a physician licensed under chapter 18.57 or 18.71 RCW.

Sec. 103. RCW 18.50.010 and 1987 c 467 s 2 are each amended to read as follows:

Any person shall be regarded as practicing midwifery within the meaning of this chapter who shall render medical aid for a fee or compensation to a woman during prenatal, intrapartum, and postpartum stages or who shall advertise as a midwife by signs, printed cards, or otherwise. Nothing shall be construed in this chapter to prohibit gratuitous services. It shall be the duty of a midwife to consult with a physician whenever there are significant deviations from normal in either the mother or the infant.

~~((A study shall be conducted by the department of licensing in consultation with the department of social and health services and the midwifery advisory committee to determine maternal and neonatal outcome data by type of practitioner, including an analysis of births attended by nonlicensed practitioners. The study shall also determine the role of nonlicensed practitioners in the provision of maternity services in the state of Washington. The results of the study shall be reported to the legislature in January, 1988.))~~

Sec. 104. RCW 18.50.020 and 1917 c 160 s 1 are each amended to read as follows:

Any person who shall practice midwifery in this state after July 1, 1917, shall first obtain from the (~~director of licensing of the state of Washington~~) secretary a license so to do, and the said (~~director~~) secretary is authorized to grant such license after examination of the applicant as hereinafter provided.

Sec. 105. RCW 18.50.034 and 1981 c 53 s 11 are each amended to read as follows:

Nothing in this chapter shall be construed to apply to or interfere in any way with the practice of midwifery by a person who is enrolled in a program of midwifery approved and accredited by the (~~director~~) secretary: PROVIDED, That the performance of such services is only pursuant to a regular course of instruction or assignment from the student's instructor, and that such services are performed only under the supervision and control of a person licensed in the state of Washington to perform services encompassed under this chapter.

Sec. 106. RCW 18.50.040 and 1987 c 467 s 3 are each amended to read as follows:

(1) Any person seeking to be examined shall present to the (~~director~~) secretary, at least forty-five days before the commencement of the examination, a written application on a form or forms provided by the (~~director~~) secretary setting forth under affidavit such information as the (~~director~~) secretary may require and proof the candidate has received a high school degree or its equivalent; that the candidate is twenty-one years of age or older; that the candidate has received a certificate or diploma from a midwifery program accredited by the (~~director~~) secretary and licensed under chapter 28C.10 RCW, when applicable, or a certificate or diploma in a foreign institution on midwifery of equal requirements conferring the full right to practice midwifery in the country in which it was issued. The diploma must bear the seal of the institution from which the applicant was graduated. Foreign candidates must present with the application a translation of the foreign certificate or diploma made by and under the seal of the consulate of the country in which the certificate or diploma was issued.

(2) The candidate shall meet the following conditions:

(a) Obtaining a minimum period of midwifery training for at least three years including the study of the basic nursing skills that the department shall prescribe by rule. However, if the applicant is a registered nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, or has had previous nursing education or practical midwifery experience, the required period of training may be reduced depending upon the extent of the candidate's qualifications as determined under rules adopted by the department. In no case shall the training be reduced to a period of less than two years.

(b) Meeting minimum educational requirements which shall include studying obstetrics; neonatal pediatrics; basic sciences; female reproductive anatomy and physiology; behavioral sciences; childbirth education; community care; obstetrical pharmacology; epidemiology; gynecology; family planning; genetics; embryology; neonatology; the medical and legal aspects of midwifery; nutrition during pregnancy and lactation; breast feeding; nursing skills, including but not limited to injections, administering intravenous fluids, catheterization, and aseptic technique; and such other requirements prescribed by rule.

(c) For a student midwife during training, undertaking the care of not less than fifty women in each of the prenatal, intrapartum, and early postpartum periods, but the same women need not be seen through all three periods. A student midwife may be issued a permit upon the satisfactory completion of the requirements in (a), (b), and (c) of this subsection and the satisfactory completion of the licensure examination required by RCW 18.50.060. The permit permits the student midwife to practice under the supervision of a midwife licensed under this chapter, a physician or a certified nurse-midwife licensed under the authority of chapter 18.88 RCW. The permit shall expire within one year of issuance and may be extended as provided by rule.

(d) Observing an additional fifty women in the intrapartum period before the candidate qualifies for a license.

(3) Notwithstanding subsections (1) and (2) of this section, the department shall adopt rules to provide credit toward the educational requirements for licensure before July 1, 1988, of nonlicensed midwives, including rules to provide:

- (a) Credit toward licensure for documented deliveries;
- (b) The substitution of relevant experience for classroom time; and
- (c) That experienced lay midwives may sit for the licensing examination without completing the required coursework.

The training required under this section shall include training in either hospitals or alternative birth settings or both with particular emphasis on learning the ability to differentiate between low-risk and high-risk pregnancies.

Sec. 107. RCW 18.50.045 and 1981 c 53 s 7 are each amended to read as follows:

The ~~((director))~~ secretary shall promulgate standards by rule under chapter 34.05 RCW for accrediting midwifery educational programs. The standards shall cover the provision of adequate clinical and didactic instruction in all subjects and noncurriculum matters under this section including, but not limited to, staffing and teacher qualifications. In developing the standards, the ~~((director))~~ secretary shall be advised by and receive the recommendations of the midwifery advisory committee.

Sec. 108. RCW 18.50.050 and 1985 c 7 s 48 are each amended to read as follows:

If the application is approved and the candidate shall have deposited an examination fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250 with the ~~((director))~~ secretary, the candidate shall be admitted to the examination, and in case of failure to pass the examination, may be reexamined at any regular examination within one year without the payment of an additional fee, said fee to be retained by the ~~((director))~~ secretary after failure to pass the second examination.

Sec. 109. RCW 18.50.060 and 1987 c 467 s 4 are each amended to read as follows:

(1) The ~~((director of licensing))~~ secretary is hereby authorized and empowered to execute the provisions of this chapter and shall offer examinations in midwifery at least twice a year at such times and places as the ~~((director))~~ secretary may select. The examinations shall be written and shall be in the English language.

(2) The ~~((director))~~ secretary, with the assistance of the midwifery advisory committee, shall develop or approve a licensure examination in the subjects that the ~~((director))~~ secretary determines are within the scope of and commensurate with the work performed by a licensed midwife. The examination shall be sufficient to test the scientific and practical fitness of candidates to practice midwifery. All application papers shall be deposited with the ~~((director))~~ secretary and there retained for at least one year, when they may be destroyed.

(3) If the examination is satisfactorily completed, the ~~((director))~~ secretary shall issue to such candidate a license entitling the candidate to practice midwifery in the state of Washington.

Sec. 110. RCW 18.50.102 and 1985 c 7 s 49 are each amended to read as follows:

Every person licensed to practice midwifery shall register with the ~~((director of licensing))~~ secretary annually and pay an annual renewal registration fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250 on or before the licensee's birth anniversary date. The license of the person shall be renewed for a period of one year. Any failure to register and pay the annual renewal registration fee shall render the license invalid. The license shall be reinstated upon written application to the ~~((director))~~ secretary, payment to the state of a penalty fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250, and payment to the state of all delinquent annual license renewal fees. Any person who fails to renew his or her license for a period of three years shall not be entitled to renew such license under this section. Such person, in order to obtain a license to practice midwifery in this state, shall file a new application under this chapter, along with the required fee. The

~~((director))~~ secretary, in the ~~((director's))~~ secretary's discretion, may permit the applicant to be licensed without examination if satisfied that the applicant meets all the requirements for licensure in this state and is competent to engage in the practice of midwifery.

Sec. 111. RCW 18.50.105 and 1981 c 53 s 12 are each amended to read as follows:

The ~~((director))~~ secretary, with the advice of the midwifery advisory committee, shall develop a form to be used by a midwife to inform the patient of the qualifications of a licensed midwife.

Sec. 112. RCW 18.50.115 and 1987 c 467 s 6 are each amended to read as follows:

A midwife licensed under this chapter may obtain and administer prophylactic ophthalmic medication, postpartum oxytocic, vitamin K, Rho immune globulin (human), and local anesthetic and may administer such other drugs or medications as prescribed by a physician. A pharmacist who dispenses such drugs to a licensed midwife shall not be liable for any adverse reactions caused by any method of use by the midwife.

The ~~((director))~~ secretary, after consultation with representatives of the midwife advisory committee, the board of pharmacy, and the board of medical examiners, may issue regulations which authorize licensed midwives to purchase and use legend drugs and devices in addition to the drugs authorized in this chapter.

Sec. 113. RCW 18.50.135 and 1981 c 53 s 15 are each amended to read as follows:

The ~~((director))~~ secretary shall promulgate rules under chapter 34.05 RCW as are necessary to carry out the purposes of this chapter.

Sec. 114. RCW 18.50.140 and 1987 c 467 s 5 are each amended to read as follows:

The midwifery advisory committee is created.

The committee shall be composed of one physician who is a practicing obstetrician; one practicing physician; one certified nurse midwife licensed under chapter 18.88 RCW; three midwives licensed under this chapter; and one public member, who shall have no financial interest in the rendering of health services. The committee may seek other consultants as appropriate, including persons trained in childbirth education and perinatology or neonatology.

The members are appointed by the ~~((director))~~ secretary and serve at the pleasure of the ~~((director))~~ secretary but may not serve more than five years consecutively. The terms of office shall be staggered. Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now or hereafter amended.

Sec. 115. RCW 18.50.150 and 1981 c 53 s 4 are each amended to read as follows:

The midwifery advisory committee shall advise and make recommendations to the ~~((director))~~ secretary on issues including, but not limited to, continuing education, mandatory reexamination, and peer review. The ~~((director))~~ secretary shall transmit the recommendations to the social and health services committee of the senate and the human services committee of the house of representatives on an annual basis.

Sec. 116. RCW 18.52.020 and 1979 c 158 s 44 are each amended to read as follows:

When used in this chapter, unless the context otherwise clearly requires:

(1) "Board" means the state board of examiners for the licensing of nursing home administrators representative of the professions and institutions concerned with the care of the chronically ill and infirm aged patients.

(2) ~~(("Director" means the director of licensing))~~ "Secretary" means the secretary of health.

(3) "Nursing home" means any facility or portion thereof licensed under state law as a nursing home.

(4) "Nursing home administrator" means an individual in active administrative charge of nursing homes as defined herein, whether or not having an ownership interest in such homes, and although functions and duties may be shared with or delegated to other persons: PROVIDED HOWEVER, That nothing in this definition or this chapter shall be construed to prevent any person, so long as he or she is otherwise qualified, from obtaining and maintaining a license even though he or she has not administered or does not continue to administer a nursing home.

Sec. 117. RCW 18.52.060 and 1984 c 287 s 40 are each amended to read as follows:

The board shall elect from its membership a chairman, vice chairman, and secretary-treasurer, and shall adopt rules ~~((and regulations))~~ to govern its proceedings. The chairman or four board members by signed written request may call board meetings upon reasonable written notice to each member. Each member shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. A full-time or part-time executive secretary for the board may be employed by the ~~((director))~~ secretary through the department of ~~((licensing))~~ health, and the ~~((director))~~ secretary through the department of ~~((licensing))~~ health shall provide the executive secretary and the board with such secretarial, administrative, and other assistance as may be required to carry out the purposes of this chapter. Employment of an executive secretary shall be subject to confirmation by the board. The position of executive secretary shall be exempt from the requirements of chapter 41.06 RCW.

Sec. 118. RCW 18.52.070 and 1984 c 279 s 65 are each amended to read as follows:

Upon the ~~((director's))~~ secretary's receipt of an application and examination fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250, and completed application forms provided by the ~~((director))~~ secretary, a nursing home administrator's license shall be issued to any person who:

(1) Is at least twenty-one years of age and of good moral character.

(2) Has presented evidence satisfactory to the board of practical experience, education, and training which, when evaluated according to criteria developed by the board, is equivalent to two years of experience in the operation of a nursing home: PROVIDED, That after January 1, 1980, no license shall be issued to any applicant unless such applicant has either successfully completed at least two years of formal education beyond the high school level or holds an associate degree from a recognized institution of higher learning: PROVIDED FURTHER, That the educational degree required by this subsection may be waived for individuals who present evidence satisfactory to the board of sufficient practical experience.

(3) Has passed an examination administered by the board which shall be designed to test the candidate's competence to administer a nursing home on the basis of the candidate's formal instruction and training or actual experience: PROVIDED HOWEVER, That nothing in this chapter or the rules ~~((and regulations thereunder))~~ under this chapter shall be construed to require an applicant for a license or provisional license as a nursing home administrator who is certified by any well established and generally recognized church or religious denomination which teaches reliance on spiritual means alone for healing as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teachings, to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in such institutions: PROVIDED FURTHER, That any such individual shall demonstrate in the process of application for the examination his or her membership in such church or religious denomination and his or her license shall indicate the limited extent of his or her authority to act as an administrator.

(4) The initial administrator members of the board shall be selected and appointed by the governor to meet the requirements of subsection (1) of this section and of RCW 18.52.040 and 18.52.050. The three nonadministrator members of the first board shall administer to the initial administrator members an appropriate examination, and the initial administrator members shall thereafter be issued their licenses under this chapter as nursing home administrators. The three nonadministrator members of the first board may exercise the powers of the board to carry out licensing of

the initial administrator members, regardless of the normal quorum or procedural requirements for board action. The licensing of the initial administrator members of the first board shall be carried out within thirty days after appointment of the board, and in all events prior to April 1, 1970.

Sec. 119. RCW 18.52.100 and 1987 c 150 s 33 are each amended to read as follows:

The board with the assistance of the ((director)) secretary for administrative matters shall have the duty and responsibility within the limits provided in this chapter:

(1) To develop standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall include criteria to evaluate the practical experience, education, and training of applicants for licenses to determine that applicants have the equivalent of two years of experience in the operation of a nursing home. The standards and criteria shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators as provided in this chapter.

(2) To develop appropriate techniques, including examinations and investigations to the extent necessary to determine whether an individual meets such standards for licensing.

(3) To develop, administer, and supervise an administrator-in-training program for applicants for licenses who are otherwise qualified but do not have the equivalent of two years experience in the operation of a nursing home at the time of application. Such program shall provide for supervision of each administrator-in-training by licensed nursing home administrators as preceptors. The board shall have the authority to do all acts necessary for the implementation of such a program, including, but not limited to, conducting education and training programs, establishing standards of qualification for preceptors, establishing criteria for creating and evaluating individual programs, and monitoring such programs to assure compliance with rules and regulations adopted by the board.

(4) To issue licenses to individuals determined by the board, after the application of such techniques, to meet such standards and to order the ((director)) secretary to deny licenses to individuals who do not meet such standards or who are in violation of this chapter or chapter 18.130 RCW.

(5) To conduct a continuing study and investigation of the licensing of administrators of nursing homes within the state with a view to the improvement of the standards imposed for the licensing of new administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who are to be licensed.

(6) To encourage qualified educational institutions and other qualified organizations to establish, provide, and conduct and continue such training

and instruction courses and programs as will enable all otherwise qualified individuals to attain the qualifications necessary to meet the standards for licensing nursing home administrators.

(7) To establish and carry out procedures, if required, designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements and standards for licensing set forth in this chapter.

(8) To establish appropriate procedures for the issuance in unusual circumstances and without examination of temporary license permits as nursing home administrators. Such permits may be issued and renewed by the ~~((director))~~ secretary pursuant to rules ~~((and regulations))~~ which shall be established by the board. Such permits and renewals shall be subject to confirmation or rescission by order of the board upon review at the next board meeting. Any such permit or renewal thereof shall in all events expire six months from the date issued. Persons receiving such permits need not have passed the required examination but shall meet the other requirements of this chapter, except RCW 18.52.070(2). After hearing before the board and upon order of the board the board may take appropriate disciplinary action for the reasons provided in this chapter or chapter 18.130 RCW.

(9) To advise the relevant state agencies regarding receipt and administration of such federal funds as are made available to carry out the educational purposes of this chapter.

(10) To advise the ~~((director))~~ secretary regarding the application forms used by the ~~((director))~~ secretary under this chapter.

(11) To issue rules ~~((and regulations))~~ which are necessary to carry out the functions of the board specifically assigned to it by this chapter.

Sec. 120. RCW 18.52.110 and 1984 c 279 s 69 are each amended to read as follows:

(1) Every holder of a nursing home administrator's license shall reregister it annually with the ~~((director))~~ secretary on dates specified by the ~~((director))~~ secretary by making application for reregistration on forms provided by the ~~((director))~~ secretary. Such reregistration shall be granted automatically upon receipt of a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250. In the event that any license is not reregistered within thirty days after the date for reregistration specified by the ~~((director))~~ secretary, the ~~((director))~~ secretary shall, in accordance with rules prescribed by the board, give notice to the license holder, and may thereafter in accordance with rules prescribed by the board charge up to double the normal reregistration fee. In the event that the license of an individual is not reregistered within two years from the most recent date for reregistration it shall lapse and such individual must again apply for licensing and meet all requirements of this chapter for a new applicant. The board may prescribe rules for maintenance of a license at a reduced fee for

temporary or permanent withdrawal or retirement from the active practice of nursing home administration.

(2) A condition of reregistration shall be the presentation of proof by the applicant that he or she has attended the number of classroom hours of approved educational programs, classes, seminars, or proceedings set by the board. The board shall have the power to approve programs, classes, seminars, or proceedings offered in this state or elsewhere by any accredited institution of higher learning or any national or local group or society if such programs, classes, seminars, or proceedings are reasonably related to the administration of nursing homes. The board shall establish rules (~~and regulations~~) providing that the applicant for reregistration may present such proofs yearly, or may obtain the cumulative number of required hours over a three year period and present such proofs over periods of three years. In no event shall the number of classroom hours required for any time period exceed the number of such board approved classroom hours reasonably available over such time period on an adult or continuing education basis to nonmatriculating participants in this state.

(3) An individual may obtain and reregister a license under this chapter although he or she does not actively engage in nursing home administration. The licensee shall meet requirements set by the board to ensure the individual's continued competency.

Sec. 121. RCW 18.52.130 and 1985 c 7 s 50 are each amended to read as follows:

Upon receipt of an application fee determined by the (~~director~~) secretary as provided in RCW (~~43.24.086~~) 43.70.250 and an annual license fee, the (~~director~~) secretary may issue a nursing home administrator's license, without examination, to any person who holds a current license as a nursing home administrator from another jurisdiction: PROVIDED, That the board finds that the standards for licensing in such other jurisdiction are at least the substantial equivalent of those prevailing in this state, and that the applicant is otherwise qualified. In the event that there is developed a nationally recognized standard for the licensing of nursing home administrators which is in fact utilized in licensing procedures on a reasonably uniform basis the board may by rule or regulation provide for granting reciprocal licensing on a showing of compliance with such standard.

Sec. 122. RCW 18.52A.020 and 1989 c 300 s 13 are each amended to read as follows:

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

(1) "Nursing assistant" means a person registered or certified under chapter 18.88A RCW who, under the direction and supervision of a registered nurse or licensed practical nurse, assists in the care of patients in a facility licensed under chapter 18.51 RCW, a wing of a hospital licensed under chapter 70.41 RCW if the wing is certified to provide nursing home

care under Title XVIII or Title XIX of the social security act, or any nursing care facility operated under the direction of the department of veterans affairs.

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

(3) "Nursing home" means a facility licensed under chapter 18.51 RCW, a wing of a hospital licensed under chapter 70.41 RCW if the wing is certified to provide nursing home care under Title XVIII or Title XIX of the social security act, or any nursing care facility operated under the direction of the department of veterans affairs.

(4) "Board" means the state board of nursing.

Sec. 123. RCW 18.52A.030 and 1989 c 300 s 1 are each amended to read as follows:

(1) Any nursing assistant employed by a nursing home, who has satisfactorily completed a nursing assistant training program under this chapter, shall, upon application, be issued a verification of completion by the program provider.

(2) All nursing assistants employed by a nursing home shall be required to be registered with the department (~~(of licensing)~~) and to show evidence of satisfactory completion of a nursing assistant training program, or that they are enrolled in and are progressing satisfactorily towards completion of a training program under standards promulgated by the board, which program must be completed within four months of employment. A nursing home may employ a person not currently enrolled if the employer within twenty days enrolls the person in an approved training program: PROVIDED, That a nursing home shall not assign an assistant to provide resident care until the assistant has demonstrated skills necessary to perform assigned duties and responsibilities competently. All persons enrolled in a training program must satisfactorily complete the program within four months from the date of initial employment.

(3) Compliance with this section shall be a condition of licensure of nursing homes under chapter 18.51 RCW. Beginning January 1, 1986, compliance with this section shall be a condition of licensure of hospitals licensed under chapter 70.41 RCW with a wing certified to provide nursing home care under Title XVIII or Title XIX of the social security act. Any health provider of skilled nursing facility care or intermediate care facility care shall meet the requirements of this section.

Sec. 124. RCW 18.52B.050 and 1988 c 267 s 5 are each amended to read as follows:

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

(1) The practice by an individual licensed, certified, or registered under the laws of this state and performing services within their authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the ((director)) secretary, and whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor.

Sec. 125. RCW 18.52B.080 and 1988 c 267 s 8 are each amended to read as follows:

The ((director)) secretary shall keep an official record of all proceedings. A part of the record shall consist of a register of all applicants for credentialing under this chapter and the results of each application.

Sec. 126. RCW 18.52B.110 and 1988 c 267 s 11 are each amended to read as follows:

The board, in consultation with the board of practical nursing, shall establish by rule the standards and procedures for approval of educational programs and alternative training. The ((director)) secretary may use or contract with individuals or organizations having expertise in the profession or in education to assist in the evaluations. The board shall establish by rule the standards and procedures for revocation of approval of education programs. The standards and procedures set shall apply equally to educational programs and training in the United States and in foreign jurisdictions. The ((director)) secretary may establish a fee for educational program evaluations.

Sec. 127. RCW 18.52B.120 and 1988 c 267 s 14 are each amended to read as follows:

Applications for certification shall be submitted on forms provided by the ((director)) secretary. The ((director)) secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for credentialing provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the ((director)) secretary under RCW ((43.24.086)) 43.70.250. The fee shall accompany the application.

Sec. 128. RCW 18.52B.150 and 1988 c 267 s 16 are each amended to read as follows:

An applicant holding a credential in another state may be certified by endorsement to practice in this state without examination if the ((director)) secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state.

Sec. 129. RCW 18.52B.160 and 1988 c 267 s 17 are each amended to read as follows:

The ((director)) secretary shall establish by rule the procedural requirements and fees for renewal of a registration or certificate. Failure to

renew shall invalidate the credential and all privileges granted by the credential. If a certificate has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the board by taking continuing education courses, or meeting other standards determined by the board.

Sec. 130. RCW 18.52C.020 and 1988 c 243 s 2 are each amended to read as follows:

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

(1) (~~"Director" means the director of the department of licensing~~) "Secretary" means the secretary of the department of health.

(2) "Health care facility" means a nursing home, hospital, hospice care facility, home health care agency, hospice agency, or other entity for the delivery of health care services.

(3) "Nursing home" means any nursing home facility licensed pursuant to chapter 18.52 RCW.

(4) "Nursing pool" means any person engaged in the business of providing, procuring, or referring health care personnel for temporary employment in health care facilities, such as licensed nurses or practical nurses, and nursing assistants. "Nursing pool" does not include an individual who only engages in providing his or her own services.

(5) "Person" includes an individual, firm, corporation, partnership, or association.

Sec. 131. RCW 18.52C.030 and 1988 c 243 s 3 are each amended to read as follows:

A person who operates a nursing pool shall register the pool with the (~~director~~) secretary. Each separate location of the business of a nursing pool shall have a separate registration.

The (~~director~~) secretary, by rule, shall establish forms and procedures for the processing of nursing pool registration applications, including the payment of registration fees pursuant to RCW (~~43-24-086~~) 43.70.250. An application for a nursing pool registration shall include at least the following information:

(1) The names and addresses of the owner or owners of the nursing pool; and

(2) If the owner is a corporation, copies of its articles of incorporation and current bylaws, together with the names and addresses of its officers and directors.

A registration issued by the (~~director~~) secretary in accordance with this section shall remain effective for a period of one year from the date of its issuance unless the registration is revoked or suspended pursuant to RCW 18.52C.040(4), or unless the nursing pool is sold or ownership or management is transferred, in which case the registration of the nursing

pool shall be voided and the new owner or operator shall apply for a new registration.

Sec. 132. RCW 18.52C.040 and 1988 c 243 s 4 are each amended to read as follows:

(1) The nursing pool shall document that each temporary employee or referred independent contractor provided or referred to health care facilities currently meets the minimum state credentialing requirements.

(2) The nursing pool shall not require, as a condition of employment or referral, that employees or independent contractors of the nursing pool recruit new employees or independent contractors for the nursing pool from among the permanent employees of the health care facility to which the nursing pool employee or independent contractor has been assigned or referred.

(3) The nursing pool shall carry professional and general liability insurance to insure against any loss or damage occurring, whether professional or otherwise, as the result of the negligence of its employees, agents or independent contractors for acts committed in the course of their employment with the nursing pool: PROVIDED, That a nursing pool that only refers self-employed, independent contractors to health care facilities shall carry professional and general liability insurance to cover its own liability as a nursing pool which refers self-employed, independent contractors to health care facilities: AND PROVIDED FURTHER, That it shall require, as a condition of referral, that self-employed, independent contractors carry professional and general liability insurance to insure against loss or damage resulting from their own acts committed in the course of their own employment by a health care facility.

(4) The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of registration and the discipline of persons registered under this chapter. The ((director)) secretary shall be the disciplinary authority under this chapter.

Sec. 133. RCW 18.53.021 and 1987 c 150 s 38 are each amended to read as follows:

It is a violation of RCW 18.130.190 for any person to practice optometry in this state without first obtaining a license from the ((director of licensing)) secretary of health.

Sec. 134. RCW 18.53.050 and 1985 c 7 s 51 are each amended to read as follows:

Every registered optometrist shall annually or on the date specified by the ((director)) secretary pay to the state treasurer a renewal fee, to be determined by the ((director)) secretary as provided in RCW ((43-24-086)) 43.70.250, and failure to pay such fee within the prescribed time shall cause the suspension of his or her certificate.

Sec. 135. RCW 18.53.060 and 1975 1st ex.s. c 69 s 4 are each amended to read as follows:

From and after January 1, 1940, in order to be eligible for examination for registration, a person shall be a citizen of the United States of America, who shall have a preliminary education of or equal to four years in a state accredited high school and has completed a full attendance course in a regularly chartered school of optometry maintaining a standard which is deemed sufficient and satisfactory by the optometry board, who is a person of good moral character, who is not afflicted with any contagious or infectious disease, who has a visual acuity in at least one eye, of a standard known as 20/40 under correction: PROVIDED, That from and after January 1, 1975, in order to be eligible for examination for a license, a person shall have the following qualifications:

- (1) Be a graduate of a state accredited high school or its equivalent;
- (2) Have a diploma or other certificate of completion from an accredited college of optometry or school of optometry, maintaining a standard which is deemed sufficient and satisfactory by the optometry board, conferring its degree of doctor of optometry or its equivalent, maintaining a course of four scholastic years in addition to preprofessional college level studies, and teaching substantially all of the following subjects: General anatomy, anatomy of the eyes, physiology, physics, chemistry, pharmacology, biology, bacteriology, general pathology, ocular pathology, ocular neurology, ocular myology, psychology, physiological optics, optometrical mechanics, clinical optometry, visual field charting and orthoptics, general laws of optics and refraction and use of the ophthalmoscope, retinoscope and other clinical instruments necessary in the practice of optometry;
- (3) Be of good moral character; and
- (4) Have no contagious or infectious disease.

Such person shall file an application for an examination and license with said board at any time thirty days prior to the time fixed for such examination, or at a later date if approved by the board, and such application must be on forms approved by the board, and properly attested, and if found to be in accordance with the provisions of this chapter shall entitle the applicant upon payment of the proper fee, to take the examination prescribed by the board. Such examination shall not be out of keeping with the established teachings and adopted textbooks of the recognized schools of optometry, and shall be confined to such subjects and practices as are recognized as essential to the practice of optometry. All candidates without discrimination, who shall successfully pass the prescribed examination, shall be registered by the board and shall, upon payment of the proper fee, be issued a license. The optometry board, at its discretion, may waive all or a portion of the written examination for any applicant who has satisfactorily

passed the examination given by the National Board of Examiners in Optometry. Any license to practice optometry in this state issued by the ((director)) secretary, and which shall be in full force and effect at the time of passage of this 1975 amendatory act, shall be continued.

Sec. 136. RCW 18.53.070 and 1985 c 7 s 52 are each amended to read as follows:

The fees for application for examination and for issuing a certificate of registration shall be determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250, which shall be paid to the ((director)) secretary as he or she shall prescribe.

Sec. 137. RCW 18.53.100 and 1986 c 259 s 81 are each amended to read as follows:

The following constitutes grounds for disciplinary action under chapter 18.130 RCW:

- (1) Any form of fraud or deceit used in securing a license; or
- (2) Any unprofessional conduct, of a nature likely to deceive or defraud the public; or
- (3) The employing either directly or indirectly of any person or persons commonly known as "cappers" or "steerers" to obtain business; or
- (4) To employ any person to solicit from house to house, or to personally solicit from house to house; or
- (5) Advertisement in any way in which untruthful, improbable or impossible statements are made regarding treatments, cures or values; or
- (6) The use of the term "eye specialist" in connection with the name of such optometrist; or
- (7) Inability to demonstrate, in a manner satisfactory to the ((director)) secretary or the board of optometry, their practical ability to perform any function set forth in RCW 18.53.010 which they utilize in their practice.

Sec. 138. RCW 18.53.140 and 1989 c 36 s 2 are each amended to read as follows:

It shall be unlawful for any person:

- (1) To sell or barter, or offer to sell or barter any license issued by the ((director)) secretary; or
- (2) To purchase or procure by barter any license with the intent to use the same as evidence of the holder's qualification to practice optometry; or
- (3) To alter with fraudulent intent in any material regard such license; or
- (4) To use or attempt to use any such license which has been purchased, fraudulently issued, counterfeited or materially altered as a valid license; or

(5) To practice optometry under a false or assumed name, or as a representative or agent of any person, firm or corporation with which the licensee has no connection: PROVIDED, Nothing in this chapter nor in the optometry law shall make it unlawful for any lawfully licensed optometrist or association of lawfully licensed optometrists to practice optometry under the name of any lawfully licensed optometrist who may transfer by inheritance or otherwise the right to use such name; or

(6) To practice optometry in this state either for ~~((himself))~~ him or herself or any other individual, corporation, partnership, group, public or private entity, or any member of the licensed healing arts without having at the time of so doing a valid license issued by the ~~((director of licensing))~~ secretary of health; or

(7) To in any manner barter or give away as premiums either on his own account or as agent or representative for any other purpose, firm or corporation, any eyeglasses, spectacles, lenses or frames; or

(8) To use drugs in the practice of optometry, except those topically applied for diagnostic or therapeutic purposes; or

(9) To use advertising whether printed, radio, display, or of any other nature, which is misleading or inaccurate in any material particular, nor shall any such person in any way misrepresent any goods or services (including but without limitation, its use, trademark, grade, quality, size, origin, substance, character, nature, finish, material, content, or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted; or

(10) To advertise the "free examination of eyes," "free consultation," "consultation without obligation," "free advice," or any words or phrases of similar import which convey the impression to the public that eyes are examined free or of a character tending to deceive or mislead the public, or in the nature of "bait advertising;" or

(11) To use an advertisement of a frame or mounting which is not truthful in describing the frame or mounting and all its component parts. Or advertise a frame or mounting at a price, unless it shall be depicted in the advertisement without lenses inserted, and in addition the advertisement must contain a statement immediately following, or adjacent to the advertised price, that the price is for frame or mounting only, and does not include lenses, eye examination and professional services, which statement shall appear in type as large as that used for the price, or advertise lenses or complete glasses, viz.: frame or mounting with lenses included, at a price either alone or in conjunction with professional services; or

(12) To use advertising, whether printed, radio, display, or of any other nature, which inaccurately lays claim to a policy or continuing practice of generally underselling competitors; or

(13) To use advertising, whether printed, radio, display or of any other nature which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services; or

(14) To use advertising whether printed, radio, display, or of any other nature, which states any definite amount of money as "down payment" and any definite amount of money as a subsequent payment, be it daily, weekly, monthly, or at the end of any period of time.

Sec. 139. RCW 18.54.050 and 1989 c 175 s 65 are each amended to read as follows:

The board must meet at least once yearly or more frequently upon call of the chairman or the (~~director of licensing~~) secretary of health at such times and places as the chairman or the (~~director of licensing~~) secretary of health may designate by giving three days' notice or as otherwise required by RCW 42.30.075.

Sec. 140. RCW 18.54.070 and 1986 c 259 s 84 are each amended to read as follows:

The board has the following powers and duties:

(1) The board shall prepare the necessary lists of examination questions, conduct examinations, either written or oral or partly written and partly oral, and shall certify to the (~~director of licensing~~) secretary of health all lists, signed by all members conducting the examination, of all applicants for licenses who have successfully passed the examination and a separate list of all applicants for licenses who have failed to pass the examination, together with a copy of all examination questions used, and the written answers to questions on written examinations submitted by each of the applicants.

(2) The board shall adopt rules and regulations to promote safety, protection and the welfare of the public, to carry out the purposes of this chapter, to aid the board in the performance of its powers and duties, and to govern the practice of optometry.

Sec. 141. RCW 18.54.140 and 1983 c 168 s 9 are each amended to read as follows:

Notwithstanding any other provisions of law, rule or regulation, the board may draw from the health professions account on vouchers approved by the (~~director of licensing~~) secretary of health, so much money as is necessary to carry into effect, to administer, and to enforce the provisions of this chapter.

Sec. 142. RCW 18.55.020 and 1980 c 101 s 2 are each amended to read as follows:

The terms defined in this section shall have the meaning ascribed to them wherever appearing in this chapter, unless a different meaning is specifically used to such term in such statute.

(1) (~~"Director" means the director of licensing~~) "Secretary" means the secretary of health.

(2) "Ocularist" means a person who designs, fabricates, and fits ocular prosthetic appliances. An ocularist is authorized to perform the necessary procedures to provide an ocular prosthetic service for the patient in the ocularist's office or laboratory on prescription of a physician. The ocularist is authorized to make judgment on the needed care, replacement, and use of an ocular prosthetic appliance. The ocularist is authorized to design, fabricate, and fit human prosthetics in the following categories:

- (a) Stock and custom prosthetic eyes;
- (b) Stock and custom therapeutic scleral shells;
- (c) Stock and custom therapeutic painted iris shells;
- (d) External orbital and facial prosthetics; and
- (e) Ocular conformers: PROVIDED, That nothing herein shall be construed to allow the fitting or fabricating of contact lenses.

(3) "Apprentice" means a person designated an apprentice in the records of the (~~director~~) secretary at the request of a licensed ocularist, and who shall thereafter receive from such licensee training and direct supervision in the work of an ocularist.

Sec. 143. RCW 18.55.030 and 1980 c 101 s 3 are each amended to read as follows:

Upon receipt of an application for a license and the license fee as determined by the (~~director~~) secretary, the (~~director~~) secretary shall issue a license if the applicant meets the requirements established under this chapter. The license, unless suspended or revoked, shall be renewed annually. All licenses issued under the provisions of this chapter shall expire on the 1st day of July.

Sec. 144. RCW 18.55.040 and 1985 c 7 s 53 are each amended to read as follows:

(1) No applicant for a license shall be registered under this chapter until the applicant pays an examination fee as shall be determined by the (~~director~~) secretary as provided in RCW (~~43.24.086~~) 43.70.250, and certifies under oath that the applicant:

- (a) Is eighteen years or more of age;
- (b) Has graduated from high school;
- (c) Is of good moral character; and
- (d) Has either:
 - (i) Had at least five years of apprenticeship training under a licensed ocularist in the state of Washington; or
 - (ii) Successfully completed a prescribed course in ocularist training programs in a college, teaching facility, or university approved by the (~~director~~) secretary; or

(iii) Been principally engaged in practicing as an ocularist outside the state of Washington for eight years and shall have been employed by a licensed ocularist or physician for one year in the state of Washington; and

(iv) Successfully passes with a grade of at least seventy-five percent, an examination, conducted by the ((director)) secretary, which shall determine whether the applicant has a thorough knowledge of the principles governing the practice of an ocularist.

(2) The ((director)) secretary shall issue a license without examination to any person who makes application therefor within six months after June 12, 1980, pays a fee as determined by the ((director)) secretary, and certifies under oath that the applicant has been actually and principally engaged in the practice of an ocularist in the state of Washington for a period of not less than five years immediately preceding June 12, 1980.

(3) Any person who on June 12, 1980 (a) is employed as apprentice by a person who is principally engaged in the practice of an ocularist, (b) registers with the ((director)) secretary prior to one hundred twenty days after June 12, 1980, and (c) furnishes the ((director)) secretary a statement, under oath, and certified as correct by the employer, as to the length of time of such employment shall be given credit for such period towards compliance with the requirement for five years' apprenticeship.

Sec. 145. RCW 18.55.050 and 1985 c 7 s 54 are each amended to read as follows:

Every licensee under this chapter shall pay an annual renewal registration fee determined by the ((director)) secretary, as provided by RCW ((~~43.24.086~~)) 43.70.250, on or before the 1st day of July of each year, and thereupon the license of such person shall be renewed for a period of one year. An application for renewal shall be on the form provided by the ((director)) secretary and shall be filed with the department of ((licensing)) health not less than ten days prior to its expiration. Each application for renewal shall be accompanied by a license fee as shall be determined by the ((director)) secretary. Any license not renewed as provided in this section shall render the license invalid but such licensee shall be reinstated upon written application therefore to the ((director)) secretary and payment of a renewal fee to the ((director)) secretary as provided in RCW ((~~43.24.086~~)) 43.70.250, together with all delinquent annual renewal license fees.

Sec. 146. RCW 18.55.060 and 1980 c 101 s 5 are each amended to read as follows:

(1) No licensee under this chapter may have more than two apprentices in training at one time.

(2) The licensee shall be responsible for the acts of the apprentices in the performance of their work in the apprenticeship program.

(3) Apprentices shall complete their apprenticeship in eight years and shall not work longer as an apprentice unless the ((director)) secretary determines, after a hearing, that the apprentice was prevented by causes beyond his or her control from completing the apprenticeship and becoming a licensee hereunder in eight years.

Sec. 147. RCW 18.57.001 and 1979 c 117 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Board" means the Washington state board of osteopathic medicine and surgery;

(2) "Department" means the department of ((licensing)) health;

(3) (~~"Director" means the director of licensing~~) "Secretary" means the secretary of health; and

(4) "Osteopathic medicine and surgery" means the use of any and all methods in the treatment of disease, injuries, deformities, and all other physical and mental conditions in and of human beings, including the use of osteopathic manipulative therapy. The term means the same as "osteopathy and surgery".

Sec. 148. RCW 18.57.020 and 1979 c 117 s 11 are each amended to read as follows:

A license shall be issued by the ((director)) secretary authorizing the holder thereof to practice osteopathy or osteopathic medicine and surgery, including the use of internal medicine and drugs, and shall be the only type of license issued. All licenses to practice osteopathy or osteopathic medicine and surgery, including the use of internal medicine and drugs, heretofore issued shall remain in full force and effect: PROVIDED, That a license to practice osteopathy and surgery shall be deemed to be the same as a license to practice osteopathic medicine and surgery, and the former license may be exchanged for the latter license at the option of the license holder.

In order to procure a license to practice osteopathic medicine and surgery, the applicant must file with the board satisfactory testimonials of good moral character and a diploma issued by some legally chartered school of osteopathic medicine and surgery, approved by the board, or satisfactory evidence of having possessed such diploma, and he or she must file with such diploma an application sworn to before some person authorized to administer oaths, and attested by the hand and seal of such officer, if he or she have a seal, stating that he or she is the person named in said diploma, that he or she is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination, without fraud or misrepresentation. The said application shall be made upon a form prepared by the ((director)) secretary, with the approval of the board, and it shall contain such information concerning said osteopathic medical instruction and the preliminary education of the applicant as the board may by rule provide. Applicants who have failed to meet the requirements must be rejected.

An applicant for a license to practice osteopathic medicine and surgery must furnish evidence satisfactory to the board that he or she has served for not less than one year as intern or resident in a training program acceptable to the board.

In addition, the applicant may be required to furnish evidence satisfactory to the board that he or she is physically and mentally capable of safely carrying on the practice of osteopathic medicine and surgery. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice osteopathic medicine and surgery. The applicant must also show that he or she has not been guilty of any conduct which would constitute grounds for denial, suspension, or revocation of such license under the laws of the state of Washington.

Nothing in this section shall be construed as prohibiting the board from requiring such additional information from applicants as it deems necessary.

Nothing in this chapter shall be construed to require any applicant for licensure, or any licensee, as a requisite of retaining or renewing licensure under this chapter, to be a member of any political and/or professional organization.

Sec. 149. RCW 18.57.050 and 1985 c 7 s 55 are each amended to read as follows:

Each applicant on making application shall pay the ~~((director))~~ secretary a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250 which shall be paid to the state treasurer by said ~~((director))~~ secretary and used to defray the expenses and compensation of said ~~((director))~~ secretary. In case the applicant's credentials are insufficient, or in case he does not desire to take the examination, the sum of fifteen dollars shall be returned. All persons licensed to practice osteopathy or osteopathic medicine and surgery within this state who are engaged in active practice shall pay on or before the first day of May of each year to the ~~((director))~~ secretary a renewal license fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250. The board may establish rules ~~((and regulations))~~ governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. Licenses not so renewed will not be valid. The ~~((director))~~ secretary shall thirty days or more before May 1st of each year mail to all active practitioners of osteopathy or osteopathic medicine and surgery in this state at their last known address a notice of the fact that the renewal fee will be due on or before the first of May. Nothing in this chapter shall be construed so as to require that the receipt shall be recorded as original licenses are required to be recorded.

Sec. 150. RCW 18.57.080 and 1979 c 117 s 13 are each amended to read as follows:

Applicants for a license must be personally examined by the board as to their qualifications. The examination shall be conducted in the English language, shall be practical in character and designed to discover the applicant's fitness to practice osteopathic medicine and surgery, and shall be in whole or in part in writing on the following fundamental subjects, to wit: Anatomy, histology, gynecology, pathology, bacteriology, chemistry, toxicology, physiology, obstetrics, general diagnosis, hygiene, principles and practice of osteopathic medicine, surgery, and the management of surgical cases (including anesthetics) and any other subjects that the board shall deem advisable. The examination papers shall form a part of the records of the ((director)) secretary and shall be kept on file by the board for a period of one year after examination. In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret until final action by the board on such application.

Sec. 151. RCW 18.57.130 and 1985 c 7 s 56 are each amended to read as follows:

Any person who meets the requirements of RCW 18.57.020 as now or hereafter amended and has been examined and licensed to practice osteopathic medicine and surgery by a state board of examiners of another state or the duly constituted authorities of another state authorized to issue licenses to practice osteopathic medicine and surgery upon examination, shall upon approval of the board be entitled to receive a license to practice osteopathic medicine and surgery in this state upon the payment of a fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250 to the state treasurer and filing a copy of his or her license in such other state, duly certified by the authorities granting the license to be a full, true, and correct copy thereof, and certifying also that the standard of requirements adopted by such authorities as provided by the law of such state is equal to that provided for by the provisions of this chapter: PROVIDED, That no license shall issue without examination to any person who has previously failed in an examination held in this state: PROVIDED, FURTHER, That all licenses herein mentioned may be revoked for unprofessional conduct, in the same manner and upon the same grounds as if issued under this chapter: PROVIDED, FURTHER, That no one shall be permitted to practice surgery under this chapter who has not a license to practice osteopathic medicine and surgery.

Sec. 152. RCW 18.57A.040 and 1986 c 7 s 57 and 1985 c 259 s 96 are each reenacted and amended to read as follows:

No osteopathic physician practicing in this state shall utilize the services of an osteopathic physician's assistant without the approval of the board.

Any osteopathic physician licensed in this state may apply to the board for permission to use the services of an osteopathic physician's assistant.

The application shall be accompanied by a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43-24-086))~~ 43.70.250, shall detail the manner and extent to which the physician's assistant would be used and supervised, shall detail the education, training, and experience of the osteopathic physician's assistant and shall provide such other information in such form as the board may require.

The board may approve or reject such applications. In addition, the board may modify the proposed utilization of the osteopathic physician's assistant, and approve the application as modified. No such approval shall extend for more than one year, but approval once granted may be renewed annually upon payment of a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43-24-086))~~ 43.70.250. Whenever it appears to the board that an osteopathic physician's assistant is being utilized in a manner inconsistent with the approval granted, the board may withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of an approval, a hearing shall be conducted in accordance with chapter 34.05 RCW.

Sec. 153. RCW 18.59.020 and 1984 c 9 s 3 are each amended to read as follows:

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

- (1) "Board" means the board of occupational therapy practice.
- (2) "Occupational therapy" is the scientifically based use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Specific occupational therapy services include but are not limited to: Using specifically designed activities and exercises to enhance neurodevelopmental, cognitive, perceptual motor, sensory integrative, and psychomotor functioning; administering and interpreting tests such as manual muscle and sensory integration; teaching daily living skills; developing prevocational skills and play and avocational capabilities; designing, fabricating, or applying selected orthotic and prosthetic devices or selected adaptive equipment; and adapting environments for the handicapped. These services are provided individually, in groups, or through social systems.
- (3) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.
- (4) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the supervision or with the regular consultation of an occupational therapist.
- (5) "Occupational therapy aide" means a person who is trained to perform specific occupational therapy techniques under professional supervision as defined by the board but who does not perform activities that require

advanced training in the sciences or practices involved in the profession of occupational therapy.

(6) "Person" means any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this chapter.

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

(8) ~~(("Director" means the director of licensing))~~ "Secretary" means the secretary of health.

Sec. 154. RCW 18.59.080 and 1984 c 9 s 9 are each amended to read as follows:

The ~~((director))~~ secretary shall issue a license to a person who meets the licensing requirements of this chapter upon payment of the prescribed license fee. The license shall be posted in a conspicuous location at the person's work site.

Sec. 155. RCW 18.59.090 and 1990 c 13 s 1 are each amended to read as follows:

(1) Licenses under this chapter shall be renewed at the time and in the manner determined by the ~~((director))~~ secretary and with the payment of a renewal fee. The board shall establish requirements for license renewal which provide evidence of continued competency. The ~~((director))~~ secretary may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules which may include additional continuing education or examination requirements.

(2) A suspended license is subject to expiration and may be renewed as provided in this section, but the renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any applicable late fee.

(3) Any occupational therapist or occupational therapy assistant licensed under this chapter not practicing occupational therapy or providing services may place his or her license in an inactive status. The ~~((director))~~ secretary may prescribe requirements for maintaining an inactive status and converting from an inactive or active status.

Sec. 156. RCW 18.59.110 and 1985 c 7 s 58 are each amended to read as follows:

The ~~((director))~~ secretary shall prescribe and publish fees in amounts determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250 for the following purposes:

- (1) Application for examination;
- (2) Initial license fee;
- (3) Renewal of license fee;

- (4) Late renewal fee; and
- (5) Limited permit fee.

The fees shall be set in such an amount as to reimburse the state, to the extent feasible, for the cost of the services rendered.

Sec. 157. RCW 18.59.150 and 1984 c 9 s 15 are each amended to read as follows:

The (~~director~~) secretary shall provide such administrative and investigative staff as are necessary for the board to carry out its duties under this chapter.

Sec. 158. RCW 18.71.010 and 1988 c 104 s 1 are each amended to read as follows:

The following terms used in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:

- (1) "Board" means the board of medical examiners.
- (2) (~~"Director" means the director of licensing~~) "Secretary" means the secretary of health.

(3) "Resident physician" means an individual who has graduated from a school of medicine which meets the requirements set forth in RCW 18.71.055 and is serving a period of postgraduate clinical medical training sponsored by a college or university in this state or by a hospital accredited by this state. For purposes of this chapter, the term shall include individuals designated as intern or medical fellow.

(4) "Emergency medical care" or "emergency medical service" has the same meaning as in chapter 18.73 RCW.

Sec. 159. RCW 18.71.015 and 1990 c 196 s 11 are each amended to read as follows:

There is hereby created a board of medical examiners consisting of six individuals licensed to practice medicine in the state of Washington, one individual who is licensed as a physician assistant under chapter 18.71A RCW, and two individuals who are not physicians, to be known as the Washington state board of medical examiners.

The board shall be appointed by the governor. On expiration of the term of any member, the governor shall appoint for a period of five years an individual of similar qualifications to take the place of such member. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been appointed and shall have qualified.

Each member of the board shall be a citizen of the United States, must be an actual resident of this state, and, if a physician, must have been licensed to practice medicine in this state for at least five years.

The board shall meet as soon as practicable after appointment and elect a chair and a vice-chair from its members. Meetings shall be held at least four times a year and at such place as the board shall determine and

at such other times and places as the board deems necessary. A majority of the board members serving shall constitute a quorum for the transaction of board business.

It shall require the affirmative vote of a majority of a quorum of the board to carry any motion or resolution, to adopt any rule, to pass any measure, or to authorize or deny the issuance of any certificate.

Each member of the board shall be compensated in accordance with RCW 43.03.240 and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060. Any such expenses shall be paid from funds appropriated to the department of health.

Any member of the board may be removed by the governor for neglect of duty, misconduct, or malfeasance or misfeasance in office.

Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor.

Sec. 160. RCW 18.71.040 and 1985 c 322 s 1 are each amended to read as follows:

Every applicant for a certificate to practice medicine and surgery shall pay a fee determined by the ((director)) secretary as provided in RCW ((43-24.086)) 43.70.250.

Sec. 161. RCW 18.71.050 and 1986 c 259 s 109 are each amended to read as follows:

(1) Each applicant who has graduated from a school of medicine located in any state, territory or possession of the United States, the District of Columbia, or the Dominion of Canada, shall file an application for licensure with the board on a form prepared by the ((director)) secretary with the approval of the board. Each applicant shall furnish proof satisfactory to the board of the following:

(a) That the applicant has attended and graduated from a school of medicine approved by the board;

(b) That the applicant has completed two years of postgraduate medical training in a program acceptable to the board, provided that applicants graduating before July 28, 1985, may complete only one year of postgraduate medical training;

(c) That the applicant is of good moral character; and

(d) That the applicant is physically and mentally capable of safely carrying on the practice of medicine. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice medicine.

(2) Nothing in this section shall be construed as prohibiting the board from requiring such additional information from applicants as it deems necessary. The issuance and denial of licenses are subject to chapter 18.130 RCW, the uniform disciplinary act.

Sec. 162. RCW 18.71.051 and 1975 1st ex.s. c 171 s 16 are each amended to read as follows:

Applicants for licensure to practice medicine who have graduated from a school of medicine located outside of the states, territories and possessions of the United States, the District of Columbia, or the Dominion of Canada, shall file an application for licensure with the board on a form prepared by the ~~((director))~~ secretary with the approval of the board. Each applicant shall furnish proof satisfactory to the board of the following:

(1) That he or she has completed in a school of medicine a resident course of professional instruction equivalent to that required in this chapter for applicants generally;

(2) That he or she meets all the requirements which must be met by graduates of the United States and Canadian school of medicine except that he or she need not have graduated from a school of medicine approved by the board;

(3) That he or she has satisfactorily passed the examination given by the educational council for foreign medical graduates or has met the requirements in lieu thereof as set forth in rules and regulations adopted by the board;

(4) That he or she has the ability to read, write, speak, understand, and be understood in the English language.

Sec. 163. RCW 18.71.080 and 1985 c 322 s 4 are each amended to read as follows:

Every person licensed to practice medicine in this state shall register with th. ~~((director of licensing))~~ secretary of health annually, and pay an annual renewal registration fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250. The board may establish rules ~~((and regulations))~~ governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. Any failure to register and pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the ~~((director))~~ secretary, and payment to the state of a penalty fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250, together with all delinquent annual license renewal fees: PROVIDED, HOWEVER, That any person who fails to renew the license for a period of three years, shall in no event be entitled to renew the license under this section. Such a person in order to obtain a license to practice medicine in this state, shall file an original application as provided for in this chapter, along with the requisite fee therefor. The board, in its sole discretion, may permit such applicant to be licensed without examination if it is satisfied that such applicant meets all the requirements for licensure in this state, and is competent to engage in the practice of medicine.

Sec. 164. RCW 18.71.095 and 1990 c 160 s 1 are each amended to read as follows:

The board may, without examination, issue a limited license to persons who possess the qualifications set forth herein:

(1) The board may, upon the written request of the secretary of the department of social and health services or the secretary of corrections, issue a limited license to practice medicine in this state to persons who have been accepted for employment by the department of social and health services or the department of corrections as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with patients, residents, or inmates of the state institutions under the control and supervision of the secretary of the department of social and health services or the department of corrections.

(2) The board may issue a limited license to practice medicine in this state to persons who have been accepted for employment by a county or city health department as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with his or her duties in employment with the city or county health department.

(3) Upon receipt of a completed application showing that the applicant meets all of the requirements for licensure set forth in RCW 18.71.050 except for completion of two years of postgraduate medical training, and that the applicant has been appointed as a resident physician in a program of postgraduate clinical training in this state approved by the board, the board may issue a limited license to a resident physician. Such license shall permit the resident physician to practice medicine only in connection with his or her duties as a resident physician and shall not authorize the physician to engage in any other form of practice. Each resident physician shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

(4)(a) Upon nomination by the dean of the school of medicine at the University of Washington or the chief executive officer of a hospital or other appropriate health care facility licensed in the state of Washington, the board may issue a limited license to a physician applicant invited to serve as a teaching-research member of the institution's instructional staff if the sponsoring institution and the applicant give evidence that he or she has graduated from a recognized medical school and has been licensed or otherwise privileged to practice medicine at his or her location of origin.

Such license shall permit the recipient to practice medicine only within the confines of the instructional program specified in the application and shall terminate whenever the holder ceases to be involved in that program, or at the end of one year, whichever is earlier. Upon request of the applicant and the institutional authority, the license may be renewed for no more than a total of two years.

(b) Upon nomination by the dean of the school of medicine of the University of Washington or the chief executive officer of any hospital or appropriate health care facility licensed in the state of Washington, the board may issue a limited license to an applicant selected by the sponsoring institution to be enrolled in one of its designated departmental or divisional fellowship programs provided that the applicant shall have graduated from a recognized medical school and has been granted a license or other appropriate certificate to practice medicine in the location of the applicant's origin. Such license shall permit the holder only to practice medicine within the confines of the fellowship program to which he or she has been appointed and, upon the request of the applicant and the sponsoring institution, the license may be renewed by the board for no more than a total of two years.

All persons licensed under this section shall be subject to the jurisdiction of the medical disciplinary board to the same extent as other members of the medical profession, in accordance with chapters 18.72 and 18.130 RCW.

Persons applying for licensure pursuant to this section shall pay an application fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250 and, in the event the license applied for is issued, a license fee at the rate provided for renewals of licenses generally. Licenses issued hereunder may be renewed annually pursuant to the provisions of RCW 18.71.080. Any person who obtains a limited license pursuant to this section may, without an additional application fee, apply for licensure under this chapter, but shall submit a new application form and comply with all other licensing requirements of this chapter.

Sec. 165. RCW 18.71.200 and 1986 c 259 s 111 are each amended to read as follows:

(1) As used in this chapter, a "physician's trained mobile intravenous therapy technician" means a person who:

(a) Has successfully completed an emergency medical technician course as described in chapter 18.73 RCW;

(b) Is trained under the supervision of an approved medical program director to administer intravenous solutions under written or oral authorization of an approved licensed physician; and

(c) Has been examined and certified as a physician's trained mobile intravenous therapy technician by the University of Washington's school of medicine or the department of ~~((social and health services))~~ health;

(2) As used in this chapter, a "physician's trained mobile airway management technician" means a person who:

(a) Has successfully completed an emergency medical technician course as described in chapter 18.73 RCW;

(b) Is trained under the supervision of an approved medical program director to perform endotracheal airway management and other authorized aids to ventilation under written or oral authorization of an approved licensed physician; and

(c) Has been examined and certified as a physician's trained mobile airway management technician by the University of Washington's school of medicine or the department of ~~((social and health services))~~ health; and

(3) As used in this chapter, a "physician's trained mobile intensive care paramedic" means a person who:

(a) Has successfully completed an emergency medical technician course as described in chapter 18.73 RCW;

(b) Is trained under the supervision of an approved medical program director:

(i) To carry out all phases of advanced cardiac life support;

(ii) To administer drugs under written or oral authorization of an approved licensed physician; and

(iii) To administer intravenous solutions under written or oral authorization of an approved licensed physician; and

(iv) To perform endotracheal airway management and other authorized aids to ventilation; and

(c) Has been examined and certified as a physician's trained mobile intensive care paramedic by the University of Washington's school of medicine or by the department of ~~((social and health services))~~ health.

Sec. 166. RCW 18.72.100 and 1984 c 287 s 45 are each amended to read as follows:

Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be repaid their travel expenses while engaged in business of the board in accordance with RCW 43.03.050 and 43.03.060. Such compensation and reimbursement for expenses shall be paid out of the general fund on vouchers approved by the ~~((director of licensing))~~ secretary of health.

Sec. 167. RCW 18.72.120 and 1955 c 202 s 12 are each amended to read as follows:

The first board shall be organized in this manner: Within ten days after the effective date of this chapter the ~~((director of licenses))~~ secretary of health shall appoint five holders of licenses to practice medicine and surgery in this state to serve as members of a temporary commission which shall, within ninety days thereafter, organize and hold the election to name the first members of the medical disciplinary board. The temporary commission shall adopt such rules ~~((and regulations))~~ as it deems necessary to govern

the holding of the first election. After the election is completed and the first members of the board have qualified and taken office, the temporary commission shall be abolished and all of its records shall be turned over to the board.

Sec. 168. RCW 18.72.155 and 1979 ex.s. c 111 s 6 are each amended to read as follows:

The ((director)) secretary of the department of ((licensing)) health shall appoint, from a list of three names supplied by the board, an executive secretary who shall act to carry out the provisions of this chapter. The ((director)) secretary shall also employ such additional staff including administrative assistants, investigators, and clerical staff as are required to enable the board to accomplish its duties and responsibilities. The executive secretary shall be exempt from the provisions of the civil service law, chapter 41.06 RCW, as now or hereafter amended.

Sec. 169. RCW 18.72.306 and 1989 c 119 s 2 are each amended to read as follows:

(1) The board shall enter into a contract with the committee to implement an impaired physician program. The impaired physician program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired physicians to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired physicians including those ordered by the board;
- (f) Providing post-treatment monitoring and support of rehabilitative impaired physicians;
- (g) Performing such other activities as agreed upon by the board and the committee; and
- (h) Providing prevention and education services.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to twenty-five dollars on each license renewal or issuance of a new license to be collected by the department of ((licensing)) health from every physician and surgeon licensed under chapter 18.71 RCW in addition to other license fees and the medical discipline assessment fee established under RCW 18.72.380. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired physician program.

Sec. 170. RCW 18.72.380 and 1985 c 7 s 62 are each amended to read as follows:

There is hereby levied to be collected by the department of ((licensing)) health from every physician and surgeon licensed pursuant to chapter

18.71 RCW an annual medical disciplinary assessment equal to the license renewal fee established under RCW (~~(43.24.086)~~) 43.70.250. The assessment levied pursuant to this subsection is in addition to any license renewal fee established under RCW (~~(43.24.086)~~) 43.70.250.

Sec. 171. RCW 18.72.400 and 1983 c 71 s 3 are each amended to read as follows:

The (~~director of licensing~~) secretary of health shall allocate all appropriated funds to accomplish the purposes of this chapter.

Sec. 172. RCW 18.74.010 and 1988 c 185 s 1 are each amended to read as follows:

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

(1) "Board" means the board of physical therapy created by RCW 18.74.020.

(2) "Department" means the department of (~~licensing~~) health.

(3) (~~"Director" means the director of licensing~~) "Secretary" means the secretary of health.

(4) "Physical therapy" means the treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, cold, air, light, water, electricity, sound, massage, and therapeutic exercise, which includes posture and rehabilitation procedures; the performance of tests and measurements of neuromuscular function as an aid to the diagnosis or treatment of any human condition; performance of treatments on the basis of test findings after consultation with and periodic review by an authorized health care practitioner except as provided in RCW 18.74.012 until June 30, 1991; supervision of selective forms of treatment by trained supportive personnel; and provision of consultative services for health, education, and community agencies. The use of Roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the use of spinal manipulation or manipulative mobilization of the spine and its immediate articulations, are not included under the term "physical therapy" as used in this chapter.

(5) "Physical therapist" means a person who practices physical therapy as defined in this chapter but does not include massage operators as defined in RCW 18.108.010.

(6) (~~Words importing the masculine gender may be applied to females:~~

(~~7~~)) "Authorized health care practitioner" means and includes licensed physicians, osteopathic physicians, chiropractors, naturopaths, podiatrists, and dentists: PROVIDED, HOWEVER, That nothing herein shall be construed as altering the scope of practice of such practitioners as defined in their respective licensure laws.

Sec. 173. RCW 18.74.010 and 1990 c 297 s 17 are each amended to read as follows:

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

(1) "Board" means the board of physical therapy created by RCW 18.74.020.

(2) "Department" means the department of ~~((licensing))~~ health.

(3) ~~(("Director" means the director of licensing))~~ "Secretary" means the secretary of health.

(4) "Physical therapy" means the treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, cold, air, light, water, electricity, sound, massage, and therapeutic exercise, which includes posture and rehabilitation procedures; the performance of tests and measurements of neuromuscular function as an aid to the diagnosis or treatment of any human condition; performance of treatments on the basis of test findings after consultation with and periodic review by an authorized health care practitioner; supervision of selective forms of treatment by trained supportive personnel; and provision of consultative services for health, education, and community agencies. The use of Roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the use of spinal manipulation or manipulative mobilization of the spine and its immediate articulations, are not included under the term "physical therapy" as used in this chapter.

(5) "Physical therapist" means a person who practices physical therapy as defined in this chapter but does not include massage operators as defined in RCW 18.108.010.

(6) ~~((Words importing the masculine gender may be applied to females:~~

(7)) "Authorized health care practitioner" means and includes licensed physicians, osteopathic physicians, chiropractors, naturopaths, podiatrists, and dentists: PROVIDED, HOWEVER, That nothing herein shall be construed as altering the scope of practice of such practitioners as defined in their respective licensure laws.

Sec. 174. RCW 18.74.020 and 1984 c 287 s 46 are each amended to read as follows:

The state board of physical therapy is hereby created. The board shall consist of five members who shall be appointed by the governor. Of the initial appointments, two shall be appointed for a term of two years, two for a term of three years, and one for a term of four years. Thereafter, all appointments shall be for terms of four years. Four members of the board shall be physical therapists licensed under this chapter and residing in this state, shall have not less than five years' experience in the practice of physical therapy, and shall be actively engaged in practice within two years of

appointment. The fifth member shall be appointed from the public at large, shall have an interest in the rights of consumers of health services, and shall not be or have been a member of any other licensing board, a licensee of any health occupation board, an employee of any health facility nor derive his or her primary livelihood from the provision of health services at any level of responsibility. In the event that a member of the board for any reason cannot complete his or her term of office, another appointment shall be made by the governor in accordance with the procedure stated above to fill the remainder of the term. No member may serve for more than two successive four-year terms.

The (~~director of licensing~~) secretary of health shall furnish such secretarial, clerical and other assistance as the board may require. Each member of the board shall, in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060, be compensated in accordance with RCW 43.03.240.

Sec. 175. RCW 18.74.023 and 1986 c 259 s 124 are each amended to read as follows:

The board has the following powers and duties:

(1) To administer examinations to applicants for a license under this chapter.

(2) To pass upon the qualifications of applicants for a license and to certify to the (~~director~~) secretary duly qualified applicants.

(3) To make such rules not inconsistent with the laws of this state as may be deemed necessary or proper to carry out the purposes of this chapter.

(4) To establish and administer requirements for continuing professional education as may be necessary or proper to ensure the public health and safety and which may be a prerequisite to granting and renewing a license under this chapter.

(5) To keep an official record of all its proceedings, which record shall be evidence of all proceedings of the board which are set forth therein.

(6) To adopt rules not inconsistent with the laws of this state, when it deems appropriate, in response to questions put to it by professional health associations, physical therapists, and consumers in this state concerning the authority of physical therapists to perform particular acts.

Sec. 176. RCW 18.74.035 and 1983 c 116 s 7 are each amended to read as follows:

All qualified applicants for a license as a physical therapist shall be examined by the board at such time and place as the board may determine. The examination shall embrace the following subjects: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics; physical therapy, as defined in this chapter, applied to medicine,

neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of physical therapy as defined in this chapter; and such other subjects as the board may deem useful to test the applicant's fitness to practice physical therapy, but not including the adjustment or manipulation of the spine or use of a thrusting force as mobilization. Examinations shall be held within the state at least once a year, at such time and place as the board shall determine. An applicant who fails an examination may apply for reexamination upon payment of a reexamination fee determined by the ~~((director))~~ secretary.

Sec. 177. RCW 18.74.040 and 1983 c 116 s 8 are each amended to read as follows:

The ~~((director of licensing))~~ secretary of health shall license as a physical therapist, and shall furnish a license to each applicant who successfully passes the examination for licensure as a physical therapist.

Sec. 178. RCW 18.74.050 and 1985 c 7 s 63 are each amended to read as follows:

The ~~((director))~~ secretary shall furnish a license upon the authority of the board to any person who applies and who has qualified under the provisions of this chapter. At the time of applying, the applicant shall pay to the state treasurer a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086, provided))~~ 43.70.250. No person registered or licensed on July 24, 1983, as a physical therapist shall be required to pay an additional fee for a license under this chapter.

Sec. 179. RCW 18.74.060 and 1985 c 7 s 64 are each amended to read as follows:

Upon the recommendation of the board, the ~~((director))~~ secretary shall license as a physical therapist and shall furnish a license to any person who is a physical therapist registered or licensed under the laws of another state or territory, or the District of Columbia, if the qualifications for such registration or license required of the applicant were substantially equal to the requirements under this chapter. At the time of making application, the applicant shall pay to the state treasurer a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250.

Sec. 180. RCW 18.74.070 and 1983 c 116 s 12 are each amended to read as follows:

Every licensed physical therapist shall apply to the ~~((director))~~ secretary for a renewal of the license and pay to the state treasurer a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.085 as now or hereafter amended))~~ 43.70.250. The license of a physical therapist who fails to renew the license within thirty days of the date set by the ~~((director))~~ secretary for renewal shall automatically lapse. Within three years from the date of lapse and upon the recommendation of the board, the ~~((director))~~ secretary may revive a lapsed license upon the payment of all

past unpaid renewal fees and a penalty fee to be determined by the ((~~director~~)) secretary. The board may require reexamination of an applicant whose license has lapsed for more than three years and who has not continuously engaged in lawful practice in another state or territory, or waive reexamination in favor of evidence of continuing education satisfactory to the board.

Sec. 181. RCW 18.74.090 and 1987 c 150 s 48 are each amended to read as follows:

A person who is not licensed with the ((~~director of licensing~~)) secretary of health as a physical therapist under the requirements of this chapter shall not represent ((~~himself~~)) him or herself as being so licensed and shall not use in connection with his or her name the words or letters "P.T.", "R.P.T.", "L.P.T.", "physical therapy", "physiotherapy", "physical therapist" or "physiotherapist", or any other letters, words, signs, numbers, or insignia indicating or implying that he or she is a physical therapist. No person may practice physical therapy without first having a valid license. Nothing in this chapter prohibits any person licensed in this state under any other act from engaging in the practice for which he or she is licensed. It shall be the duty of the prosecuting attorney of each county to prosecute all cases involving a violation of this chapter arising within his or her county. The attorney general may assist in such prosecution and shall appear at all hearings when requested to do so by the board.

Sec. 182. RCW 18.74.095 and 1983 c 116 s 19 are each amended to read as follows:

If any person violates the provisions of this chapter, the attorney general, prosecuting attorney, the ((~~director~~)) secretary, the board, or any citizen of the same county, may maintain an action in the name of the state to enjoin such person from practicing or holding himself or herself out as practicing physical therapy. The injunction shall not relieve criminal prosecution but the remedy by injunction shall be in addition to the liability of such offender for criminal prosecution and the suspension or revocation of his or her license.

Sec. 183. RCW 18.74.120 and 1983 c 116 s 21 are each amended to read as follows:

The ((~~director of licensing~~)) secretary of health shall keep a record of proceedings under this chapter and a register of all persons licensed under it. The register shall show the name of every living licensed physical therapist, his or her last known place of residence, and the date and number of his or her license as a physical therapist.

Sec. 184. RCW 18.76.020 and 1987 c 214 s 19 are each amended to read as follows:

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

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

(2) "Poison information center medical director" means a person who: (a) Is licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathy and surgery under chapter 18.57 RCW; (b) is certified by the secretary under standards adopted under RCW 18.76.050; and (c) provides services enumerated under RCW 18.76.030 and 18.76.040, and is responsible for supervision of poison information specialists.

(3) "Poison information specialist" means a person who provides services enumerated under RCW 18.76.030 and 18.76.040 under the supervision of a poison information center medical director and is certified by the secretary under standards adopted under RCW 18.76.050.

(4) "Secretary" means the secretary of (~~social and health services~~) health.

Sec. 185. RCW 18.78.010 and 1983 c 55 s 2 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Board" shall mean "Washington state board of practical nursing."

(2) "Curriculum" means the theoretical and practical studies which must be taught in order for students to meet the minimum standards of competency as determined by the board.

(3) (~~"Director" shall mean "director of licensing."~~) "Secretary" means the secretary of health.

(4) "Licensed practical nurse," abbreviated "L.P.N.," means a person licensed by the board to practice practical nursing.

(5) "Licensed practical nurse practice" shall mean the performance of services requiring the knowledge, skill, and judgment necessary for carrying out selected aspects of the designated nursing regimen under the direction of a licensed physician and surgeon, dentist, osteopathic physician and surgeon, or podiatrist or at the direction and under the supervision of a registered nurse.

(6) "Supervision" shall mean the critical evaluation of acts performed with authority to take corrective action, but shall not be construed so as to require direct and bodily presence.

Sec. 186. RCW 18.78.050 and 1988 c 211 s 4 are each amended to read as follows:

The board shall conduct examinations for all applicants for licensure under this chapter and shall certify qualified applicants to the department of (~~licensing~~) health for licensing. The board shall also determine and formulate what constitutes the curriculum for an approved practical nursing program preparing persons for licensure under this chapter. The board shall establish criteria for licensure by endorsement.

The board may adopt rules or issue advisory opinions in response to questions from professional health associations, health care practitioners, and consumers in this state concerning licensed practical nurse practice. The board shall establish criteria for proof of reasonable currency of knowledge and skill as a basis for safe practice after three years inactive or lapsed status.

The board shall adopt such rules as are necessary to fulfill the purposes of this chapter pursuant to chapter 34.05 RCW.

Sec. 187. RCW 18.78.060 and 1988 c 212 s 1 are each amended to read as follows:

An applicant for a license to practice nursing as a licensed practical nurse shall submit to the board written evidence, on a form provided by the board, verified under oath, that the applicant:

- (1) Is at least eighteen years of age;
- (2) Is of good moral character;
- (3) Is of good physical and mental health;
- (4) Has completed at least a tenth grade course or its equivalent, as determined by the board;
- (5) Has completed an approved program of not less than nine months for the education of practical nurses, or its equivalent, as determined by the board.

To be licensed as a practical nurse, each applicant shall be required to pass an examination in such subjects as the board may determine within the scope of and commensurate with the work to be performed by a licensed practical nurse. Upon approval by the board, the department shall issue an interim permit authorizing the applicant to practice nursing as authorized under this chapter pending notification of the results of the first licensing examination following verification of satisfactory completion of an approved program of practical nursing. Any applicant failing to pass such an examination may apply for reexamination. If the applicant fails the examination, the interim permit expires upon notification and is not renewable. Upon passing such examination as determined by the board, the ~~((director))~~ secretary shall issue to the applicant a license to practice as a licensed practical nurse, providing the license fee is paid by the applicant and the applicant meets all other requirements of the board.

Sec. 188. RCW 18.78.080 and 1985 c 7 s 65 are each amended to read as follows:

All applicants applying for a license to practice as a licensed practical nurse with or without examination, as provided in this chapter, shall pay a license fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43-24-086))~~ 43.70.250 to the department of ~~((licensing))~~ health: PROVIDED, HOWEVER, That the applicant applying for a reexamination shall pay a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43-24-086))~~ 43.70.250.

Sec. 189. RCW 18.78.090 and 1986 c 7 s 66 and 1985 c 259 s 131 are each reenacted and amended to read as follows:

Every licensed practical nurse in this state shall renew the license with the department of ~~((licensing))~~ health and shall pay a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250. Any failure to register and pay the renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor and upon payment to the state of a penalty fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250.

Sec. 190. RCW 18.78.100 and 1983 c 55 s 11 are each amended to read as follows:

After consultation with the board, the ~~((director))~~ secretary shall appoint an executive secretary of the board to carry out the provisions of this chapter who shall have the following qualifications:

- (1) Be a registered nurse in the state of Washington;
- (2) Be the holder of a baccalaureate degree from an accredited four-year institution of higher education;
- (3) Have not less than five years' experience in the field of nursing; and
- (4) Have not less than two years' experience in nursing education.

Sec. 191. RCW 18.78.110 and 1983 c 55 s 12 are each amended to read as follows:

The ~~((director))~~ secretary shall fix the compensation and provide for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for the executive secretary of the board and shall provide such clerical assistance as ~~((said director))~~ the secretary may deem necessary.

Sec. 192. RCW 18.78.225 and 1988 c 211 s 12 are each amended to read as follows:

An individual may place his or her license on inactive status with proper notification to the department. The holder of an inactive license shall not practice practical nursing in this state. The inactive renewal fee shall be established by the ~~((director))~~ secretary pursuant to RCW ~~((43.24.086))~~ 43.70.250. Failure to renew an inactive license shall result in cancellation in the same manner as an active license. An inactive license may be placed in an active status upon compliance with the rules established by the board.

The provisions relating to the denial, suspension, and revocation of a license shall be applicable to an inactive or lapsed license. When proceedings to suspend or revoke an inactive license have been initiated, the license shall not be reinstated until the proceedings have been completed.

Sec. 193. RCW 18.83.010 and 1984 c 279 s 75 are each amended to read as follows:

When used in this chapter:

(1) The "practice of psychology" means the application of established principles of learning, motivation, perception, thinking and emotional relationships to problems of evaluation, group relations and behavior adjustment, including but not limited to: (a) counseling and guidance; (b) use of psychotherapeutic techniques with clients who have adjustment problems in the family, at school, at work or in interpersonal relationships; (c) measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes and skills.

This definition does not include the teaching of principles of psychology for accredited educational institutions, or the conduct of research in problems of human or animal behavior.

Nothing in this definition shall be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 RCW.

(2) (~~"Director" means director of licensing~~) "Secretary" means the secretary of health.

(3) "Board" means the examining board of psychology.

(4) "Committee" means the disciplinary committee established by the board.

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

Sec. 194. RCW 18.83.025 and 1984 c 279 s 87 are each amended to read as follows:

The (~~director~~) secretary has the following authority:

(1) To hire such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation, hearing, or proceeding, and to reimburse the individuals for services provided.

Sec. 195. RCW 18.83.045 and 1984 c 279 s 77 are each amended to read as follows:

The board shall meet at least once each year and at such other times as the board deems appropriate to properly discharge its duties. All meetings shall be held in Olympia, Washington, or such other places as may be designated by the (~~director~~) secretary. Five members of the board shall constitute a quorum, except that oral examinations may be conducted with only three psychologist members.

Sec. 196. RCW 18.83.050 and 1986 c 27 s 3 are each amended to read as follows:

(1) The board shall adopt such rules as it deems necessary to carry out its functions.

(2) The board shall examine the qualifications of applicants for licensing under this chapter, to determine which applicants are eligible for licensing under this chapter and shall forward to the ((director)) secretary the names of applicants so eligible.

(3) The board shall administer examinations to qualified applicants on at least an annual basis. The board shall determine the subject matter and scope of the examinations and shall require both written and oral examinations of each applicant, except as provided in RCW 18.83.170. The board may allow applicants to take the written examination upon the granting of their doctoral degree before completion of their internship for supervised experience.

(4) The board shall keep a complete record of its own proceedings, of the questions given in examinations, of the names and qualifications of all applicants, and the names and addresses of all licensed psychologists. The examination paper of such applicant shall be kept on file for a period of at least one year after examination.

(5) The board shall, by rule, adopt a code of ethics for psychologists which is designed to protect the public interest.

(6) The board shall create a disciplinary committee within the board for the purposes of hearing, examining, and ruling on complaints and evidence of unethical conduct or practices brought by the public, other psychologists, organizations, corporations, public or private agencies, or officers, agencies, or instrumentalities of state, county, or local governments.

(7) The board may require that persons licensed under this chapter as psychologists obtain and maintain professional liability insurance in amounts determined by the board to be practicable and reasonably available.

Sec. 197. RCW 18.83.060 and 1984 c 279 s 79 are each amended to read as follows:

Each applicant for a license shall file with the ((director)) secretary an application duly verified, in such form and setting forth such information as the board shall prescribe. An application fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250 shall accompany each application.

Sec. 198. RCW 18.83.072 and 1984 c 279 s 81 are each amended to read as follows:

(1) Examination of applicants shall be held in Olympia, Washington, or at such other place as designated by the ((director)) secretary, at least annually at such times as the board may determine.

(2) Any applicant shall have the right to discuss with the board his or her performance on the examination.

(3) Any applicant who fails to make a passing grade on the examination may be allowed to retake the examination. Any applicant who fails the

examination a second time must obtain special permission from the board to take the examination again.

(4) The reexamination fee shall be the same as the application fee set forth in RCW 18.83.060.

Sec. 199. RCW 18.83.080 and 1986 c 27 s 4 are each amended to read as follows:

Upon forwarding to the ((director)) secretary by the board of the name of each applicant entitled to a license under this chapter, the ((director)) secretary shall promptly issue to such applicant a license authorizing such applicant to use the title "psychologist" for a period of one year. Said license shall be in such form as the ((director)) secretary shall determine. Each licensed psychologist shall keep his or her license displayed in a conspicuous place in his or her principal place of business.

Sec. 200. RCW 18.83.090 and 1984 c 279 s 83 are each amended to read as follows:

The board shall establish rules governing mandatory continuing education requirements which shall be met by any psychologist applying for a license renewal. Each licensed psychologist shall pay to the health professions account, created in RCW ((43.24.072)) 43.70.320, annually, at such time as determined by the board, an annual license renewal fee determined by the ((director)) secretary under RCW ((43.24.086)) 43.70.250. Upon receipt of the fee, the ((director)) secretary shall issue a certificate of renewal in such form as the ((director)) secretary shall determine.

Sec. 201. RCW 18.83.105 and 1985 c 7 s 67 are each amended to read as follows:

The board may issue certificates of qualification with appropriate title to applicants who meet all the licensing requirements except the possession of the degree of Doctor of Philosophy or its equivalent in psychology from an accredited educational institution. These certificates of qualification certify that the holder has been examined by the board and is deemed competent to perform certain functions within the practice of psychology under the periodic direct supervision of a psychologist licensed by the board. Such functions will be specified on the certificate issued by the board. Such applicant shall pay to the board of examiners a fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250 for certification in a single area of qualification and a fee for amendment of the certificate to include each additional area of qualification. Upon petition by a holder the board of examiners may grant authority to function without immediate supervision.

Sec. 202. RCW 18.83.170 and 1984 c 279 s 92 are each amended to read as follows:

Upon application accompanied by a fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250, the board may

grant a license, without written examination, to any applicant who has not previously failed any examination held by the board of psychology of the state of Washington and furnishes evidence satisfactory to the board that the applicant:

(1) Holds a doctoral degree with primary emphasis on psychology from an accredited college or university; and

(2) Is licensed or certified to practice psychology in another state or country in which the requirements for such licensing or certification are, in the judgment of the board, essentially equivalent to those required by this chapter and the rules and regulations of the board. Such individuals must have been licensed or certified in another state for a period of at least two years; or

(3) Is a diplomate in good standing of the American Board of Examiners in Professional Psychology.

Sec. 203. RCW 18.83.190 and 1986 c 27 s 8 are each amended to read as follows:

If any person represents himself or herself to be a psychologist, unless the person is exempt from the provisions of this chapter, without possessing a valid license, certificated qualification, or a temporary permit to do so, or if he or she violates any of the provisions of this chapter, any prosecuting attorney, the ~~((director))~~ secretary, or any citizen of the same county may maintain an action in the name of the state to enjoin such person from representing himself or herself as a psychologist. The injunction shall not relieve the person from criminal prosecution, but the remedy by injunction shall be in addition to the liability of such offender to criminal prosecution and to suspension or revocation of his or her license.

Sec. 204. RCW 18.84.020 and 1987 c 412 s 3 are each amended to read as follows:

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

(1) "Department" means the department of ~~((licensing))~~ health.

(2) ~~(("Director" means the director of licensing))~~ "Secretary" means the secretary of health.

(3) "Licensed practitioner" means a physician or osteopathic physician licensed under chapter 18.71 or 18.57 RCW, respectively; a registered nurse licensed under chapter 18.88 RCW; or a podiatrist licensed under chapter 18.22 RCW.

(4) "Radiologic technologist" means an individual certified under this chapter, other than a licensed practitioner, who practices radiologic technology as a:

(a) Diagnostic radiologic technologist, who is a person who actually handles x-ray equipment in the process of applying radiation on a human being for diagnostic purposes under the supervision of a licensed practitioner; or

(b) Therapeutic radiologic technologist, who is a person who uses radiation-generating equipment for therapeutic purposes on human subjects at the direction of a licensed practitioner; or

(c) Nuclear medicine technologist, who is a person who prepares radiopharmaceuticals and administers them to human beings for diagnostic and therapeutic purposes and who performs in vivo and in vitro detection and measurement of radioactivity for medical purposes under the supervision of a licensed practitioner.

(5) "Advisory committee" means the Washington state radiologic technology advisory committee.

(6) "Approved school of radiologic technology" means a school of radiologic technology approved by the council on medical education of the American medical association or a school found to maintain the equivalent of such a course of study as determined by the department. Such school may be operated by a medical or educational institution, and for the purpose of providing the requisite clinical experience, shall be affiliated with one or more general hospitals.

(7) "Radiologic technology" means the use of ionizing radiation upon a human being for diagnostic or therapeutic purposes.

(8) "Radiologist" means a physician certified by the American board of radiology or the American osteopathic board of radiology.

Sec. 205. RCW 18.84.040 and 1987 c 412 s 5 are each amended to read as follows:

(1) In addition to any other authority provided by law, the ((director)) secretary may in consultation with the advisory committee:

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

(b) Set all certification and renewal fees in accordance with RCW ((43.24.086)) 43.70.250;

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

(d) Evaluate and designate those schools from which graduation will be accepted as proof of an applicant's eligibility to receive a certificate;

(e) Determine whether alternative methods of training are equivalent to formal education, and to establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to receive a certificate;

(f) Issue a certificate to any applicant who has met the education, training, and conduct requirements for certification; and

(g) Hire clerical, administrative, and investigative staff as needed to implement this chapter.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of certifications, uncertified practice and the discipline

of certificants under this chapter. The ((director)) secretary shall be the disciplining authority under this chapter.

Sec. 206. RCW 18.84.050 and 1987 c 412 s 6 are each amended to read as follows:

The ((director)) secretary shall keep an official record of all proceedings, a part of which record shall consist of a register of all applicants for certification under this chapter, with the result of each application.

Sec. 207. RCW 18.84.060 and 1987 c 412 s 7 are each amended to read as follows:

(1) There is created a state radiologic technology advisory committee consisting of seven members appointed by the ((director)) secretary who shall advise the ((director)) secretary concerning the administration of this chapter. Three members of the committee shall be radiologic technologists who are certified under this chapter, except for the initial members of the committee, and who have been engaged in the practice of radiologic technology for at least five years. Two members shall be radiologists. Two members of the committee shall be individuals who are unaffiliated with the profession representing the public. The term of office for committee members is four years. The terms of the first committee members, however, shall be staggered to ensure an orderly succession of new committee members thereafter. Any committee member may be removed for just cause. The ((director)) secretary may appoint a new member to fill any vacancy on the committee for the remainder of the unexpired term. No committee member may serve more than two consecutive terms whether full or partial.

(2) Committee members shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(3) The committee shall elect a chair and vice-chair annually to direct the meetings of the committee. The committee shall meet at least once each year, and may hold additional meetings as called by the ((director)) secretary or the chair. Four members of the committee shall constitute a quorum.

Sec. 208. RCW 18.84.070 and 1987 c 412 s 8 are each amended to read as follows:

The ((director)) secretary, members of the committee, or individuals acting on their behalf are immune from suit in any civil action based on any certification or disciplinary proceedings or other official acts performed in the course of their duties.

Sec. 209. RCW 18.84.080 and 1987 c 412 s 9 are each amended to read as follows:

(1) The ((director)) secretary shall issue a certificate to any applicant who demonstrates to the ((director's)) secretary's satisfaction, that the following requirements have been met:

(a) Graduation from an approved school or successful completion of alternate training that meets the criteria established by the ~~((director))~~ secretary; and

(b) Good moral character.

(2) Applicants shall be subject to the grounds for denial or issuance of a conditional license under chapter 18.130 RCW.

(3) The ~~((director))~~ secretary shall establish by rule what constitutes adequate proof of meeting the requirements for certification and for designation of certification in a particular field of radiologic technology.

Sec. 210. RCW 18.84.090 and 1987 c 412 s 10 are each amended to read as follows:

The ~~((director))~~ secretary, in consultation with the advisory committee, shall establish by rule the standards and procedures for approval of schools and alternate training, and may contract with individuals or organizations having expertise in the profession or in education to assist in evaluating those applying for approval. The standards and procedures set shall apply equally to schools and training within the United States and those in foreign jurisdictions.

Sec. 211. RCW 18.84.100 and 1987 c 412 s 11 are each amended to read as follows:

Applications for certification must be submitted on forms provided by the ~~((director))~~ secretary. The ~~((director))~~ secretary may require any information and documentation that reasonably relates to the determination of whether the applicant meets the requirements for certification provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250 which shall accompany the application.

Sec. 212. RCW 18.84.110 and 1987 c 412 s 12 are each amended to read as follows:

The ~~((director))~~ secretary, in consultation with the advisory committee, shall establish by rule the requirements and fees for renewal of certificates. Failure to renew invalidates the certificate and all privileges granted by the certificate. In the event a certificate has lapsed for a period longer than three years, the certificant shall demonstrate competence to the satisfaction of the ~~((director))~~ secretary by continuing education or under the other standards determined by the ~~((director))~~ secretary.

Sec. 213. RCW 18.88.030 and 1989 c 114 s 1 are each amended to read as follows:

Whenever used in this chapter, terms defined in this section shall have the meanings herein specified unless the context clearly indicates otherwise.

The practice of nursing means the performance of acts requiring substantial specialized knowledge, judgment and skill based upon the principles

of the biological, physiological, behavioral and sociological sciences in either:

(1) The observation, assessment, diagnosis, care or counsel, and health teaching of the ill, injured or infirm, or in the maintenance of health or prevention of illness of others.

(2) The performance of such additional acts requiring education and training and which are recognized jointly by the medical and nursing professions as proper to be performed by nurses licensed under this chapter and which shall be authorized by the board of nursing through its rules and regulations.

(3) The administration, supervision, delegation and evaluation of nursing practice: **PROVIDED, HOWEVER,** That nothing herein shall affect the authority of any hospital, hospital district, medical clinic or office, concerning its administration and supervision.

(4) The teaching of nursing.

(5) The executing of medical regimen as prescribed by a licensed physician, osteopathic physician, dentist, or podiatrist.

Nothing in this chapter shall be construed as prohibiting any person from practicing any profession for which a license shall have been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

This chapter shall not be construed as prohibiting the nursing care of the sick, without compensation, by any unlicensed person who does not hold herself or himself out to be a registered nurse, and further, this chapter shall not be construed as prohibiting the practice of practical nursing by any practical nurse, with or without compensation in either homes or hospitals.

The word "board" means the Washington state board of nursing.

The term "department" means the department of ~~((licensing))~~ health.

The word "diagnosis", in the context of nursing practice, means the identification of, and discrimination between, the person's physical and psycho-social signs and symptoms which are essential to effective execution and management of the nursing care regimen.

The term "diploma" means written official verification of completion of an approved nursing education program.

The term ~~(("director" means the director of licensing or the director's designee))~~ "secretary" means the secretary of health or the secretary's designee.

The terms "nurse" or "nursing" wherever they occur in this chapter, unless otherwise specified, for the purposes of this chapter shall mean a registered nurse or registered nursing.

Sec. 214. RCW 18.88.080 and 1988 c 211 s 8 are each amended to read as follows:

The board may adopt such rules (~~(and regulations)~~) not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of this chapter. The board shall approve curricula and shall establish criteria for minimum standards for schools preparing persons for licensure under this chapter. It shall keep a record of all its proceedings and make such reports to the governor as may be required. The board shall define by (~~(regulation)~~) rules what constitutes specialized and advanced levels of nursing practice as recognized by the medical and nursing professions. The board may adopt (~~(regulations)~~) rules or issue advisory opinions in response to questions put to it by professional health associations, nursing practitioners, and consumers in this state concerning the authority of various categories of nursing practitioners to perform particular acts.

The board shall approve such schools of nursing as meet the requirements of this chapter and the board, and the board shall approve establishment of basic nursing education programs and shall establish criteria as to the need for and the size of a program and the type of program and the geographical location. The board shall establish criteria for proof of reasonable currency of knowledge and skill as a basis for safe practice after three years inactive or lapsed status. The board shall establish criteria for licensure by endorsement. The board shall examine all applications for registration under this chapter, and shall certify to the (~~(director)~~) secretary for licensing duly qualified applicants.

The department shall furnish to the board such secretarial, clerical and other assistance as may be necessary to effectively administer the provisions of this chapter. Each member of the board shall, in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 while away from home, be compensated in accordance with RCW 43.03.240.

Sec. 215. RCW 18.88.090 and 1975-'76 2nd ex.s. c 34 s 51 are each amended to read as follows:

The (~~(director)~~) secretary shall appoint, after consultation with the board, an executive secretary who shall act to carry out the provisions of this chapter. The (~~(director)~~) secretary shall also employ such assistants licensed under the provisions of this chapter as shall be necessary to carry out the provisions of this chapter. The (~~(director)~~) secretary shall fix the compensation and provide for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for such appointee and all such employees.

Sec. 216. RCW 18.88.160 and 1985 c 7 s 68 are each amended to read as follows:

Each applicant for a license to practice as a registered nurse or a specialized or advanced registered nurse shall pay a fee determined by the (~~(director)~~) secretary as provided in RCW (~~(43.24.086)~~) 43.70.250 to the state treasurer.

Sec. 217. RCW 18.88.175 and 1988 c 211 s 13 are each amended to read as follows:

Upon approval by the board and following verification of satisfactory completion of an advanced formal education, the department of (~~(licensing)~~) health shall issue an interim permit authorizing the applicant to practice specialized and advanced nursing practice pending notification of the results of the first certification examination. If the applicant passes the examination, the department shall grant advanced registered nurse practitioner status. If the applicant fails the examination, the interim permit shall expire upon notification and is not renewable. The holder of the interim permit is subject to chapter 18.130 RCW.

Sec. 218. RCW 18.88.190 and 1988 c 211 s 9 are each amended to read as follows:

Every license issued under the provisions of this chapter, whether in an active or inactive status, shall be renewed, except as hereinafter provided. At least thirty days prior to expiration, the (~~(director)~~) secretary shall mail a notice for renewal of license to every person licensed for the current licensing period. The applicant shall return the notice to the department with a renewal fee determined by the (~~(director)~~) secretary as provided in RCW (~~(43.24.086)~~) 43.70.250 before the expiration date. Upon receipt of the notice and appropriate fee, the department shall issue to the applicant a license which shall render the holder thereof a legal practitioner of nursing in either active or inactive status for the period stated on the license.

Sec. 219. RCW 18.88.200 and 1988 c 211 s 10 are each amended to read as follows:

Any licensee who allows his or her license to lapse by failing to renew the license, shall upon application for renewal pay a penalty determined by the (~~(director)~~) secretary as provided in RCW (~~(43.24.086)~~) 43.70.250. If the applicant fails to renew the license before the end of the current licensing period, the license shall be issued for the next licensing period by the department upon written application and fee determined by the (~~(director)~~) secretary as provided in RCW (~~(43.24.086)~~) 43.70.250. Persons on lapsed status for three or more years must provide evidence of knowledge and skill of current practice as required by the board.

Sec. 220. RCW 18.88.220 and 1988 c 211 s 11 are each amended to read as follows:

A person licensed under the provisions of this chapter desiring to retire temporarily from the practice of nursing in this state shall send a written notice to the (~~(director)~~) secretary.

Upon receipt of such notice the name of such person shall be placed on inactive status. While remaining on this status the person shall not practice nursing in the state as provided in this chapter. When such person desires to resume practice, application for renewal of license shall be made to the

board and renewal fee payable to the state treasurer. Persons on inactive status for three years or more must provide evidence of knowledge and skill of current practice as required by the board or as hereinafter in this chapter provided.

Sec. 221. RCW 18.88A.020 and 1989 c 300 s 4 are each amended to read as follows:

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

(1) "Department" means the department of ~~((licensing))~~ health.

(2) ~~(("Director" means the director of licensing or the director's designee))~~ "Secretary" means the secretary of health or the secretary's designee.

(3) "Board" means the Washington state board of nursing.

(4) "Nursing assistant—certified" means an individual certified under this chapter.

(5) "Nursing assistant—registered" means an individual registered under this chapter.

(6) "Committee" means the Washington state nursing assistant advisory committee.

(7) "Certification program" means an educational program approved by the superintendent of public instruction or the state board for community college education in consultation with the board, and offered by or under the administration of an accredited educational institution, either at a school site or a health care facility site. A program shall be offered at or near a health care facility site only if the health care facility can provide adequate classroom and clinical facilities.

(8) "Health care facility" means a nursing home, hospital, hospice care facility, home health care agency, hospice agency, or other entity for delivery of health care services.

Sec. 222. RCW 18.88A.050 and 1989 c 300 s 7 are each amended to read as follows:

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

(1) Set all certification, registration, and renewal fees in accordance with RCW ~~((43.24.086))~~ 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW ~~((43.24.072))~~ 43.70.320;

(2) Establish forms and procedures necessary to administer this chapter;

(3) Hire clerical, administrative, and investigative staff as needed to implement this chapter;

(4) Issue a registration to any applicant who has met the requirements for registration;

(5) After January 1, 1990, issue a certificate to any applicant who has met the education, training, and conduct requirements for certification;

(6) Maintain the official record for the department of all applicants and persons with registrations and certificates;

(7) Conduct a hearing on an appeal of a denial of a registration or a certificate based on the applicant's failure to meet the minimum qualifications for certification. The hearing shall be conducted under chapter 34.05 RCW;

(8) Issue subpoenas, statements of charges, statements of intent to deny certification, and orders and to delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements of intent to deny certification.

The uniform disciplinary act, chapter 18.130 RCW, governs unregistered or uncertified practice, issuance of certificates and registration, and the discipline of persons registered or with certificates under this chapter. The ((director)) secretary shall be the disciplinary authority under this chapter.

Sec. 223. RCW 18.88A.070 and 1989 c 300 s 9 are each amended to read as follows:

(1) The ((director)) secretary has the authority to appoint an advisory committee to the state board of nursing and the department to further the purposes of this chapter. The committee shall be composed of ten members, two members initially appointed for a term of one year, three for a term of two years, and four for a term of three years. Subsequent appointments shall be for terms of three years. No person may serve as a member of the committee for more than two consecutive terms. The committee shall consist of: A nursing assistant certified under this chapter, a representative of nursing homes, a representative of the office of the superintendent of public instruction, a representative of the state board of community college education, a representative of the department of social and health services responsible for aging and adult services in nursing homes, a consumer of nursing assistant services who shall not be or have been a member of any other licensing board or committee; nor a licensee of any health occupation board, an employee of any health care facility, nor derive primary livelihood from the provision of health services at any level of responsibility, a representative of an acute care hospital, a representative of home health care, and one member who is a licensed (registered) nurse and one member who is a licensed practical nurse.

(2) The ((director)) secretary may remove any member of the advisory committee for cause as specified by rule. In the case of a vacancy, the ((director)) secretary shall appoint a person to serve for the remainder of the unexpired term.

(3) The advisory committee shall meet at the times and places designated by the ((director)) secretary or the board and shall hold meetings during the year as necessary to provide advice to the ((director)) secretary.

Sec. 224. RCW 18.88A.080 and 1989 c 300 s 10 are each amended to read as follows:

(1) The ~~((director))~~ secretary shall issue a registration to any applicant who submits, on forms provided by the ~~((director))~~ secretary, the applicant's name, address, and other information as determined by the ~~((director))~~ secretary, including information necessary to determine whether there are grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW.

(2) After January 1, 1990, the ~~((director))~~ secretary shall issue a certificate to any applicant who demonstrates to the ~~((director's))~~ secretary's satisfaction that the following requirements have been met:

(a) Completion of an educational program approved by the board or successful completion of alternate training meeting established criteria approved by the board;

(b) Successful completion of an approved examination; and

(c) Successful completion of any experience requirement established by the board.

(3) In addition, applicants shall be subject to the grounds for denial of registration or certificate under chapter 18.130 RCW.

Sec. 225. RCW 18.88A.090 and 1989 c 300 s 11 are each amended to read as follows:

(1) The date and location of examinations shall be established by the ~~((director))~~ secretary. Applicants who have been found by the ~~((director))~~ secretary to meet the requirements for certification shall be scheduled for the next examination following the filing of the application. The ~~((director))~~ secretary shall establish by rule the examination application deadline.

(2) The board shall examine each applicant, by a written or oral and a manual component of competency evaluation. Examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading of the papers, and the grading of skills demonstration shall be preserved for a period of not less than one year after the board has made and published the decisions. All examinations shall be conducted under fair and wholly impartial methods.

(4) Any applicant failing to make the required grade in the first examination may take up to three subsequent examinations as the applicant desires upon prepaying a fee determined by the ~~((director))~~ secretary under RCW ~~((43-24-086))~~ 43.70.250 for each subsequent examination. Upon failing four examinations, the ~~((director))~~ secretary may invalidate the original application and require such remedial education before the person may take future examinations.

(5) The board may approve an examination prepared or administered by a private testing agency or association of licensing agencies for use by an applicant in meeting the credentialing requirements.

Sec. 226. RCW 18.88A.100 and 1989 c 300 s 12 are each amended to read as follows:

The ~~((director))~~ secretary shall waive the competency examination and certify a person authorized to practice within the state of Washington if the board determines that the person meets commonly accepted standards of education and experience for the nursing assistants. This section applies only to those individuals who file an application for waiver within one year of the establishment of the authorized practice on January 1, 1990.

Sec. 227. RCW 18.89.020 and 1987 c 415 s 2 are each amended to read as follows:

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

(1) "Advisory committee" means the Washington state advisory respiratory care committee.

(2) "Department" means the department of ~~((licensing))~~ health.

(3) ~~((^Director^ means the director of licensing or the director's designee))~~ "Secretary" means the secretary of health or the secretary's designee.

(4) "Respiratory care practitioner" means an individual certified under this chapter.

(5) "Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

(6) "Rural hospital" means a hospital located anywhere in the state except the following areas:

(a) The entire counties of Snohomish (including Camano Island), King, Kitsap, Pierce, Thurston, Clark, and Spokane;

(b) Areas within a twenty-mile radius of an urban area with a population exceeding thirty thousand persons; and

(c) Those cities or city-clusters located in rural counties but which for all practical purposes are urban. These areas are Bellingham, Aberdeen-Hoquiam, Longview-Kelso, Wenatchee, Yakima, Sunnyside, Richland-Kennewick-Pasco, and Walla Walla.

Sec. 228. RCW 18.89.050 and 1987 c 415 s 6 are each amended to read as follows:

(1) In addition to any other authority provided by law, the ~~((director))~~ secretary, in consultation with the advisory committee, may:

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

(b) Set all certification, examination, and renewal fees in accordance with RCW ~~((43.24.086))~~ 43.70.250;

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

(d) Issue a certificate to any applicant who has met the education, training, and examination requirements for certification;

(e) Hire clerical, administrative, and investigative staff as needed to implement this chapter and hire individuals certified under this chapter to serve as examiners for any practical examinations;

(f) Approve those schools from which graduation will be accepted as proof of an applicant's eligibility to take the certification examination;

(g) Prepare, grade, and administer, or determine the nature of, and supervise the grading and administration of, examinations for applicants for certification;

(h) Determine whether alternative methods of training are equivalent to formal education and establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to take the examination;

(i) Determine which states have legal credentialing requirements equivalent to those of this state and issue certificates to individuals legally credentialed in those states without examination; and

(j) Define and approve any experience requirement for certification.

(2) The provisions of chapter 18.130 RCW shall govern the issuance and denial of certificates, uncertified practice, and the disciplining of persons certified under this chapter. The ~~((director))~~ secretary shall be the disciplining authority under this chapter.

Sec. 229. RCW 18.89.060 and 1987 c 415 s 7 are each amended to read as follows:

The ~~((director))~~ secretary shall keep an official record of all proceedings, a part of which record shall consist of a register of all applicants for certification under this chapter, with the result of each application.

Sec. 230. RCW 18.89.070 and 1987 c 415 s 8 are each amended to read as follows:

(1) There is created a state respiratory care advisory committee consisting of five members appointed by the ~~((director))~~ secretary. Three members of the advisory committee shall be respiratory care practitioners who are certified under this chapter. The initial members, however, may be appointed to the advisory committee if they meet all the requirements for certification under this chapter and have been engaged in the practice of respiratory care for at least five years. One member of the advisory committee shall be an individual representing the public who is unaffiliated with the profession. One member of the advisory committee shall be a physician, who is a pulmonary specialist. Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term and the terms of office of the members first taking office shall expire, as designated at the time of appointment, one at the end of the first year, one at the end of the second year, one at the end of the third year, and two at the end of the fourth year after the date of appointment. Thereafter all appointments shall

be for four years. Any advisory committee member may be removed for just cause. The ((director)) secretary may appoint a new member to fill any vacancy on the advisory committee for the remainder of the unexpired term. No advisory committee member may serve more than two consecutive terms, whether full or partial.

(2) Advisory committee members shall be entitled to be compensated in accordance with RCW 43.03.240, and to be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(3) The advisory committee shall have the authority to elect annually a chairperson and vice-chairperson to direct the meetings of the advisory committee. The advisory committee shall meet at least once each year, and may hold additional meetings as called by the ((director)) secretary or the chairperson. Three members of the advisory committee constitute a quorum.

Sec. 231. RCW 18.89.080 and 1987 c 415 s 9 are each amended to read as follows:

The ((director)) secretary, members of the advisory committee, or individuals acting on their behalf are immune from suit in any civil action based on any certification or disciplinary proceedings, or other official acts performed in the course of their duties.

Sec. 232. RCW 18.89.090 and 1987 c 415 s 10 are each amended to read as follows:

The ((director)) secretary shall issue a certificate to any applicant who demonstrates to the ((director's)) secretary's satisfaction that the following requirements have been met:

(1) Graduation from a school approved by the ((director)) secretary or successful completion of alternate training which meets the criteria established by the ((director)) secretary;

(2) Successful completion of an examination administered or approved by the ((director)) secretary;

(3) Successful completion of any experience requirement established by the ((director)) secretary;

(4) Good moral character.

In addition, applicants shall be subject to the grounds for denial or issuance of a conditional certificate under chapter 18.130 RCW.

A person who meets the qualifications to be admitted to the examination for certification as a respiratory care practitioner may practice as a respiratory care practitioner under the supervision of a respiratory care practitioner certified under this chapter between the date of filing an application for certification and the announcement of the results of the next succeeding examination for certification if that person applies for and takes the first examination for which he or she is eligible.

The ((director)) secretary shall establish by rule what constitutes adequate proof of meeting the criteria.

Sec. 233. RCW 18.89.100 and 1987 c 415 s 11 are each amended to read as follows:

The ~~((director))~~ secretary shall approve only those persons who have achieved the minimum level of competency as defined by the ~~((director))~~ secretary. The ~~((director))~~ secretary shall establish by rule the standards and procedures for approval of alternate training and shall have the authority to contract with individuals or organizations having expertise in the profession, or in education, to assist in evaluating those applying for approval. The standards and procedures set shall apply equally to schools and training within the United States and those in foreign jurisdictions.

Sec. 234. RCW 18.89.110 and 1987 c 415 s 12 are each amended to read as follows:

(1) The date and location of the examination shall be established by the ~~((director))~~ secretary. Applicants who have been found by the ~~((director))~~ secretary to meet the other requirements for certification shall be scheduled for the next examination following the filing of the application. However, the applicant shall not be scheduled for any examination taking place sooner than sixty days after the application is filed.

(2) The ~~((director))~~ secretary shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice. Such examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently, and shall meet generally accepted standards of fairness and validity for certification examinations.

(3) All examinations shall be conducted by the ~~((director))~~ secretary, and all grading of the examinations shall be under fair and wholly impartial methods.

(4) Any applicant who fails to make the required grade in the first examination is entitled to take up to three subsequent examinations, upon the prepayment of a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250 for each subsequent examination. Upon failure of four examinations, the ~~((director))~~ secretary may invalidate the original application and require such remedial education as is deemed necessary.

(5) The ~~((director))~~ secretary may approve an examination prepared and administered by a private testing agency or association of credentialing boards for use by an applicant in meeting the certification requirement.

Sec. 235. RCW 18.89.120 and 1987 c 415 s 13 are each amended to read as follows:

Applications for certification shall be submitted on forms provided by the ~~((director))~~ secretary. The ~~((director))~~ secretary may require any information and documentation which reasonably relates to the need to determine whether the applicant meets the criteria for certification provided in

this chapter and chapter 18.130 RCW. All applications shall be accompanied by a fee determined by the ((director)) secretary under RCW ((43-24-086)) 43.70.250.

Sec. 236. RCW 18.89.130 and 1987 c 415 s 14 are each amended to read as follows:

(1) The ((director)) secretary shall waive the examination and grant a certificate to a person engaged in the profession of respiratory care in this state on July 26, 1987, if the ((director)) secretary determines the person meets commonly accepted standards of education and experience for the profession and has previously achieved an acceptable grade on an approved examination administered by a private testing agency or respiratory care association as established by rule of the ((director)) secretary.

(2) If an individual is engaged in the practice of respiratory care on July 26, 1987, but has not achieved an acceptable grade on an approved examination administered by a private testing agency, the individual may apply to the ((director)) secretary for examination. This section shall only apply to those individuals who file an application within one year of July 26, 1987.

Sec. 237. RCW 18.89.140 and 1987 c 415 s 15 are each amended to read as follows:

The ((director)) secretary shall establish by rule the requirements and fees for renewal of certificates. Failure to renew shall invalidate the certificate and all privileges granted by the certificate. In the event a certificate has lapsed for a period longer than three years, the certified respiratory care practitioner shall demonstrate competence to the satisfaction of the ((director)) secretary by continuing education or under the other standards determined by the ((director)) secretary.

Sec. 238. RCW 18.92.015 and 1983 c 102 s 1 are each amended to read as follows:

The term "board" used in this chapter shall mean the Washington state veterinary board of governors; and the term ((~~"director"~~)) "secretary" shall mean the ((~~director of licensing~~)) secretary of health of the state of Washington. "Animal technician" shall mean a person who has successfully completed an examination administered by the board and who has either successfully completed a post high school course approved by the board in the care and treatment of animals, or a person who has had five years practical experience acceptable to the board with a licensed veterinarian.

Sec. 239. RCW 18.92.035 and 1941 c 71 s 9 are each amended to read as follows:

The board shall certify to the ((director)) secretary the names of all applicants who have successfully passed an examination and are entitled to

a license to practice veterinary medicine, surgery and dentistry. The ~~((director))~~ secretary shall thereupon issue a license to practice veterinary medicine, surgery and dentistry to such applicant.

Sec. 240. RCW 18.92.040 and 1984 c 287 s 51 are each amended to read as follows:

Each member of the board shall be compensated in accordance with RCW ~~((43.03.240))~~ 43.70.250 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. No expense may be incurred by members of the board except in connection with board meetings without prior approval of the ~~((director))~~ secretary.

Sec. 241. RCW 18.92.047 and 1989 c 125 s 2 are each amended to read as follows:

(1) To implement an impaired veterinarian program as authorized by RCW 18.130.175, the veterinary board of governors shall enter into a contract with a voluntary substance abuse monitoring program. The impaired veterinarian program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired veterinarians to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired veterinarians including those ordered by the board;
- (f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired veterinarians; and
- (g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to twenty-five dollars on each license issuance or renewal of a new license to be collected by the department of ~~((licensing))~~ health from every veterinarian licensed under chapter 18.92 RCW. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired veterinarian program.

Sec. 242. RCW 18.92.070 and 1986 c 259 s 141 are each amended to read as follows:

No person, unless registered or licensed to practice veterinary medicine, surgery, and dentistry in this state at the time this chapter shall become operative, shall begin the practice of veterinary medicine, surgery and dentistry without first applying for and obtaining a license for such purpose from the ~~((director))~~ secretary. In order to procure a license to practice veterinary medicine, surgery, and dentistry in the state of Washington, the applicant for such license shall file his or her application at least sixty days prior to date of examination upon a form furnished by the ~~((director of licensing))~~ secretary of health, which, in addition to the fee provided by this

chapter, shall be accompanied by satisfactory evidence that he or she is at least eighteen years of age and of good moral character, and by official transcripts or other evidence of graduation from a veterinary college satisfactory to and approved by the board. Said application shall be signed by the applicant and sworn to by him or her before some person authorized to administer oaths. When such application and the accompanying evidence are found satisfactory, the ((director)) secretary shall notify the applicant to appear before the board for the next examination. In addition, applicants shall be subject to grounds for denial or issuance of a conditional license under chapter 18.130 RCW.

Nothing in this chapter shall preclude the board from permitting a person who has completed a portion of his or her educational program as determined by the board, in a veterinary college recognized by the board, to take the examination or any part thereof prior to satisfying the requirements for application for a license: PROVIDED HOWEVER, That no license shall be issued to such applicant until such requirements are satisfied.

Sec. 243. RCW 18.92.100 and 1967 ex.s. c 50 s 6 are each amended to read as follows:

Examinations for license to practice veterinary medicine, surgery and dentistry shall be held at least once each year at such times and places as the ((director)) secretary may authorize and direct. Said examination, which shall be conducted in the English language shall be, in whole or in part, in writing on the following subjects: Veterinary anatomy, surgery, obstetrics, pathology, chemistry, hygiene, veterinary diagnosis, materia medica, therapeutics, parasitology, physiology, sanitary medicine, and such other subjects which are ordinarily included in the curricula of veterinary colleges, as the board may prescribe. All examinees shall be tested by written examination, supplemented by such oral interviews and practical demonstrations as the board deems necessary. The board may accept the examinee's results on the National Board of Veterinary Examiners in lieu of the written portion of the state examination.

Sec. 244. RCW 18.92.115 and 1985 c 7 s 71 are each amended to read as follows:

Any applicant who shall fail to secure the required grade in his first examination may take the next regular veterinary examination. The fee for reexamination shall be determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250.

Sec. 245. RCW 18.92.120 and 1986 c 259 s 142 are each amended to read as follows:

Any person who shall make application for examination, as provided by RCW 18.92.070, and who has not previously failed to pass the veterinary examination, and whose application is found satisfactory by the ((director))

secretary, may be given a temporary certificate to practice veterinary medicine, surgery and dentistry valid only until the results of the next examination for licenses are available. In addition, applicants shall be subject to the grounds for denial or issuance of a conditional license under chapter 18.130 RCW. No more than one temporary certificate may be issued to any applicant. Such permittee shall be employed by a licensed veterinary practitioner or by the state of Washington.

Sec. 246. RCW 18.92.130 and 1959 c 92 s 10 are each amended to read as follows:

Any person who has been lawfully licensed to practice veterinary medicine, surgery, and dentistry in another state or territory which has and maintains a standard for the practice of veterinary medicine, surgery and dentistry which is substantially the same as that maintained in this state, and who has been lawfully and continuously engaged in the practice of veterinary medicine, surgery and dentistry for two years or more immediately before filing his or her application to practice in this state and who shall submit to the (~~(director)~~) secretary a duly attested certificate from the examining board of the state or territory in which he or she is registered, certifying to the fact of his or her registration and of his or her being a person of good moral character and of professional attainments, may upon the payment of the fee as provided herein, be granted a license to practice veterinary medicine, surgery and dentistry in this state, without being required to take an examination: PROVIDED, HOWEVER, That no license shall be issued to any applicant, unless the state or territory from which such certificate has been granted to such applicant shall have extended a like privilege to engage in the practice of veterinary medicine, surgery and dentistry within its own borders to veterinarians heretofore and hereafter licensed by this state, and removing to such other state: AND PROVIDED FURTHER, That the (~~(director of licensing)~~) secretary of health shall have power to enter into reciprocal relations with other states whose requirements are substantially the same as those provided herein. The board shall make recommendations to the (~~(director)~~) secretary upon all requests for reciprocity.

Sec. 247. RCW 18.92.140 and 1985 c 7 s 72 are each amended to read as follows:

Each person now qualified to practice veterinary medicine, surgery and dentistry or registered as an animal technician in this state or who shall hereafter be licensed or registered to engage in such practice, shall register with the (~~(director of licensing)~~) secretary of health annually or on the date prescribed by the (~~(director)~~) secretary and pay the renewal registration fee set by the (~~(director)~~) secretary as provided in RCW (~~(43.24.086)~~) 43.70-.250. A person who fails to renew a license or certificate prior to its expiration shall be subject to a late renewal fee equal to one-third of the regular renewal fee set by the (~~(director)~~) secretary.

Sec. 248. RCW 18.92.145 and 1985 c 7 s 73 are each amended to read as follows:

The ~~((director))~~ secretary shall determine the fees, as provided in RCW ~~((43.24.086))~~ 43.70.250, for the issuance, renewal, or administration of the following licenses, certificates of registration, permits, duplicate licenses, renewals, or examination:

- (1) For a license to practice veterinary medicine, surgery, and dentistry issued upon an examination given by the examining board;
- (2) For a license to practice veterinary medicine, surgery, and dentistry issued upon the basis of a license issued in another state;
- (3) For a certificate of registration as an animal technician;
- (4) For a temporary permit to practice veterinary medicine, surgery, and dentistry. The temporary permit fee shall be accompanied by the full amount of the examination fee.

Sec. 249. RCW 18.104.040 and 1971 ex.s. c 212 s 4 are each amended to read as follows:

The department shall have the power:

- (1) To issue, deny, suspend or revoke licenses pursuant to the provisions of this chapter;
- (2) To enter upon lands for the purpose of inspecting any water well, drilled or being drilled, at all reasonable times;
- (3) To call upon or receive professional or technical advice from any public agency or any person;
- (4) To make such rules ~~((and regulations))~~ governing licensing hereunder and water well construction as may be appropriate to carry out the purposes of this chapter. Without limiting the generality of the foregoing, the department may in cooperation with the department of ~~((social and health services))~~ health make rules ~~((and regulations))~~ regarding:
 - (a) Standards for the construction and maintenance of water wells and their casings;
 - (b) Methods of sealing artesian wells and water wells to be abandoned or which may contaminate other water resources;
 - (c) Methods of artificial recharge of ground water bodies and of construction of wells which insure separation of individual water bearing formations;
 - (d) The manner of conducting and the content of examinations required to be taken by applicants for license hereunder;
 - (e) Reporting requirements of water well contractors;
 - (f) Limitations on water well construction in areas identified by the department as requiring intensive control of withdrawals in the interests of sound management of the ground water resource.

Sec. 250. RCW 18.104.080 and 1971 ex.s. c 212 s 8 are each amended to read as follows:

The examination, which is made a prerequisite for obtaining a license hereunder, shall be prepared to test knowledge and understanding of the following subjects:

- (1) Washington ground water laws as they relate to well construction;
- (2) Sanitary standards for water well drilling and construction of water wells;
- (3) Types of water well construction;
- (4) Drilling tools and equipment;
- (5) Underground geology as it relates to water well construction; and
- (6) Rules ~~((and regulations))~~ of the department and the department of ~~((social and health services))~~ health relating to water well construction.

Examinations shall be held at such times and places as may be determined by the department but not later than thirty days after an applicant has filed a completed application with the department. The department shall make a determination of the applicant's qualifications for a license within ten days after the examination.

Sec. 251. RCW 18.104.110 and 1971 ex.s. c 212 s 11 are each amended to read as follows:

In cases other than those relating to the failure of a licensee to renew a license, any license issued hereunder may be suspended or revoked by the director for any of the following reasons:

- (1) For fraud or deception in obtaining the license;
- (2) For fraud or deception in reporting under RCW 18.104.050;
- (3) For violating the provisions of this chapter, or of any lawful rule or regulation of the department or the department of ~~((social and health services))~~ health.

No license shall be suspended for more than six months. No person whose license is revoked shall be eligible to apply for a license for one year from the effective date of the final order of revocation.

Sec. 252. RCW 18.108.010 and 1987 c 443 s 2 are each amended to read as follows:

In this chapter, unless the context otherwise requires, the following meanings shall apply:

- (1) "Board" means the Washington state board of massage.
- (2) "Massage" and "massage therapy" mean a health care service involving the external manipulation or pressure of soft tissue for therapeutic purposes. Massage therapy includes massage techniques such as methods of effleurage, petrissage, tapotement, tapping, compressions, vibration, friction, nerve stokes, and Swedish gymnastics or movements either by manual means, as they relate to massage, with or without the aids of superficial heat, cold, water, lubricants, or salts. Massage therapy does not include diagnosis or attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force.

(3) "Massage practitioner" means an individual licensed under this chapter.

(4) (~~"Director" means the director of licensing or the director's designee~~) "Secretary" means the secretary of health or the secretary's designee.

(5) Massage business means the operation of a business where massages are given.

Sec. 253. RCW 18.108.020 and 1987 c 443 s 9 are each amended to read as follows:

The Washington state board of massage is hereby created. The board shall consist of four members who shall be appointed by the governor for a term of four years each. Members shall be residents of this state and shall have not less than three years experience in the practice of massage immediately preceding their appointment and shall be licensed under this chapter and actively engaged in the practice of massage during their incumbency.

In addition to the members specified in this section, the governor shall appoint a consumer member of the board, who shall serve for a term of four years. The consumer member of the board shall be an individual who does not derive his or her livelihood by providing health care services or massage therapy and is not a licensed health professional. The consumer member shall not be an employee of the state nor a present or former member of another licensing board.

In the event that a member cannot complete his or her term of office, another appointment shall be made by the governor in accordance with the procedures stated in this section to fill the remainder of the term. No member may serve more than two successive terms whether full or partial. The governor may remove any member of the board for neglect of duty, incompetence, or unprofessional or disorderly conduct as determined under chapter 18.130 RCW.

Each member of the board shall be compensated in accordance with RCW 43.03.240. Members shall be reimbursed for travel expenses incurred in the actual performance of their duties, as provided in RCW 43.03.050 and 43.03.060.

The board may annually elect a chairperson to direct the meetings of the board. The board shall meet as called by the chairperson or the (~~director~~) secretary. Three members of the board shall constitute a quorum of the board.

Sec. 254. RCW 18.108.025 and 1987 c 443 s 10 are each amended to read as follows:

In addition to any other authority provided by law, the board may:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter, subject to the approval of the (~~director~~) secretary;

(2) Define, evaluate, approve, and designate those schools, programs, and apprenticeship programs including all current and proposed curriculum,

faculty, and health, sanitation, and facility standards from which graduation will be accepted as proof of an applicant's eligibility to take the licensing examination;

(3) Review approved schools and programs periodically;

(4) Prepare, grade, administer, and supervise the grading and administration of, examinations for applicants for licensure; and

(5) Determine which states have educational and licensing requirements equivalent to those of this state.

The board shall establish by rule the standards and procedures for approving courses of study and may contract with individuals or organizations having expertise in the profession or in education to assist in evaluating courses of study. The standards and procedures set shall apply equally to schools and training within the United States of America and those in foreign jurisdictions.

Sec. 255. RCW 18.108.040 and 1987 c 443 s 4 are each amended to read as follows:

It shall be unlawful to advertise the practice of massage using the term massage or any other term that implies a massage technique or method in any public or private publication or communication by a person not licensed by the ~~((director))~~ secretary as a massage practitioner. Any person who holds a license to practice as a massage practitioner in this state may use the title "licensed massage practitioner" and the abbreviation "L.M.P.". No other persons may assume such title or use such abbreviation or any other word, letters, signs, or figures to indicate that the person using the title is a licensed massage practitioner.

Sec. 256. RCW 18.108.060 and 1987 c 443 s 6 are each amended to read as follows:

All licenses issued under the provisions of this chapter, unless otherwise provided shall expire on the annual anniversary date of the individual's date of birth.

The ~~((director))~~ secretary shall prorate the licensing fee for massage practitioner based on one-twelfth of the annual license fee for each full calendar month between the issue date and the next anniversary of the applicant's birth date, a date used as the expiration date of such license.

Every applicant for a license shall pay an examination fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43-24-086))~~ 43.70.250, which fee shall accompany their application. Applications for licensure shall be submitted on forms provided by the ~~((director))~~ secretary.

Applicants granted a license under this chapter shall pay to the ~~((director))~~ secretary a license fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43-24-086))~~ 43.70.250, prior to the issuance of their license, and an annual renewal fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43-24-086))~~ 43.70.250. Failure to renew shall invalidate the license and all privileges granted to the licensee, but such license

may be reinstated upon written application to the ((director)) secretary and payment to the state of all delinquent fees and penalties as determined by the ((director)) secretary. In the event a license has lapsed for a period longer than three years, the licensee shall demonstrate competence to the satisfaction of the ((director)) secretary by proof of continuing education or other standard determined by the ((director)) secretary with the advice of the board.

Sec. 257. RCW 18.108.070 and 1987 c 443 s 7 are each amended to read as follows:

The ((director)) secretary shall issue a massage practitioner's license to an applicant who demonstrates to the ((director's)) secretary's satisfaction that the following requirements have been met:

- (1) Effective June 1, 1988, successful completion of a course of study in an approved massage program or approved apprenticeship program;
- (2) Successful completion of an examination administered or approved by the board; and
- (3) Be eighteen years of age or older.

In addition, applicants shall be subject to the grounds for denial or issuance of a conditional license under chapter 18.130 RCW.

The ((director)) secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for licensure provided for in this chapter and chapter 18.130 RCW. The ((director)) secretary shall establish by rule what constitutes adequate proof of meeting the criteria. The board shall give an appropriate alternate form of examination for persons who cannot read or speak English to determine equivalent competency.

Sec. 258. RCW 18.108.073 and 1987 c 443 s 8 are each amended to read as follows:

(1) The date and location of the examination shall be established by the ((director)) secretary. Applicants who demonstrate to the ((director's)) secretary's satisfaction that the following requirements have been met shall be scheduled for the next examination following the filing of the application:

- (a) Effective June 1, 1988, successful completion of a course of study in an approved massage program; or
- (b) Effective June 1, 1988, successful completion of an apprenticeship program established by the board; and
- (c) Be eighteen years of age or older.

In addition, completed and approved applications shall be received sixty days before the scheduled examination.

(2) The board or its designee shall examine each applicant in a written and practical examination determined most effective on subjects appropriate to the massage scope of practice. The subjects may include anatomy, kinesiology, physiology, pathology, principles of human behavior, massage theory and practice, hydrotherapy, hygiene, first aid, Washington law pertaining to

the practice of massage, and such other subjects as the board may deem useful to test applicant's fitness to practice massage therapy. Such examinations shall be limited in purpose to determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading of examinations, and the grading of any practical work, shall be preserved for a period of not less than one year after the board has made and published decisions thereupon. All examinations shall be conducted by the board under fair and impartial methods as determined by the ~~((director))~~ secretary.

(4) An applicant who fails to make the required grade in the first examination is entitled to take up to two additional examinations upon the payment of a fee for each subsequent examination determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250. Upon failure of three examinations, the ~~((director))~~ secretary may invalidate the original application and require such remedial education as is required by the board before admission to future examinations.

(5) The board may approve an examination prepared or administered, or both, by a private testing agency or association of licensing boards for use by an applicant in meeting the licensing requirement.

Sec. 259. RCW 18.108.085 and 1987 c 443 s 11 are each amended to read as follows:

(1) In addition to any other authority provided by law, the ~~((director))~~ secretary may:

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

(b) Set all license, examination, and renewal fees in accordance with RCW ~~((43.24.086))~~ 43.70.250;

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

(d) Issue a license to any applicant who has met the education, training, and examination requirements for licensure; and

(e) Hire clerical, administrative, and investigative staff as necessary to implement this chapter, and hire individuals licensed under this chapter to serve as examiners for any practical examinations.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of licenses and the disciplining of persons under this chapter. The ~~((director))~~ secretary shall be the disciplining authority under this chapter.

(3) The ~~((director))~~ secretary shall keep an official record of all proceedings under this chapter, a part of which record shall consist of a register of all applicants for licensure under this chapter, with the result of each application.

Sec. 260. RCW 18.122.040 and 1987 c 150 s 64 are each amended to read as follows:

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

(1) The practice by an individual licensed, certified, or registered under the laws of this state and performing services within the authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the ((director)) secretary, and whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor.

Sec. 261. RCW 18.122.060 and 1987 c 150 s 66 are each amended to read as follows:

The ((director)) secretary shall keep an official record of all proceedings. A part of the record shall consist of a register of all applicants for credentialing under this chapter and the results of each application.

Sec. 262. RCW 18.122.070 and 1987 c 150 s 67 are each amended to read as follows:

(1) The ((director)) secretary has the authority to appoint advisory committees to further the purposes of this chapter. Each such committee shall be composed of five members, one member initially appointed for a term of one year, two for a term of two years, and two for a term of three years. Subsequent appointments shall be for terms of three years. No person may serve as a member of the committee for more than two consecutive terms. Members of an advisory committee shall be residents of this state. Each committee shall be composed of three individuals registered, certified, or licensed in the category designated, and two members who represent the public at large and are unaffiliated directly or indirectly with the profession being credentialed.

(2) The ((director)) secretary may remove any member of the advisory committees for cause as specified by rule. In the case of a vacancy, the ((director)) secretary shall appoint a person to serve for the remainder of the unexpired term.

(3) The advisory committees shall each meet at the times and places designated by the ((director)) secretary and shall hold meetings during the year as necessary to provide advice to the director. The committee may elect a chair and a vice chair. A majority of the members currently serving shall constitute a quorum.

(4) Each member of an advisory committee shall be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060. In addition, members of the committees shall be compensated in accordance with

RCW 43.03.240 when engaged in the authorized business of their committees.

(5) The ((director)) secretary, members of advisory committees, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any credentialing or disciplinary proceedings or other official acts performed in the course of their duties.

Sec. 263. RCW 18.122.080 and 1987 c 150 s 68 are each amended to read as follows:

(1) The ((director)) secretary shall issue a license or certificate, as appropriate, to any applicant who demonstrates to the ((director's)) secretary's satisfaction that the following requirements have been met:

(a) Graduation from an educational program approved by the ((director)) secretary or successful completion of alternate training meeting established criteria;

(b) Successful completion of an approved examination; and

(c) Successful completion of any experience requirement established by the ((director)) secretary.

(2) The ((director)) secretary shall establish by rule what constitutes adequate proof of meeting the criteria.

(3) In addition, applicants shall be subject to the grounds for denial of a license or certificate or issuance of a conditional license or certificate under chapter 18.130 RCW.

(4) The ((director)) secretary shall issue a registration to any applicant who completes an application which identifies the name and address of the applicant, the registration being requested, and information required by the ((director)) secretary necessary to establish whether there are grounds for denial of a registration or issuance of a conditional registration under chapter 18.130 RCW.

Sec. 264. RCW 18.122.090 and 1987 c 150 s 69 are each amended to read as follows:

The ((director)) secretary shall establish by rule the standards and procedures for approval of educational programs and alternative training. The ((director)) secretary may utilize or contract with individuals or organizations having expertise in the profession or in education to assist in the evaluations. The ((director)) secretary shall establish by rule the standards and procedures for revocation of approval of education programs. The standards and procedures set shall apply equally to educational programs and training in the United States and in foreign jurisdictions. The ((director)) secretary may establish a fee for educational program evaluations.

Sec. 265. RCW 18.122.120 and 1987 c 150 s 72 are each amended to read as follows:

The ~~((director))~~ secretary shall waive the examination and credential a person authorized to practice within the state of Washington if the ~~((director))~~ secretary determines that the person meets commonly accepted standards of education and experience for the profession. This section applies only to those individuals who file an application for waiver within one year of the establishment of the authorized practice.

Sec. 266. RCW 18.122.130 and 1987 c 150 s 73 are each amended to read as follows:

An applicant holding a credential in another state may be credentialed to practice in this state without examination if the ~~((director))~~ secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state.

Sec. 267. RCW 18.122.140 and 1987 c 150 s 74 are each amended to read as follows:

The ~~((director))~~ secretary shall establish by rule the procedural requirements and fees for renewal of a credential. Failure to renew shall invalidate the credential and all privileges granted by the credential. If a license or certificate has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the ~~((director))~~ secretary by taking continuing education courses, or meeting other standards determined by the ~~((director))~~ secretary.

Sec. 268. RCW 18.122.150 and 1987 c 150 s 75 are each amended to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of credentials, unauthorized practice, and the discipline of persons credentialed under this chapter. The ~~((director))~~ secretary shall be the disciplining authority under this chapter.

Sec. 269. RCW 18.130.060 and 1989 c 175 s 68 are each amended to read as follows:

In addition to the authority specified in RCW 18.130.050, the ~~((director))~~ secretary has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) Upon the request of a board, to appoint not more than three pro tem members for the purpose of participating as members of one or more committees of the board in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board. While serving as board members pro tem, persons so appointed have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular members of the board. The chairperson of a committee shall be a regular member of the board appointed by the board chairperson. Committees have authority to

act as directed by the board with respect to all matters concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters subject to the jurisdiction of the board. The authority to act through committees does not restrict the authority of the board to act as a single body at any phase of proceedings within the board's jurisdiction. Board committees may make interim orders and issue final decisions with respect to matters and cases delegated to the committee by the board. Final decisions may be appealed as provided in chapter 34.05 RCW, the Administrative Procedure Act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency adjudicative proceeding as authorized by RCW 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority.

Sec. 270. RCW 18.130.175 and 1988 c 247 s 2 are each amended to read as follows:

(1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or drug treatment shall be provided by approved treatment facilities under RCW 70.96A.020(2) (~~or 69.54.030~~): PROVIDED, That nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or drug treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160.

(2) In addition to approving substance abuse monitoring programs that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority for substance abuse. License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their

substance abuse, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The substance abuse program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause as defined in subsection (3) of this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.

(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(6) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(7) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section and the persons entitled to immunity shall include:

- (i) An approved monitoring treatment program;
- (ii) The professional association operating the program;
- (iii) Members, employees, or agents of the program or association;

(iv) Persons reporting a license holder as being impaired or providing information about the license holder's impairment; and

(v) Professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

(b) The immunity provided in this section is in addition to any other immunity provided by law.

(8) In addition to health care professionals governed by this chapter, this section also applies to pharmacists under chapter 18.64 RCW and pharmacy assistants under chapter 18.64A RCW. For that purpose, the board of pharmacy shall be deemed to be the disciplining authority and the substance abuse monitoring program shall be in lieu of disciplinary action under RCW 18.64.160 or 18.64A.050. The board of pharmacy shall adjust license fees to offset the costs of this program.

Sec. 271. RCW 18.130.190 and 1989 c 175 s 71 and 1989 c 373 s 20 are each reenacted and amended to read as follows:

(1) The ~~((director))~~ secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the ~~((director))~~ secretary shall have the same authority as provided the ~~((director))~~ secretary under RCW 18.130.050. The ~~((director))~~ secretary shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the ~~((director))~~ secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the ~~((director))~~ secretary may issue a temporary cease and desist order. The cease and desist order shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(2) The attorney general, a county prosecuting attorney, the ~~((director))~~ secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(3) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

Sec. 272. RCW 18.135.020 and 1986 c 115 s 2 are each amended to read as follows:

As used in this chapter:

(1) (~~"Director" means the director of licensing~~) "Secretary" means the secretary of health.

(2) "Health care assistant" means an unlicensed person who assists a licensed health care practitioner in providing health care to patients pursuant to this chapter.

(3) "Health care practitioner" means:

(a) A physician licensed under chapter 18.71 RCW;

(b) An osteopathic physician or surgeon licensed under chapter 18.57 RCW; or

(c) Acting within the scope of their respective licensures, a podiatrist licensed under chapter 18.22 RCW or a registered nurse licensed under chapter 18.88 RCW.

(4) "Supervision" means supervision of procedures permitted pursuant to this chapter by a health care practitioner who is physically present and is immediately available in the facility during the administration of injections, as defined in this chapter, but need not be present during procedures to withdraw blood.

(5) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, renal dialysis center or facility federally approved under 42 C.F.R. 405.2100, blood bank federally licensed under 21 C.F.R. 607, or clinical laboratory certified under 20 C.F.R. 405.1301-16.

(6) "Delegation" means direct authorization granted by a licensed health care practitioner to a health care assistant to perform the functions authorized in this chapter which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee.

Sec. 273. RCW 18.135.030 and 1986 c 216 s 2 are each amended to read as follows:

The (~~director~~) secretary, or the (~~director's~~) secretary's designee, with the advice of designees of the board of medical examiners, the board of osteopathic medicine and surgery, the podiatry board, and the board of nursing, shall adopt rules necessary to administer, implement, and enforce this chapter and establish the minimum requirements necessary for a health

care facility or health care practitioner to certify a health care assistant capable of performing the functions authorized in this chapter. The rules shall establish minimum requirements for each and every category of health care assistant. Said rules shall be adopted after fair consideration of input from representatives of each category. These requirements shall ensure that the public health and welfare are protected and shall include, but not be limited to, the following factors:

- (1) The education and occupational qualifications for the health care assistant category;
- (2) The work experience for the health care assistant category;
- (3) The instruction and training provided for the health care assistant category; and
- (4) The types of drugs or diagnostic agents which may be administered by injection by health care assistants working in a hospital or nursing home. The rules established pursuant to this subsection shall not prohibit health care assistants working in a health care facility other than a nursing home or hospital from performing the functions authorized under this chapter.

Sec. 274. RCW 18.135.050 and 1984 c 281 s 5 are each amended to read as follows:

(1) Any health care facility may certify a health care assistant to perform the functions authorized in this chapter in that health care facility; and any health care practitioner may certify a health care assistant capable of performing such services in any health care facility, or in his or her office, under a health care practitioner's supervision. Before certifying the health care assistant, the health care facility or health care practitioner shall verify that the health care assistant has met the minimum requirements established by the ((director)) secretary under this chapter. These requirements shall not prevent the certifying entity from imposing such additional standards as the certifying entity considers appropriate. The health care facility or health care practitioner shall provide the licensing authority with a certified roster of health care assistants who are certified.

(2) Certification of a health care assistant shall be effective for a period of two years. Recertification is required at the end of this period. Requirements for recertification shall be established by rule.

Sec. 275. RCW 18.135.055 and 1985 c 117 s 1 are each amended to read as follows:

The health care facility or health care practitioner registering an initial or continuing certification pursuant to the provisions of this chapter shall pay a fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250.

All fees collected under this section shall be credited to the health professions account as required in RCW ((43.24.072)) 43.70.320.

Sec. 276. RCW 18.135.065 and 1986 c 216 s 4 are each amended to read as follows:

(1) Each delegator, as defined under RCW 18.135.020(6) shall maintain a list of specific medications, diagnostic agents, and the route of administration of each that he or she has authorized for injection. Both the delegator and delegatee shall sign the above list, indicating the date of each signature. The signed list shall be forwarded to the ~~((director))~~ secretary of the department of ~~((licensing))~~ health and shall be available for review.

(2) Delegates are prohibited from administering any controlled substance as defined in RCW ~~((69.50.101(2)(d)))~~ 69.50.101(d), any experimental drug, and any cancer chemotherapy agent unless a delegator is physically present in the immediate area where the drug is administered.

Sec. 277. RCW 18.135.080 and 1984 c 281 s 8 are each amended to read as follows:

The ~~((director or the director's))~~ secretary or the secretary's designee shall decertify a health care assistant based on a finding that the assistant has obtained certification through misrepresentation or concealment of a material fact or has engaged in unsafe or negligent practices.

Sec. 278. RCW 18.138.010 and 1988 c 277 s 1 are each amended to read as follows:

(1) "Dietetics" is the integration and application of scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences in counseling people to achieve and maintain health. Unique functions of dietetics include, but are not limited to:

(a) Assessing individual and community food practices and nutritional status using anthropometric, biochemical, clinical, dietary, and demographic data for clinical, research, and program planning purposes;

(b) Establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(c) Providing nutrition counseling and education as components of preventive, curative, and restorative health care;

(d) Developing, implementing, managing, and evaluating nutrition care systems; and

(e) Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services.

(2) "General nutrition services" means the counseling and/or educating of groups or individuals in the selection of food to meet normal nutritional needs for health maintenance, which includes, but is not restricted to:

(a) Assessing the nutritional needs of individuals and groups by planning, organizing, coordinating, and evaluating the nutrition components of community health care services;

(b) Supervising, administering, or teaching normal nutrition in colleges, universities, clinics, group care homes, nursing homes, hospitals, private industry, and group meetings.

(3) "Certified dietitian" means any person certified to practice dietetics under this chapter.

(4) "Certified nutritionist" means any person certified to provide general nutrition services under this chapter.

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

(6) ~~((("Director" means the director of licensing or the director's designee))~~ "Secretary" means the secretary of health or the secretary's designee.

Sec. 279. RCW 18.138.020 and 1988 c 277 s 2 are each amended to read as follows:

(1) No persons shall represent themselves as certified dietitians or certified nutritionists unless certified as provided for in this chapter.

(2) Persons represent themselves as certified dietitians or certified nutritionists when any title or any description of services is used which incorporates one or more of the following items or designations: "Certified dietitian," "certified dietician," "certified nutritionist," "D.," "C.D.," or "C.N."

(3) The ~~((director))~~ secretary may by rule proscribe or regulate advertising and other forms of patient solicitation which are likely to mislead or deceive the public as to whether someone is certified under this chapter.

Sec. 280. RCW 18.138.030 and 1988 c 277 s 3 are each amended to read as follows:

(1) An applicant applying for certification as a certified dietitian or certified nutritionist shall file a written application on a form or forms provided by the ~~((director))~~ secretary setting forth under affidavit such information as the ~~((director))~~ secretary may require, and proof that the candidate has met qualifications set forth below in subsection (2) or (3) of this section.

(2) Any person seeking certification as a "certified dietitian" shall meet the following qualifications:

(a) Be eighteen years of age or older;

(b) Has satisfactorily completed a major course of study in human nutrition, foods and nutrition, dietetics, or food systems management, and has received a baccalaureate or higher degree from a college or university accredited by the Western association of schools and colleges or a similar accreditation agency or colleges and universities approved by the ~~((director))~~ secretary in rule;

(c) Demonstrates evidence of having successfully completed a planned continuous preprofessional experience in dietetic practice of not less than nine hundred hours under the supervision of a certified dietitian or a registered dietitian or demonstrates completion of a coordinated undergraduate program in dietetics, both of which meet the training criteria established by the ~~((director))~~ secretary;

(d) Has satisfactorily completed an examination for dietitians administered by a public or private agency or institution recognized by the ((director)) secretary as qualified to administer the examination; and

(e) Has satisfactorily completed courses of continuing education as currently established by the ((director)) secretary.

(3) An individual may be certified as a certified dietician if he or she provides evidence of meeting criteria for registration on June 9, 1988, by the commission on dietetic registration.

(4) Any person seeking certification as a "certified nutritionist" shall meet the following qualifications:

(a) Possess the qualifications required to be a certified dietician; or

(b) Has received a master's degree or doctorate degree in one of the following subject areas: Human nutrition, nutrition education, foods and nutrition, or public health nutrition from a college or university accredited by the Western association of schools and colleges or a similar accrediting agency or colleges and universities approved by the ((director)) secretary in rule.

Sec. 281. RCW 18.138.040 and 1988 c 277 s 4 are each amended to read as follows:

(1) If the applicant meets the qualifications as outlined in RCW 18.138.030(2), the ((director)) secretary shall confer on such candidates the title certified dietician.

(2) If the applicant meets the qualifications as outlined in RCW 18.138.030(4), the ((director)) secretary shall confer on such candidates the title certified nutritionist.

(3) The application fee in an amount determined by the ((director)) secretary shall accompany the application for certification as a certified dietician or certified nutritionist.

Sec. 282. RCW 18.138.050 and 1988 c 277 s 6 are each amended to read as follows:

The ((director)) secretary may certify a person applying for the title "certified dietician" without examination if such person is licensed or certified as a dietician in another jurisdiction and if, in the ((director's)) secretary's judgment, the requirements of that jurisdiction are equivalent to or greater than those of Washington state.

Sec. 283. RCW 18.138.060 and 1988 c 277 s 7 are each amended to read as follows:

(1) Every person certified as a certified dietician or certified nutritionist shall pay a renewal registration fee determined by the ((director)) secretary as provided in RCW ((43.24.086)) 43.70.250. The certificate of the person shall be renewed for a period of one year or longer at the discretion of the ((director)) secretary.

(2) Any failure to register and pay the annual renewal registration fee shall render the certificate invalid. The certificate shall be reinstated upon: (a) Written application to the ((director)) secretary; (b) payment to the state of a penalty fee determined by the ((director)) secretary; and (c) payment to the state of all delinquent annual certificate renewal fees.

(3) Any person who fails to renew his or her certification for a period of three years shall not be entitled to renew such certification under this section. Such person, in order to obtain a certification as a certified dietitian or certified nutritionist in this state, shall file a new application under this chapter, along with the required fee, and shall meet all requirements as the ((director)) secretary provides.

(4) All fees collected under this section shall be credited to the health professions account as required.

Sec. 284. RCW 18.138.070 and 1988 c 277 s 10 are each amended to read as follows:

In addition to any other authority provided by law, the ((director)) secretary may:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) Establish forms necessary to administer this chapter;

(3) Issue a certificate to an applicant who has met the requirements for certification and deny a certificate to an applicant who does not meet the minimum qualifications;

(4) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those certified under this chapter, to serve as consultants as necessary to implement and administer this chapter;

(5) Maintain the official departmental record of all applicants and certificate holders;

(6) Conduct a hearing, pursuant to chapter 34.05 RCW, on an appeal of a denial of certification based on the applicant's failure to meet the minimum qualifications for certification;

(7) Investigate alleged violations of this chapter and consumer complaints involving the practice of persons representing themselves as certified dietitians or certified nutritionists;

(8) Issue subpoenas, statements of charges, statements of intent to deny certifications, and orders and delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements on intent to deny certifications;

(9) Conduct disciplinary proceedings, impose sanctions, and assess fines for violations of this chapter or any rules adopted under it in accordance with chapter 34.05 RCW;

(10) Set all certification, renewal, and late renewal fees in accordance with RCW ((~~43.24.086~~)) 43.70.250; and

(11) Set certification expiration dates and renewal periods for all certifications under this chapter.

Sec. 285. RCW 18.138.080 and 1988 c 277 s 8 are each amended to read as follows:

(1) There is created a state advisory committee consisting of five members appointed by the ~~((director))~~ secretary who shall advise the ~~((director))~~ secretary concerning the administration of this chapter. Two members of the committee shall be certified dietitians who have been engaged in the practice of dietetics for at least five years immediately preceding their appointments. Two members of the committee shall be certified nutritionists who have been engaged in the provision of general nutrition services for at least five years preceding their appointments. These committee members shall at all times be certified under this chapter, except for the initial members of the committee, who shall fulfill the requirements for certification under this chapter. The remaining member of the committee shall be a member of the public with an interest in the rights of consumers of health services, but who does not have any financial interest in the rendering of health services.

(2) The term of office for committee members is four years. The terms of the first committee members however, shall be staggered to ensure an orderly succession of new committee members thereafter. Terms of office shall expire on December 31. Any committee member may be removed for just cause. The ~~((director))~~ secretary may appoint a new member to fill any vacancy on the committee for the remainder of the unexpired term. No committee member may serve more than two consecutive terms whether full or partial.

(3) Committee members shall be entitled to be compensated in accordance with RCW 43.03.240 and to be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(4) The committee shall have the authority to annually elect a chairperson and vice-chairperson to direct the meetings of the committee. The committee shall meet at least once each year, and may hold additional meetings as called by the ~~((director))~~ secretary or the chairperson. Three members of the committee shall constitute a quorum of the committee.

Sec. 286. RCW 18.138.090 and 1988 c 277 s 5 are each amended to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of certificates, unauthorized practices, and the disciplining of certificate holders under this chapter. The ~~((director))~~ secretary shall be the disciplining authority under this chapter.

Sec. 287. RCW 19.32.110 and 1985 c 213 s 11 are each amended to read as follows:

(1) No person afflicted with any contagious or infectious disease shall work or be permitted to work in or about any refrigerated locker, nor in the handling, dealing nor processing of any human food in connection therewith.

(2) No person shall work or be permitted to work in or about any refrigerated locker in the handling, processing or dealing in any human food or any ingredient thereof without holding a certificate from a physician, duly accredited for that purpose by the department of ~~((social and health services))~~ health, certifying that such person has been examined and found free from any contagious or infectious disease. The department of ~~((social and health services))~~ health may fix a maximum fee, not exceeding two dollars which may be charged by a physician for such examination. Such certificate shall be effective for a period of six months and thereafter must be renewed following proper physical examination as aforesaid. Where such certificate is required and provided under municipal ordinance upon examination deemed adequate by the department, certificates issued thereunder shall be sufficient under this chapter.

(3) Any such certificate shall be revoked by the department of ~~((social and health services))~~ health at any time the holder thereof is found, after proper physical examination, to be afflicted with any communicable or infectious disease. Refusal of any person employed in such premises to submit to proper and reasonable physical examination upon written demand by the department of ~~((social and health services))~~ health or of the director of agriculture shall be cause for revocation of that person's health certificate.

Sec. 288. RCW 26.33.300 and 1990 c 146 s 5 are each amended to read as follows:

The department of health shall be a depository for statistical data concerning adoption. It shall furnish to the clerk of each county a data card which shall be completed and filed with the clerk on behalf of each petitioner. The clerk shall forward the completed cards to the department of health which shall compile the data and publish reports summarizing the data. A birth certificate shall not be issued showing the petitioner as the parent of any child adopted in the state of Washington until a data card has been completed and filed.

Sec. 289. RCW 28A.210.030 and 1990 c 33 s 188 are each amended to read as follows:

The person or persons completing the screening prescribed in RCW 28A.210.020 shall promptly prepare a record of the screening of each child found to have, or suspected of having, reduced visual and/or auditory acuity in need of attention, including the special education services provided by RCW 28A.155.010 through 28A.155.100, and send copies of such records and recommendations to the parents or guardians of such children and shall deliver the original records to the appropriate school official who shall preserve such records and forward to the superintendent of public instruction

and the secretary of (~~(social and health services)~~) health visual and auditory data as requested by such officials.

Sec. 290. RCW 28A.210.090 and 1990 c 33 s 193 are each amended to read as follows:

Any child shall be exempt in whole or in part from the immunization measures required by RCW 28A.210.060 through 28A.210.170 upon the presentation of any one or more of the following, on a form prescribed by the department of (~~(social and health services)~~) health:

(1) A written certification signed by any physician licensed to practice medicine pursuant to chapter 18.71 or 18.57 RCW that a particular vaccine required by rule of the state board of health is, in his or her judgment, not advisable for the child: PROVIDED, That when it is determined that this particular vaccine is no longer contraindicated, the child will be required to have the vaccine;

(2) A written certification signed by any parent or legal guardian of the child or any adult in loco parentis to the child that the religious beliefs of the signator are contrary to the required immunization measures; and

(3) A written certification signed by any parent or legal guardian of the child or any adult in loco parentis to the child that the signator has either a philosophical or personal objection to the immunization of the child.

Sec. 291. RCW 28A.210.110 and 1990 c 33 s 195 are each amended to read as follows:

A child's proof of immunization or certification of exemption shall be presented to the chief administrator of the public or private school or day care center or to his or her designee for that purpose. The chief administrator shall:

(1) Retain such records pertaining to each child at the school or day care center for at least the period the child is enrolled in the school or attends such center;

(2) Retain a record at the school or day care center of the name, address, and date of exclusion of each child excluded from school or the center pursuant to RCW 28A.210.120 for not less than three years following the date of a child's exclusion;

(3) File a written annual report with the department of (~~(social and health services)~~) health on the immunization status of students or children attending the day care center at a time and on forms prescribed by the department of (~~(social and health services)~~) health; and

(4) Allow agents of state and local health departments access to the records retained in accordance with this section during business hours for the purposes of inspection and copying.

Sec. 292. RCW 28B.104.060 and 1988 c 242 s 6 are each amended to read as follows:

(1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest, unless they serve for five years in nurse shortage areas of the state of Washington. Nurse shortage areas may include geographical areas as a result of maldistribution, or specialty areas of nursing such as gerontology, critical care, or coronary care.

(2) The terms of the repayment, including deferral of the interest, shall be consistent with the terms of the federal guaranteed loan program.

(3) The period for repayment shall be five years, with payments accruing quarterly commencing nine months from the date the participant completes or discontinues the course of study.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant serves in a nurse shortage area, as determined by the state health (~~coordinating council~~) department, until the entire repayment obligation is satisfied or the borrower ceases to so serve. Should the participant cease to serve in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the higher education coordinating board and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

Sec. 293. RCW 42.17.2401 and 1989 1st ex.s. c 158 s 2 and 1989 c 279 s 22 are each reenacted and amended to read as follows:

For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the administrator of the Washington basic health plan, the director of the department of services for the blind, the director of the state system of community colleges, the director of community development, the secretary of corrections, the director of ecology, the commissioner of employment security, the chairman of the energy facility site evaluation council, the director of the energy office, the secretary of the state finance committee, the director of financial management, the director of fisheries, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the director of the higher education personnel board, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the director of the interagency committee for outdoor recreation, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the director of trade and economic development, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the director of wildlife, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, board of trustees of each community college, each member of the state board for community college education, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, (~~state health coordinating council~~;) higher education coordinating board, higher education facilities authority, higher education personnel board, horse racing commission, (~~hospital commission~~;) state housing finance commission, human rights commission, indeterminate sentence review

board, board of industrial insurance appeals, information services board, interagency committee for outdoor recreation, state investment board, liquor control board, lottery commission, oil and gas conservation committee, Pacific Northwest electric power and conservation planning council, parks and recreation commission, personnel appeals board, personnel board, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, state employees' benefits board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and wildlife commission.

Sec. 294. RCW 43.03.028 and 1988 c 167 s 9 are each amended to read as follows:

(1) There is hereby created a state committee on agency officials' salaries to consist of seven members, or their designees, as follows: The president of the University of Puget Sound; the chairperson of the council of presidents of the state's four-year institutions of higher education; the chairperson of the State Personnel Board; the president of the Association of Washington Business; the president of the Pacific Northwest Personnel Managers' Association; the president of the Washington State Bar Association; and the president of the Washington State Labor Council. If any of the titles or positions mentioned in this subsection are changed or abolished, any person occupying an equivalent or like position shall be qualified for appointment by the governor to membership upon the committee.

(2) The committee shall study the duties and salaries of the directors of the several departments and the members of the several boards and commissions of state government, who are subject to appointment by the governor or whose salaries are fixed by the governor, and of the chief executive officers of the following agencies of state government:

The arts commission; the human rights commission; the board of accountancy; the board of pharmacy; the capitol historical association and museum; the eastern Washington historical society; the Washington state historical society; the interagency committee for outdoor recreation; the criminal justice training commission; the department of personnel; the state finance committee; the state library; the traffic safety commission; the horse racing commission; the advisory council on vocational education; the public disclosure commission; (~~the hospital commission;~~) the state conservation commission; the commission on Hispanic affairs; the commission on Asian-American affairs; the state board for volunteer (~~firemen~~) fire fighters; the transportation improvement board; the public employees relations commission; the forest practices appeals board; and the energy facilities site evaluation council.

The committee shall report to the governor or the chairperson of the appropriate salary fixing authority at least once in each fiscal biennium on such date as the governor may designate, but not later than seventy-five days prior to the convening of each regular session of the legislature during an odd-numbered year, its recommendations for the salaries to be fixed for each position.

(3) Committee members shall be reimbursed by the department of personnel for travel expenses under RCW 43.03.050 and 43.03.060.

Sec. 295. RCW 43.20B.020 and 1981 1st ex.s. c 6 s 25 are each amended to read as follows:

The department ~~((is))~~ of social and health services and the department of health are authorized to charge fees for services provided ~~((by the department))~~ unless otherwise prohibited by law. The fees may be sufficient to cover the full cost of the service provided if practical or may be charged on an ability-to-pay basis if practical. This section does not supersede other statutory authority enabling the assessment of fees by the departments. Whenever the department of social and health services is authorized by law to collect total or partial reimbursement for the cost of its providing care of or exercising custody over any person, the department shall collect the reimbursement to the extent practical.

Sec. 296. RCW 43.20B.110 and 1989 1st ex.s. c 9 s 216 are each amended to read as follows:

(1) The secretary shall charge fees to the licensee for obtaining a license. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) Department of social and health services advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees.

(4) ~~((For))~~ Fees associated with the licensing or regulation of health professions or health facilities administered by the department of health, shall be in accordance with RCW 43.70.110 and 43.70.250.

Sec. 297. RCW 43.43.735 and 1989 c 334 s 9 [and 1989 c 6 s 2] are each reenacted and amended to read as follows:

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all adults and juveniles lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor. (a) When such juveniles are brought directly to

a juvenile detention facility, the juvenile court administrator is also authorized, but not required, to cause the photographing, fingerprinting, and record transmittal to the appropriate law enforcement agency; and (b) a further exception may be made when the arrest is for a violation punishable as a gross misdemeanor and the arrested person is not taken into custody.

(2) It shall be the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state to photograph and record the fingerprints of all adults lawfully arrested, all persons who are the subject of dependency record information, or all persons who are the subject of protection proceeding record information.

(3) Such sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may record, in addition to photographs and fingerprints, the palmprints, soleprints, toeprints, or any other identification data of all persons whose photograph and fingerprints are required or allowed to be taken under this section, all persons who are the subject of dependency record information, or all persons who are the subject of protection proceeding record information, when in the discretion of such law enforcement officers it is necessary for proper identification of the arrested person or the investigation of the crime with which he is charged.

(4) It shall be the duty of the department of (~~licensing~~) health or the court having jurisdiction over the dependency action and protection proceedings under chapter 74.34 RCW to cause the fingerprinting of all persons who are the subject of a disciplinary board final decision, dependency record information, protection proceeding record information, or to obtain other necessary identifying information, as specified by the section in rules adopted under chapter 34.05 RCW to carry out the provisions of this subsection.

(5) The court having jurisdiction over the dependency or protection proceeding action may obtain and record, in addition to fingerprints, the photographs, palmprints, soleprints, toeprints, or any other identification data of all persons who are the subject of dependency record information or protection proceeding record information, when in the discretion of the court it is necessary for proper identification of the person.

Sec. 298. RCW 43.59.030 and 1982 c 30 s 1 are each amended to read as follows:

The governor shall be assisted in his duties and responsibilities by the Washington state traffic safety commission. The Washington traffic safety commission shall be composed of the governor as chairman, the superintendent of public instruction, the director of licensing, the secretary of transportation, the chief of the state patrol, the secretary of health, the secretary of social and health services, a representative of the association of

Washington cities to be appointed by the governor, a member of the association of counties to be appointed by the governor, and a representative of the judiciary to be appointed by the governor. Appointments to any vacancies among appointee members shall be as in the case of original appointment.

The governor may designate an employee of the governor's office to act on behalf of the governor during the absence of the governor at one or more of the meetings of the commission. The vote of the designee shall have the same effect as if cast by the governor if the designation is in writing and is presented to the person presiding at the meetings included within the designation.

The governor may designate a member to preside during the governor's absence.

Sec. 299. RCW 43.70.320 and 1985 c 57 s 29 are each amended to read as follows:

There is created in the state treasury an account to be known as the health professions account. All fees received by the department for health professions licenses, registration, certifications, renewals, or examinations shall be forwarded to the state treasurer who shall credit such moneys to the health professions account. All expenses incurred in carrying out the health professions licensing activities of the department shall be paid from the account as authorized by legislative appropriation. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium. All earnings of investments of balances in the health professions account shall be credited to the general fund.

The ((director)) secretary shall biennially prepare a budget request based on the anticipated costs of administering the health professions licensing activities of the department which shall include the estimated income from health professions fees.

Sec. 300. RCW 43.83B.380 and 1977 ex.s. c 1 s 17 are each amended to read as follows:

There is hereby appropriated to the department of ((social and health services)) health the sum of nine million seven hundred thirty-seven thousand dollars, or so much thereof as may be necessary, for the biennium ending June 30, 1977, from the general fund—state and local improvements revolving account—water supply facilities for the purposes authorized in RCW 43.83B.300 through 43.83B.345 and 43.83B.210 as now or hereafter amended relating to the emergency water conditions arising from the drought forecast for the summer and fall of 1977 affecting municipal and industrial water supply distribution facilities. Prior to the expenditure of funds for projects approved by the department, the department shall file a listing of the approved projects with the senate ways and means committee and the house appropriations committee.

(2) There is hereby appropriated to the department of ~~((social and health services))~~ health the sum of five million three hundred twenty-seven thousand dollars, or so much thereof as may be necessary, for the biennium ending June 30, 1977, from the general fund—state and local improvements revolving account—water supply facilities to be expended for municipal and industrial water supply and distribution facility projects for which applications are in progress on March 25, 1977 and have arisen from the drought forecast for the summer and fall of 1977. Prior to the expenditure of funds for projects approved by the department, the department shall file a listing of the approved projects with the senate ways and means committee and the house appropriations committee.

The municipal and industrial water supply and distribution facilities receiving funds from the appropriations contained in this section shall comply with the eligible costs criteria, health and design standards, and contract performance requirements of the municipal and industrial funding program under chapter 43.83B RCW. All projects shall be evaluated by applying the said chapter's evaluation and prioritization criteria to insure that only projects related to water shortage problems receive funding. The projects funded shall be limited to those projects providing interties with adjacent utilities, an expanded source of supply, conservation projects which will conserve or maximize efficiency of the existing supply, or a new source of supply. No obligation to provide a grant for a project authorized under this section shall be incurred after June 30, 1977.

Sec. 301. RCW 43.99D.025 and 1979 ex.s. c 258 s 4 are each amended to read as follows:

The proceeds from the sale of the bonds deposited in the state and local improvements revolving account—water supply facilities of the general fund under the terms of this chapter shall be administered by the state department of ~~((social and health services))~~ health subject to legislative appropriation. The department may use or permit the use of any funds derived from the sale of bonds authorized under this chapter to accomplish the purpose for which the bonds are issued by direct expenditures and by grants or loans to public bodies, including grants to public bodies as matching funds in any case where federal, local, or other funds are made available on a matching basis for improvements within the purposes of this chapter.

Sec. 302. RCW 43.99E.025 and 1979 ex.s. c 234 s 4 are each amended to read as follows:

The proceeds from the sale of the bonds deposited in the state and local improvements revolving account—water supply facilities of the general fund under the terms of this chapter shall be divided into two shares as follows:

(1) Seventy-five million dollars, or so much thereof as may be required, shall be used for domestic, municipal, and industrial water supply facilities; and

(2) Fifty million dollars, or so much thereof as may be required, shall be used for water supply facilities for agricultural use alone or in combination with fishery, recreational, or other beneficial uses of water.

The share of seventy-five million dollars shall be administered by the department of ~~((social and health services))~~ health and the share of fifty million dollars shall be administered by the department of ecology, subject to legislative appropriation. The administering departments may use or permit the use of any funds derived from the sale of bonds authorized under this chapter to accomplish the purpose for the issuance of the bonds by direct expenditures and by grants or loans to public bodies, including grants to public bodies as matching funds in any case where federal, local, or other funds are made available on a matching basis for improvements within the purposes of this chapter.

Sec. 303. RCW 69.30.010 and 1989 c 200 s 1 are each amended to read as follows:

When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters, mussels, and clams, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shellfish in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

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

(7) "Secretary" means the secretary of ~~((social and health services))~~ health or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen horseclams; (d) six geoducks; or (e) fifty pounds of hard or soft shell clams.

Sec. 304. RCW 69.30.080 and 1989 c 175 s 125 are each amended to read as follows:

The department may deny, revoke, suspend, or modify a certificate of approval, license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this

chapter or rules adopted under it. (~~RCW 43.20A.205~~) Section 377 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 305. RCW 70.05.053 and 1983 1st ex.s. c 39 s 3 are each amended to read as follows:

A person holding a license required by RCW 70.05.050 but not meeting any of the requirements for qualification prescribed by RCW 70.05.051 may be appointed by the board or official responsible for appointing the local health officer under RCW 70.05.050 as a provisionally qualified local health officer for a maximum period of three years upon the following conditions and in accordance with the following procedures:

(1) He or she shall participate in an in-service orientation to the field of public health as provided in RCW 70.05.054, and

(2) He or she shall satisfy the secretary of (~~social and health services~~) health pursuant to the periodic interviews prescribed by RCW 70.05.055 that he or she has successfully completed such in-service orientation and is conducting such program of good health practices as may be required by the jurisdictional area concerned.

Sec. 306. RCW 70.05.054 and 1979 c 141 s 77 are each amended to read as follows:

The secretary of (~~social and health services~~) health shall provide an in-service public health orientation program for the benefit of provisionally qualified local health officers.

Such program shall consist of—

(1) A three months course in public health training conducted by the secretary either in the state department of (~~social and health services~~) health, in a county and/or city health department, in a local health district, or in an institution of higher education; or

(2) An on-the-job, self-training program pursuant to a standardized syllabus setting forth the major duties of a local health officer including the techniques and practices of public health principles expected of qualified local health officers: PROVIDED, That each provisionally qualified local health officer may choose which type of training he or she shall pursue.

Sec. 307. RCW 70.05.055 and 1979 c 141 s 78 are each amended to read as follows:

Each year, on a date which shall be as near as possible to the anniversary date of appointment as provisional local health officer, the secretary of (~~social and health services~~) health or his or her designee shall personally visit such provisional officer's office for a personal review and discussion of the activity, plans, and study being carried on relative to the provisional officer's jurisdictional area: PROVIDED, That the third such interview shall occur three months prior to the end of the three year provisional term. A

standardized checklist shall be used for all such interviews, but such checklist shall not constitute a grading sheet or evaluation form for use in the ultimate decision of qualification of the provisional appointee as a public health officer.

Copies of the results of each interview shall be supplied to the provisional officer within two weeks following each such interview.

Following the third such interview, the secretary (~~(of social and health services)~~) shall evaluate the provisional local health officer's in-service performance and shall notify such officer by certified mail of his or her decision whether or not to qualify such officer as a local public health officer. Such notice shall be mailed at least sixty days prior to the third anniversary date of provisional appointment. Failure to so mail such notice shall constitute a decision that such provisional officer is qualified.

Sec. 308. RCW 70.05.060 and 1984 c 25 s 6 are each amended to read as follows:

Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:

(1) Enforce through the local health officer or the administrative officer appointed under RCW 70.05.040, if any, the public health statutes of the state and rules (~~(and regulations)~~) promulgated by the state board of health and the secretary of (~~(social and health services)~~) health;

(2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;

(3) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;

(4) Provide for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department;

(5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;

(6) Make such reports to the state board of health through the local health officer or the administrative officer as the state board of health may require; and

(7) Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules (~~(and regulations)~~) of the state board of health: PROVIDED, That such fees for services shall not exceed the actual cost of providing any such services.

Sec. 309. RCW 70.05.070 and 1990 c 133 s 10 are each amended to read as follows:

The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040, if any, shall:

(1) Enforce the public health statutes of the state, rules (~~and regulations~~) of the state board of health and the secretary of (~~social and health services~~) health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of (~~social and health services~~) health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules (~~and regulations~~) of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department.

Sec. 310. RCW 70.05.080 and 1983 1st ex.s. c 39 s 4 are each amended to read as follows:

If the local board of health or other official responsible for appointing a local health officer under RCW 70.05.050 refuses or neglects to appoint a local health officer after a vacancy exists, the secretary of (~~social and health services~~) health may appoint a local health officer and fix the compensation. The local health officer so appointed shall have the same duties, powers and authority as though appointed under RCW 70.05.050. Such local health officer shall serve until a qualified individual is appointed according to the procedures set forth in RCW 70.05.050. The board or official responsible for appointing the local health officer under RCW 70.05.050 shall also be authorized to appoint an acting health officer to serve whenever the health officer is absent or incapacitated and unable to fulfill his or her

responsibilities under the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090.

Sec. 311. RCW 70.05.090 and 1979 c 141 s 82 are each amended to read as follows:

Whenever any physician shall attend any person sick with any dangerous contagious or infectious disease, or with any diseases required by the state board of health to be reported, he or she shall, within twenty-four hours, give notice thereof to the local health officer within whose jurisdiction such sick person may then be or to the state department of ~~((social and health services))~~ health in Olympia.

Sec. 312. RCW 70.05.100 and 1979 c 141 s 83 are each amended to read as follows:

In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state department of ~~((social and health services))~~ health can be notified, and then the opinion of the executive officer of the state department of ~~((social and health services))~~ health, or any physician he or she may appoint to examine such case, shall be final.

Sec. 313. RCW 70.05.130 and 1979 c 141 s 84 are each amended to read as follows:

All expenses incurred by the state, health district, or county in carrying out the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or any other public health law, or the rules ~~((and regulations))~~ of the state department of ~~((social and health services))~~ health enacted under such laws, shall be paid by the county or city by which or in behalf of which such expenses shall have been incurred and such expenses shall constitute a claim against the general fund as provided herein.

Sec. 314. RCW 70.08.050 and 1979 c 141 s 85 are each amended to read as follows:

Nothing in this chapter shall prohibit the director of public health as provided herein from acting as health officer for any other city or town within the county, nor from acting as health officer in any adjoining county or any city or town within such county having a contract or agreement as provided in RCW 70.08.090: PROVIDED, HOWEVER, That before being appointed health officer for such adjoining county, the secretary of ~~((social and health services))~~ health shall first give his or her approval thereto.

Sec. 315. RCW 70.12.015 and 1979 c 141 s 86 are each amended to read as follows:

The secretary of ~~((social and health services))~~ health is hereby authorized to apportion and expend such sums as he or she shall deem necessary for public health work in the counties of the state, from the appropriations

made to the state department of (~~social and health services~~) health for county public health work.

Sec. 316. RCW 70.12.070 and 1979 c 141 s 87 are each amended to read as follows:

The public health pool fund shall be subject to audit by the division of departmental audits and shall be subject to check by the state department of (~~social and health services~~) health.

Sec. 317. RCW 70.22.020 and 1979 c 141 s 88 are each amended to read as follows:

The secretary of (~~social and health services~~) health is hereby authorized and empowered to make or cause to be made such inspections, investigations, studies and determinations as he or she may from time to time deem advisable in order to ascertain the effect of mosquitoes as a health hazard, and, to the extent to which funds are available, to provide for the control or elimination thereof in any or all parts of the state.

Sec. 318. RCW 70.22.030 and 1979 c 141 s 89 are each amended to read as follows:

The secretary of (~~social and health services~~) health shall coordinate plans for mosquito control work which may be projected by any county, city or town, municipal corporation, taxing district, state department or agency, federal government agency, or any person, group or organization, and arrange for cooperation between any such districts, departments, agencies, persons, groups or organizations.

Sec. 319. RCW 70.22.040 and 1979 c 141 s 90 are each amended to read as follows:

The secretary of (~~social and health services~~) health is authorized and empowered to receive funds from any county, city or town, municipal corporation, taxing district, the federal government, or any person, group or organization to carry out the purpose of this chapter. In connection therewith the secretary is authorized and empowered to contract with any such county, city, or town, municipal corporation, taxing district, the federal government, person, group or organization with respect to the construction and maintenance of facilities and other work for the purpose of effecting mosquito control or elimination, and any such county, city or town, municipal corporation, or taxing district obligated to carry out the provisions of any such contract entered into with the secretary (~~of social and health services~~) is authorized, empowered and directed to appropriate, and if necessary, to levy taxes for and pay over such funds as its contract with the secretary may from time to time require.

Sec. 320. RCW 70.22.050 and 1989 c 11 s 25 are each amended to read as follows:

To carry out the purpose of this chapter, the secretary of (~~social and health services~~) health may:

(1) Abate as nuisances breeding places for mosquitoes as defined in RCW 17.28.170;

(2) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for carrying out the purpose of this chapter;

(3) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants;

(4) Publish information or literature; and

(5) Do any and all other things necessary to carry out the purpose of this chapter: PROVIDED, That no program shall be permitted nor any action taken in pursuance thereof which may be injurious to the life or health of game or fish.

Sec. 321. RCW 70.22.060 and 1979 c 141 s 92 are each amended to read as follows:

Each state department, agency, and political subdivision shall cooperate with the secretary of (~~social and health services~~) health in carrying out the purposes of this chapter.

Sec. 322. RCW 70.24.017 and 1988 c 206 s 101 are each amended to read as follows:

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

(1) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(2) "Board" means the state board of health.

(3) "Department" means the department of (~~social and health services~~) health, or any successor department with jurisdiction over public health matters.

(4) "Health care provider" means any person who is a member of a profession under RCW 18.130.040 or other person providing medical, nursing, psychological, or other health care services regulated by the department of (~~licensing or the department of social and health services~~) health.

(5) "Health care facility" means a hospital, nursing home, neuropsychiatric or mental health facility, home health agency, hospice, child care agency, adult family home, group care facility, family foster home, clinic, blood bank, blood center, sperm bank, laboratory, or other social service or health care institution regulated or operated by the department of (~~social and health services~~) health.

(6) "HIV-related condition" means any medical condition resulting from infection with HIV including, but not limited to, seropositivity for HIV.

(7) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-related viruses which damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(8) "Test for a sexually transmitted disease" means a test approved by the board by rule.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incompetent or, in the case of a minor, a person who has legal custody of the child.

(10) "Local public health officer" means the officer directing the county health department or his or her designee who has been given the responsibility and authority to protect the health of the public within his or her jurisdiction.

(11) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or health facility.

(12) "Release of test results" means a written authorization for disclosure of any sexually transmitted disease test result which is signed, dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

(13) "Sexually transmitted disease" means a bacterial, viral, fungal, or parasitic disease, determined by the board by rule to be sexually transmitted, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for regulation and treatment. The board shall designate chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), trachomitis, genital human papilloma virus infection, syphilis, acquired immunodeficiency syndrome (AIDS), and human immunodeficiency virus (HIV) infection as sexually transmitted diseases, and shall consider the recommendations and classifications of the centers for disease control and other nationally recognized medical authorities in designating other diseases as sexually transmitted.

(14) "State public health officer" means the secretary of (~~social and health services~~) health or an officer appointed by the secretary.

Sec. 323. RCW 70.24.100 and 1979 c 141 s 95 are each amended to read as follows:

A standard serological test shall be a laboratory test for syphilis approved by the secretary of (~~social and health services~~) health and shall be performed either by a laboratory approved by the secretary of (~~social and health services~~) health for the performance of the particular serological test used or by the state department of (~~social and health services~~) health, on request of the physician free of charge.

Sec. 324. RCW 70.24.120 and 1988 c 206 s 913 are each amended to read as follows:

Sexually transmitted disease case investigators, upon specific authorization from a physician, are hereby authorized to perform venipuncture or skin puncture on a person for the sole purpose of withdrawing blood for use in sexually transmitted disease tests.

The term "sexually transmitted disease case investigator" shall mean only those persons who:

- (1) Are employed by public health authorities; and
- (2) Have been trained by a physician in proper procedures to be employed when withdrawing blood in accordance with training requirements established by the department of (~~social and health services~~) health; and
- (3) Possess a statement signed by the instructing physician that the training required by subsection (2) of this section has been successfully completed.

The term "physician" means any person licensed under the provisions of chapters 18.57 or 18.71 RCW.

Sec. 325. RCW 70.24.130 and 1988 c 206 s 915 are each amended to read as follows:

The board shall adopt such rules as are necessary to implement and enforce this chapter. Rules may also be adopted by the department of (~~social and health services or the department of licensing~~) health for the purposes of this chapter. The rules may include procedures for taking appropriate action, in addition to any other penalty under this chapter, with regard to health care facilities or health care providers which violate this chapter or the rules adopted under this chapter. The rules shall prescribe stringent safeguards to protect the confidentiality of the persons and records subject to this chapter. The procedures set forth in chapter 34.05 RCW apply to the administration of this chapter, except that in case of conflict between chapter 34.05 RCW and this chapter, the provisions of this chapter shall control.

Sec. 326. RCW 70.24.150 and 1988 c 206 s 918 are each amended to read as follows:

Members of the state board of health and local boards of health, public health officers, and employees of the department of (~~social and health services~~) health and local health departments are immune from civil action for damages arising out of the good faith performance of their duties as prescribed by this chapter, unless such performance constitutes gross negligence.

Sec. 327. RCW 70.24.400 and 1988 c 206 s 801 are each amended to read as follows:

The department shall establish a state-wide system of regional acquired immunodeficiency syndrome (AIDS) service networks as follows:

- (1) The secretary of (~~social and health services~~) health shall direct that all state or federal funds, excluding those from federal Title XIX for

services or other activities authorized in this chapter, shall be allocated to the office on AIDS established in RCW 70.24.250. The secretary shall further direct that all funds for services and activities specified in subsection (3) of this section shall be provided to lead counties through contractual agreements based on plans developed as provided in subsection (2) of this section, unless direction of such funds is explicitly prohibited by federal law, federal regulation, or federal policy. The department shall deny funding allocations to lead counties only if the denial is based upon documented incidents of nonfeasance, misfeasance, or malfeasance. However, the department shall give written notice and thirty days for corrective action in incidents of misfeasance or nonfeasance before funding may be denied. The department shall designate six AIDS service network regions encompassing the state. In doing so, the department shall use the boundaries of the regional structures in place for the community services administration on January 1, 1988.

(2) The department shall request that a lead county within each region, which shall be the county with the largest population, prepare, through a cooperative effort of local health departments within the region, a regional organizational and service plan, which meets the requirements set forth in subsection (3) of this section. Efforts should be made to use existing plans, where appropriate. The plan should place emphasis on contracting with existing hospitals, major voluntary organizations, or health care organizations within a region that have in the past provided quality services similar to those mentioned in subsection (3) of this section and that have demonstrated an interest in providing any of the components listed in subsection (3) of this section. If any of the counties within a region do not participate, it shall be the lead county's responsibility to develop the part of the plan for the nonparticipating county or counties. If all of the counties within a region do not participate, the department shall assume the responsibility.

(3) The regional AIDS service network plan shall include the following components:

- (a) A designated single administrative or coordinating agency;
- (b) A complement of services to include:
 - (i) Voluntary and anonymous counseling and testing;
 - (ii) Mandatory testing and/or counseling services for certain individuals, as required by law;
 - (iii) Notification of sexual partners of infected persons, as required by law;
 - (iv) Education for the general public, health professionals, and high-risk groups;
 - (v) Intervention strategies to reduce the incidence of HIV infection among high-risk groups, possibly including needle sterilization and methadone maintenance;
 - (vi) Related community outreach services for runaway youth;

- (vii) Case management;
- (viii) Strategies for the development of volunteer networks;
- (ix) Strategies for the coordination of related agencies within the network; and
- (x) Other necessary information, including needs particular to the region;

(c) A service delivery model that includes:

(i) Case management services; and

(ii) A community-based continuum-of-care model encompassing both medical, mental health, and social services with the goal of maintaining persons with AIDS in a home-like setting, to the extent possible, in the least-expensive manner; and

(d) Budget, caseload, and staffing projections.

(4) Efforts shall be made by both the counties and the department to use existing service delivery systems, where possible, in developing the networks.

(5) The University of Washington health science program, in cooperation with the office on AIDS may, within available resources, establish a center for AIDS education, which shall be linked to the networks. The center for AIDS education is not intended to engage in state-funded research related to HIV infection, AIDS, or HIV-related conditions. Its duties shall include providing the office on AIDS with the appropriate educational materials necessary to carry out that office's duties.

(6) The department shall implement this section, consistent with available funds, by October 1, 1988, by establishing six regional AIDS service networks whose combined jurisdictions shall include the entire state.

(a) Until June 30, 1991, available funding for each regional AIDS service network shall be allocated as follows:

(i) Seventy-five percent of the amount provided for regional AIDS service networks shall be allocated per capita based on the number of persons residing within each region, but in no case less than one hundred fifty thousand dollars for each regional AIDS service network per fiscal year. This amount shall be expended for testing, counseling, education, case management, notification of sexual partners of infected persons, planning, coordination, and other services required by law, except for those enumerated in (ii) of this subsection.

(ii) Twenty-five percent of the amount provided for regional AIDS service networks shall be allocated for intervention strategies specifically addressing groups that are at a high risk of being infected with the human immunodeficiency virus. The allocation shall be made by the office on AIDS based on documented need as specified in regional AIDS network plans.

(b) After June 30, 1991, the funding shall be allocated as provided by law. By December 15, 1990, the department shall report to the appropriate

committees of the legislature on proposed methods of funding regional AIDS service networks.

(7) The regional AIDS service networks shall be the official state regional agencies for AIDS information education and coordination of services. The state public health officer, as designated by the secretary of ~~((social and health services))~~ health, shall make adequate efforts to publicize the existence and functions of the networks.

(8) If the department is not able to establish a network by an agreement solely with counties, it may contract with nonprofit agencies for any or all of the designated network responsibilities.

(9) The department, in establishing the networks, shall study mechanisms that could lead to reduced costs and/or increased access to services. The methods shall include capitation.

(10) The department shall reflect in its departmental biennial budget request the funds necessary to implement this section.

(11) The department shall submit an implementation plan to the appropriate committees of the legislature by July 1, 1988.

(12) The use of appropriate materials may be authorized by regional AIDS service networks in the prevention or control of HIV infection.

Sec. 328. RCW 70.24.410 and 1988 c 206 s 803 are each amended to read as follows:

To assist the secretary of ~~((social and health services))~~ health in the development and implementation of AIDS programs, the governor shall appoint an AIDS advisory committee. Among its duties shall be a review of insurance problems as related to persons with AIDS. The committee shall terminate on June 30, 1991.

Sec. 329. RCW 70.30.081 and 1972 ex.s. c 143 s 4 are each amended to read as follows:

All hospitals established or maintained for the treatment of persons suffering from tuberculosis shall be subject to annual inspection, or more frequently if required by federal law, by agents of the department of ~~((social and health services))~~ health, and the medical director shall admit such agents into every part of the facility and its buildings, and give them access on demand to all records, reports, books, papers, and accounts pertaining to the facility.

Sec. 330. RCW 70.33.010 and 1983 c 3 s 171 are each amended to read as follows:

The following words and phrases shall have the designated meanings in this chapter and RCW 70.32.010, 70.32.050, and 70.32.060 unless the context clearly indicated otherwise:

(1) "Department" means the department of ~~((social and health services))~~ health;

(2) "Secretary" means the secretary of the department of (~~social and health services~~) health or his or her designee;

(3) "Tuberculosis hospital" and "tuberculosis hospital facility" refer to hospitals for the care of persons suffering from tuberculosis;

(4) "Tuberculosis control" refers to the procedures administered in the counties for the control and prevention of tuberculosis, but does not include hospitalization.

Sec. 331. RCW 70.40.020 and 1979 c 141 s 96 are each amended to read as follows:

As used in this chapter:

(1) "Secretary" means the secretary of the state department of (~~social and health services~~) health;

(2) "The federal act" means Title VI of the public health service act, as amended, or as hereafter amended by congress;

(3) "The surgeon general" means the surgeon general of the public health service of the United States;

(4) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;

(5) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers;

(6) "Nonprofit hospital" and "nonprofit medical facility" means any hospital or medical facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(7) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act.

Sec. 332. RCW 70.40.030 and 1979 c 141 s 97 are each amended to read as follows:

There is hereby established in the state department of (~~social and health services~~) health a "section of hospital and medical facility survey and construction" which shall be administered by a full time salaried head under the supervision and direction of the secretary. The state department of (~~social and and health services~~) health, through such section, shall constitute the sole agency of the state for the purpose of:

(1) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital and medical facility construction; and

(2) Developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in this chapter.

Sec. 333. RCW 70.40.150 and 1973 c 106 s 31 are each amended to read as follows:

The secretary is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants or to approve applicants for federal funds and authorize the payment of such funds directly to such applicants as may be allowed by federal law. To achieve that end there is hereby established, separate and apart from all public moneys and funds of this state, a trust fund to be known as the "hospital and medical facility construction fund", of which the state treasurer shall ex officio be custodian. Moneys received from the federal government for construction projects approved by the surgeon general shall be deposited to the credit of this fund, shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Vouchers covering all payments from the hospital and medical facility construction fund shall be prepared by the department of (~~social and health services~~) health and shall bear the signature of the secretary or his or her duly authorized agent for such purpose, and warrants therefor shall be signed by the state treasurer.

Sec. 334. RCW 70.41.020 and 1985 c 213 s 16 are each amended to read as follows:

Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

(1) "Department" means the Washington state department of (~~social and health services~~) health;

(2) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include maternity homes, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or

the rules ~~((and regulations))~~ adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations;

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

Sec. 335. RCW 70.41.130 and 1989 c 175 s 128 are each amended to read as follows:

The department is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter. ~~((RCW 43.20A.205))~~ Section 377 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 336. RCW 70.41.200 and 1987 c 269 s 5 are each amended to read as follows:

(1) Every hospital shall maintain a coordinated program for the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality assurance committee with the responsibility to review the services rendered in the hospital in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the medical malpractice prevention program and shall insure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures. At least one member of the committee shall be a member of the governing board of the hospital who is not otherwise affiliated with the hospital in an employment or contractual capacity;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and

incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with patient safety, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the medical malpractice prevention program or who, in substantial good faith, participates on the quality assurance committee shall not be subject to an action for civil damages or other relief as a result of such activity.

(3) Information and documents, including complaints and incident reports, created, collected, and maintained about health care providers arising out of the matters that are under review or have been evaluated by a review committee conducting quality assurance reviews are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or board shall be permitted or required to testify in any civil action as to the content of such proceedings. This subsection does not preclude: (a) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (b) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality assurance committees regarding such health care provider; (c) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any; or (d) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of ~~((social and health services))~~ health to be made regarding the care and treatment received.

(4) The department of ~~((social and health services))~~ health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(5) The medical disciplinary board or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or

restricted. Each hospital shall produce and make accessible to the board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(6) Violation of this section shall not be considered negligence per se.

Sec. 337. RCW 70.41.230 and 1987 c 269 s 6 are each amended to read as follows:

(1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from the physician and the physician shall provide the following information:

(a) The name of any hospital or facility with or at which the physician had or has any association, employment, privileges, or practice;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician deems appropriate;

(e) A waiver by the physician of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician that the information provided by the physician is accurate and complete.

(2) Prior to granting privileges or association to any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician had or has privileges, was associated, or was employed, the following information concerning the physician:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.72.265.

(3) The medical disciplinary board shall be advised within thirty days of the name of any physician denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created, collected, and maintained about health care providers arising out of the matters that are under review or have been evaluated by a review committee conducting quality assurance reviews are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or board shall be permitted or required to testify in any civil action as to the content of such proceedings. This subsection does not preclude: (a) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (b) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality assurance committees regarding such health care provider; (c) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any; or (d) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of ~~((social and health services))~~ health to be made regarding the care and treatment received.

(6) Hospitals shall be granted access to information held by the medical disciplinary board and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se.

Sec. 338. RCW 70.41.240 and 1988 c 207 s 3 are each amended to read as follows:

The department of ~~((social and health services))~~ health shall compile and make available to the public information regarding medicare health care facility certification options available to hospitals licensed under this title that desire to convert to nonhospital health care facilities. The information provided shall include standards and requirements for certification and procedures for acquiring certification.

Sec. 339. RCW 70.47.060 and 1987 1st ex.s. c 5 s 8 are each amended to read as follows:

The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, and other services that may be necessary for basic health care, which enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care, shall include all services necessary for prenatal, postnatal, and well-child care, and shall include a separate schedule of basic health care services for children, eighteen years of age and younger, for those enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.42.080, and such other factors as the administrator deems appropriate.

(2) To design and implement a structure of periodic premiums due the administrator from enrollees that is based upon gross family income, giving appropriate consideration to family size as well as the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan.

(3) To design and implement a structure of nominal copayments due a managed health care system from enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(4) To design and implement, in concert with a sufficient number of potential providers in a discrete area, an enrollee financial participation structure, separate from that otherwise established under this chapter, that has the following characteristics:

(a) Nominal premiums that are based upon ability to pay, but not set at a level that would discourage enrollment;

(b) A modified fee-for-services payment schedule for providers;

(c) Coinsurance rates that are established based on specific service and procedure costs and the enrollee's ability to pay for the care. However, coinsurance rates for families with incomes below one hundred twenty percent of the federal poverty level shall be nominal. No coinsurance shall be required for specific proven prevention programs, such as prenatal care. The coinsurance rate levels shall not have a measurable negative effect upon the enrollee's health status; and

(d) A case management system that fosters a provider-enrollee relationship whereby, in an effort to control cost, maintain or improve the health status of the enrollee, and maximize patient involvement in her or his

health care decision-making process, every effort is made by the provider to inform the enrollee of the cost of the specific services and procedures and related health benefits.

The potential financial liability of the plan to any such providers shall not exceed in the aggregate an amount greater than that which might otherwise have been incurred by the plan on the basis of the number of enrollees multiplied by the average of the prepaid capitated rates negotiated with participating managed health care systems under RCW 70.47.100 and reduced by any sums charged enrollees on the basis of the coinsurance rates that are established under this subsection.

(5) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080.

In the selection of any area of the state for the initial operation of the plan, the administrator shall take into account the levels and rates of unemployment in different areas of the state, the need to provide basic health care coverage to a population reasonably representative of the portion of the state's population that lacks such coverage, and the need for geographic, demographic, and economic diversity.

Before July 1, 1988, the administrator shall endeavor to secure participation contracts with managed health care systems in discrete geographic areas within at least five congressional districts.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state.

(8) To receive periodic premiums from enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children,

for enrollment in the Washington basic health plan, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and at least annually thereafter, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. An enrollee who remains current in payment of the sliding-scale premium, as determined under subsection (2) of this section, and whose gross family income has risen above twice the federal poverty level, may continue enrollment unless and until the enrollee's gross family income has remained above twice the poverty level for six consecutive months, by making payment at the unsubsidized rate required for the managed health care system in which he or she may be enrolled. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to re-enroll in the plan.

(10) To require that prospective enrollees who may be eligible for categorically needy medical coverage under RCW 74.09.510 or whose income does not exceed the medically needy income level under RCW 74.09.700 apply for such coverage, but the administrator shall enroll the individuals in the plan pending the determination of eligibility under chapter 74.09 RCW.

(11) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(12) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the administrator. The administrator shall coordinate any such reporting requirements with other state agencies, such as

the insurance commissioner and the (~~hospital-commission~~) department of health, to minimize duplication of effort.

(13) To monitor the access that state residents have to adequate and necessary health care services, determine the extent of any unmet needs for such services or lack of access that may exist from time to time, and make such reports and recommendations to the legislature as the administrator deems appropriate.

(14) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(15) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(16) To provide, consistent with available resources, technical assistance for rural health activities that endeavor to develop needed health care services in rural parts of the state.

Sec. 340. RCW 70.50.010 and 1979 c 141 s 108 are each amended to read as follows:

The secretary of (~~social and health services~~) health shall appoint and employ an otologist skilled in diagnosis of diseases of the ear and defects in hearing, especially for school children with an impaired sense of hearing, and shall fix the salary of such otologist in a sum not exceeding the salary of the secretary.

Sec. 341. RCW 70.54.040 and 1979 c 141 s 109 are each amended to read as follows:

The commissioners of any county or the mayor of any city may call upon the secretary of (~~social and health services~~) health for advice relative to improving sanitary conditions or disposing of garbage and sewage or obtaining a pure water supply, and when so called upon the secretary (~~of social and health services~~) shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his or her advice (~~thereon~~) to the county or city making such request.

Sec. 342. RCW 70.58.005 and 1987 c 223 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) "Department" means the department of (~~social and health services~~) health.

(2) "Vital records" means records of birth, death, fetal death, marriage, dissolution, annulment, and legal separation, as maintained under the supervision of the state registrar of vital statistics.

Sec. 343. RCW 70.58.107 and 1988 c 40 s 1 are each amended to read as follows:

The department of (~~social and health services~~) health shall charge a fee of eleven dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration.

The (~~state~~) department (~~of social and health services~~) shall keep a true and correct account of all fees received and turn the fees over to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation, except that local registrars shall charge eleven dollars for the first copy of a death certificate and six dollars for each additional copy of the same death certificate when the additional copies are ordered at the same time as the first copy. All such fees collected, except for three dollars of each fee for the issuance of a certified copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall turn three dollars of the fee over to the state treasurer on or before the first day of January, April, July, and October.

Three dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations account established by RCW 43.79.445.

Sec. 344. RCW 70.58.310 and 1979 c 141 s 110 are each amended to read as follows:

The secretary of (~~social and health services, through the state registrar of vital statistics~~) health shall establish and maintain a registry for handicapped children.

Sec. 345. RCW 70.58.320 and 1984 c 156 s 1 are each amended to read as follows:

Whenever the attending physician discovers that a newborn child has a sentinel defect, and whenever a physician discovers upon treating a child under the age of fourteen years that such child has a partial or complete disability or a condition which may lead to partial or complete disability, such fact shall be reported to the local registrar and to the parents, or legal guardians of the child, upon a form to be provided by the secretary of (~~social and health services~~) health. No report shall be required if the disabling

condition has been previously reported or the condition is not one required to be reported by the secretary (~~(of social and health services)~~). Sentinel defects shall be reported at the same time as birth certificates are required to be filed. Each physician shall make a report as to disabling conditions within thirty days after discovery thereof. If a child with sentinel birth defects is born outside the hospital, the person filling out the birth certificate shall make a report to the department.

The forms to be provided by the secretary (~~(of social and health services)~~) for this purpose shall require such information as the secretary deems necessary to carry out the purpose of RCW 70.58.300 through 70.58.350.

Sec. 346. RCW 70.58.340 and 1979 c 141 s 112 are each amended to read as follows:

The secretary of (~~(social and health services)~~) health and any local health officer is authorized to cooperate with and to promote the aid of any medical, health, nursing, welfare, or other private groups or organizations, and with any state agency or political subdivision to furnish statistical data in furtherance of the purpose of RCW 70.58.300 through 70.58.350. The secretary or any local health officer may accept contributions or gifts in cash or otherwise from any person, group, or governmental agency to further the purpose of RCW 70.58.300 through 70.58.350.

Sec. 347. RCW 70.62.210 and 1971 ex.s. c 239 s 2 are each amended to read as follows:

The following terms whenever used or referred to in this chapter shall have the following respective meanings for the purposes of this chapter, except in those instances where the context clearly indicates otherwise:

(1) The term "transient accommodation" shall mean any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to travelers and transient guests.

(2) The term "person" shall mean any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(3) The term "secretary" shall mean the secretary of the Washington state department of (~~(social and health services)~~) health and any duly authorized representative thereof.

(4) The term "board" shall mean the Washington state board of health.

(5) The term "department" shall mean the Washington state department of (~~(social and health services)~~) health.

(6) The term "lodging unit" shall mean one self-contained unit designated by number, letter or some other method of identification.

Sec. 348. RCW 70.83.020 and 1975-'76 2nd ex.s. c 27 s 1 are each amended to read as follows:

It shall be the duty of the department of ~~((social and health services))~~ health to require screening tests of all newborn infants before they are discharged from the hospital for the detection of phenylketonuria and other heritable or metabolic disorders leading to mental retardation or physical defects as defined by the state board of health: PROVIDED, That no such tests shall be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices.

Sec. 349. RCW 70.83.030 and 1979 c 141 s 113 are each amended to read as follows:

Laboratories, attending physicians, hospital administrators, or other persons performing or requesting the performance of tests for phenylketonuria shall report to the department of ~~((social and health services))~~ health all positive tests. The state board of health by rule ~~((and regulation))~~ shall, when it deems appropriate, require that positive tests for other heritable and metabolic disorders covered by this chapter be reported to the state department of ~~((social and health services))~~ health by such persons or agencies requesting or performing such tests.

Sec. 350. RCW 70.83.040 and 1979 c 141 s 114 are each amended to read as follows:

When notified of positive screening tests, the state department of ~~((social and health services))~~ health shall offer the use of its services and facilities, designed to prevent mental retardation or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the ~~((state))~~ department ~~((of social and health services))~~, and other state and local agencies cooperating with the department ~~((of social and health services))~~ in carrying out programs of detection and prevention of mental retardation and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds.

Sec. 351. RCW 70.83B.020 and 1988 c 276 s 2 are each amended to read as follows:

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

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

(2) "Laboratory" means a private or public agency or organization performing prenatal tests for congenital and heritable disorders.

(3) "Prenatal tests" means any test that predicts congenital or heritable disorders which: (a) As determined by the state board of health can by improper utilization clearly harm or endanger the health, safety, or welfare of the public, and the potential harm is easily recognizable and not remote

or dependent upon tenuous argument, and (b) are enumerated by the department by rule.

(4) "Secretary" means the secretary of ~~((social and health services))~~ health.

Sec. 352. RCW 70.90.110 and 1987 c 222 s 2 are each amended to read as follows:

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

(1) "Water recreation facility" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation, or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

- (a) Conventional swimming pools, wading pools, and spray pools;
- (b) Recreational water contact facilities as defined in this chapter;
- (c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and
- (d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

(2) "Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to, water slides, wave pools, and water lagoons.

(3) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

(4) "Secretary" means the secretary of ~~((social and health services))~~ health.

(5) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.

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

(7) "Board" means the state board of health.

Sec. 353. RCW 70.90.130 and 1986 c 236 s 4 are each amended to read as follows:

(1) A recreational water contact facility advisory committee is established and shall be appointed by the board which shall consist of the following members:

- (a) A representative of the board of health;
- (b) A private operator of a recreational water contact facility;
- (c) A public operator of a recreational water contact facility;

(d) A representative from the department of ~~((social and health services))~~ health;

(e) A representative of the county health departments;

(f) A representative from those who engage in the construction or design of recreational water contact facilities; and

(g) A representative from those who engage in the manufacturing or design of goods or services for recreational water contact facilities.

(2) The advisory committee shall have the following powers and duties:

(a) To assist in reviewing and drafting proposed rules regarding the design or operation of any recreational water contact facility which recommendations shall be transmitted to the board;

(b) To provide technical assistance regarding the review of new products, equipment and procedures, and periodic program review; and

(c) To provide recommendations upon request in the settlement of grievances.

(3) The committee may appoint subcommittees as it deems necessary.

Sec. 354. RCW 70.90.210 and 1989 c 175 s 130 are each amended to read as follows:

(1) Any person aggrieved by an order of the department or by the imposition of a civil fine by the department has the right to an adjudicative proceeding. ~~((RCW 43-20A-215))~~ Section 378 of this act governs department notice of a civil fine and a person's right to an adjudicative proceeding.

(2) Any person aggrieved by an order of a local health officer or by the imposition of a civil fine by the officer has the right to appeal. The hearing is governed by the local health jurisdiction's administrative appeals process. Notice shall be provided by the local health jurisdiction consistent with its due process requirements.

Sec. 355. RCW 70.98.030 and 1983 1st ex.s. c 19 s 9 are each amended to read as follows:

(1) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or subatomic particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(3)(a) "General license" means a license effective pursuant to ~~((regulations))~~ rules promulgated by the state radiation control agency, without the filing of an application, to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(b) "Specific license" means a license, issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

(5) "Source material" means (a) uranium, thorium, or any other material which is determined by the United States Nuclear Regulatory Commission or its successor pursuant to the provisions of section 61 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 209) to be source material; or (b) ores containing one or more of the foregoing materials, in such concentration as the commission may by regulation determine from time to time.

(6) "Special nuclear material" means (a) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or its successor, pursuant to the provisions of section 51 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2071), determines to be special nuclear material, but does not include source material; or (b) any material artificially enriched by any of the foregoing, but does not include source material.

(7) "Registration" means registration with the state department of ~~((social and health services))~~ health by any person possessing a source of ionizing radiation in accordance with rules ~~((, regulations and standards))~~ adopted by the department of ~~((social and health services))~~ health.

(8) "Radiation source" means any type of device or substance which is capable of producing or emitting ionizing radiation.

Sec. 356. RCW 70.104.010 and 1971 ex.s. c 41 s 1 are each amended to read as follows:

The department of ~~((social and health services))~~ health has responsibility to protect and enhance the public health and welfare. As a consequence, it must be concerned with both natural and artificial environmental factors which may adversely affect the public health and welfare. Dangers to the public health and welfare related to the use of pesticides require specific legislative recognition of departmental authority and responsibility in this area.

Sec. 357. RCW 70.104.030 and 1989 c 380 s 71 are each amended to read as follows:

(1) The department of (~~(social and health services)~~) health shall investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the case or suspected case of pesticide poisoning.

In order to adequately investigate such cases, the department (~~(of social and health services)~~) shall have the power to:

(a) Take all necessary samples and human or animal tissue specimens for diagnostic purposes; PROVIDED, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent;

(b) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of pesticide poisoning.

(2) The (~~(state)~~) department (~~(of social and health services)~~) shall, by rule (~~(and regulation)~~) adopted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, (~~(as it now exists or is hereafter amended, and, in any event,)~~) with due notice and a hearing for the adoption of permanent rules, establish procedures for the prevention of any recurrence of poisoning and the department shall immediately notify the department of agriculture, the department of labor and industries, and other appropriate agencies of the results of its investigation for such action as the other departments or agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency.

Sec. 358. RCW 70.104.040 and 1983 c 3 s 178 are each amended to read as follows:

(1) In any case where an emergency relating to pesticides occurs that represents a hazard to the public due to toxicity of the material, the quantities involved or the environment in which the incident takes place, such emergencies including but not limited to fires, spillage, and accidental contamination, the person or agent of such person having actual or constructive control of the pesticides involved shall immediately notify the department of (~~(social and health services)~~) health by telephone or the fastest available method.

(2) Upon notification or discovery of any pesticide emergency the department of (~~(social and health services)~~) health shall:

(a) Make such orders and take such actions as are appropriate to assume control of the property and to dispose of hazardous substances, prevent further contamination, and restore any property involved to a nonhazardous condition. In the event of failure of any individual to obey and carry out orders pursuant to this section, the department (~~(of social and health services)~~) shall have all power and authority to accomplish those

things necessary to carry out such order. Any expenses incurred by the department (~~(of social and health services)~~) as a result of intentional failure of any individual to obey its lawful orders shall be charged as a debt against such individual.

(3) In any case where the department of (~~(social and health services)~~) health has assumed control of property pursuant to this chapter, such property shall not be reoccupied or used until such time as written notification of its release for use is received from the secretary of the department (~~(of social and health services)~~) or his or her designee. Such action shall take into consideration the economic hardship, if any, caused by having the department assume control of property, and release shall be accomplished as expeditiously as possible. Nothing in this chapter shall prevent a farmer from continuing to process his or her crops and/or animals provided that ((it)) the processing does not endanger the public health.

(4) The department shall recognize the pesticide industry's responsibility and active role in minimizing the effect of pesticide emergencies and shall provide for maximum utilization of these services.

(5) Nothing in this chapter shall be construed in any way to infringe upon or negate the authority and responsibility of the department of agriculture in its application and enforcement of the Washington Pesticide Control Act, chapter 15.58 RCW and the Washington Pesticide Application Act, chapter 17.21 RCW. The department of (~~(social and health services)~~) health shall work closely with the department of agriculture in the enforcement of this chapter and shall keep it appropriately advised.

Sec. 359. RCW 70.104.050 and 1971 ex.s. c 41 s 5 are each amended to read as follows:

The department of (~~(social and health services)~~) health shall investigate human exposure to pesticides, and in order to carry out such investigations shall have authority to secure and analyze appropriate specimens of human tissue and samples representing sources of possible exposure.

Sec. 360. RCW 70.104.055 and 1989 c 380 s 72 are each amended to read as follows:

(1) Any attending physician or other health care provider recognized as primarily responsible for the diagnosis and treatment of a patient or, in the absence of a primary health care provider, the health care provider initiating diagnostic testing or therapy for a patient shall report a case or suspected case of pesticide poisoning to the department of (~~(social and health services)~~) health in the manner prescribed by, and within the reasonable time periods established by, rules of the state board of health. Time periods established by the board shall range from immediate reporting to reporting within seven days depending on the severity of the case or suspected case of pesticide poisoning. The reporting requirements shall be patterned after other board rules establishing requirements for reporting of diseases or conditions. Confidentiality requirements shall be the same as the confidentiality

requirements established for other reportable diseases or conditions. The board rules shall determine what information shall be reported. Reports shall be made on forms provided to health care providers by the department of ~~((social and health services))~~ health. For purposes of any oral reporting, the department of ~~((social and health services))~~ health shall make available a toll-free telephone number.

(2) Within a reasonable time period as established by board rules, the department of ~~((social and health services))~~ health shall investigate the report of a case or suspected case of pesticide poisoning to document the incident. The department shall report the results of the investigation to the health care provider submitting the original report.

(3) Cases or suspected cases of pesticide poisoning shall be reported by the department of ~~((social and health services))~~ health to the pesticide reporting and tracking review panel within the time periods established by state board of health rules.

(4) Upon request of the primary health care provider, pesticide applicators or employers shall make available to that provider any available information on pesticide applications which may have affected the health of the provider's patient. This information is to be used only for the purposes of providing health care services to the patient.

(5) Any failure of the primary health care provider to make the reports required under this section may be cause for the department of ~~((social and health services))~~ health to submit information about such nonreporting to the applicable disciplining authority for the provider under RCW 18.130.040.

(6) No cause of action shall arise as the result of: (a) The failure to report under this section; or (b) any report submitted to the department of ~~((social and health services))~~ health under this section.

(7) For the purposes of this section, a suspected case of pesticide poisoning is a case in which the diagnosis is thought more likely than not to be pesticide poisoning.

Sec. 361. RCW 70.104.057 and 1989 c 380 s 73 are each amended to read as follows:

The department of ~~((social and health services))~~ health, after seeking advice from the state board of health, local health officers, and state and local medical associations, shall develop a program of medical education to alert physicians and other health care providers to the symptoms, diagnosis, treatment, and reporting of pesticide poisonings.

Sec. 362. RCW 70.104.060 and 1971 ex.s. c 41 s 6 are each amended to read as follows:

In order effectively to prevent human illness due to pesticides and to carry out the requirements of this chapter, the department of ~~((social and health services))~~ health is authorized to provide technical assistance and consultation regarding health effects of pesticides to physicians and other

agencies, and is authorized to operate an analytical chemical laboratory and may provide analytical and laboratory services to physicians and other agencies to determine pesticide levels in human and other tissues, and appropriate environmental samples.

Sec. 363. RCW 70.104.080 and 1989 c 380 s 68 are each amended to read as follows:

(1) There is hereby created a pesticide incident reporting and tracking review panel consisting of the following members:

(a) The directors, secretaries, or designees of the departments of labor and industries, agriculture, natural resources, wildlife, and ecology;

(b) The director of the department of (~~social and health services~~) health or his or her designee, who shall serve as the coordinating agency for the review panel;

(c) The chair of the department of environmental health of the University of Washington, or his or her designee;

(d) The pesticide coordinator and specialist of the cooperative extension at Washington State University or his or her designee;

(e) A representative of the Washington poison control center network;

(f) A practicing toxicologist and a member of the general public, who shall each be appointed by the governor for terms of two years and may be appointed for a maximum of four terms at the discretion of the governor. The governor may remove either member prior to the expiration of his or her term of appointment for cause. Upon the death, resignation, or removal for cause of a member of the review panel, the governor shall fill such vacancy, within thirty days of its creation, for the remainder of the term in the manner herein prescribed for appointment to the review panel.

(2) The review panel shall be chaired by the secretary of the department of (~~social and health services~~) health, or designee. The members of the review panel shall meet at least monthly at a time and place specified by the chair, or at the call of a majority of the review panel.

Sec. 364. RCW 70.104.090 and 1989 c 380 s 69 are each amended to read as follows:

The responsibilities of the review panel shall include, but not be limited to:

(1) Establishing guidelines for centralizing the receipt of information relating to actual or alleged health and environmental incidents involving pesticides;

(2) Reviewing and making recommendations for procedures for investigation of pesticide incidents, which shall be implemented by the appropriate agency unless a written statement providing the reasons for not adopting the recommendations is provided to the review panel;

(3) Monitoring the time periods required for response to reports of pesticide incidents by the departments of agriculture, (~~social and health services~~) health, and labor and industries;

(4) At the request of the chair or any panel member, reviewing pesticide incidents of unusual complexity or those that cannot be resolved;

(5) Identifying inadequacies in state and/or federal law that result in insufficient protection of public health and safety, with specific attention to advising the appropriate agencies on the adequacy of pesticide reentry intervals established by the federal environmental protection agency and registered pesticide labels to protect the health and safety of farmworkers. The panel shall establish a priority list for reviewing reentry intervals, which considers the following criteria:

(a) Whether the pesticide is being widely used in labor-intensive agriculture in Washington;

(b) Whether another state has established a reentry interval for the pesticide that is longer than the existing federal reentry interval;

(c) The toxicity category of the pesticide under federal law;

(d) Whether the pesticide has been identified by a federal or state agency or through a scientific review as presenting a risk of cancer, birth defects, genetic damage, neurological effects, blood disorders, sterility, menstrual dysfunction, organ damage, or other chronic or subchronic effects; and

(e) Whether reports or complaints of ill effects from the pesticide have been filed following worker entry into fields to which the pesticide has been applied; and

(6) Reviewing and approving an annual report prepared by the department of ~~((social and health services))~~ health to the governor, agency heads, and members of the legislature, with the same available to the public. The report shall include, at a minimum:

(a) A summary of the year's activities;

(b) A synopsis of the cases reviewed;

(c) A separate descriptive listing of each case in which adverse health or environmental effects due to pesticides were found to occur;

(d) A tabulation of the data from each case;

(e) An assessment of the effects of pesticide exposure in the workplace;

(f) The identification of trends, issues, and needs; and

(g) Any recommendations for improved pesticide use practices.

Sec. 365. RCW 70.116.010 and 1977 ex.s. c 142 s 1 are each amended to read as follows:

The legislature hereby finds that an adequate supply of potable water for domestic, commercial, and industrial use is vital to the health and well-being of the people of the state. Readily available water for use in public water systems is limited and should be developed and used efficiently with a minimum of loss or waste.

In order to maximize efficient and effective development of the state's public water supply systems, the department of ~~((social and health services))~~ health shall assist water purveyors by providing a procedure to coordinate the planning of the public water supply systems.

Sec. 366. RCW 70.116.030 and 1977 ex.s. c 142 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the following terms when used in this chapter shall be defined as follows:

(1) "Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future needs of the systems and sets forth means for meeting those needs in the most efficient manner possible. Such a plan shall include provisions for subsequently updating the plan. In areas where more than one water system exists, a coordinated plan may consist of either: (a) A new plan developed for the area following its designation as a critical water supply service area; or (b) a compilation of compatible water system plans existing at the time of such designation and containing such supplementary provisions as are necessary to satisfy the requirements of this chapter. Any such coordinated plan must include provisions regarding: Future service area designations; assessment of the feasibility of shared source, transmission, and storage facilities; emergency inter-ties; design standards; and other concerns related to the construction and operation of the water system facilities.

(2) "Critical water supply service area" means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in such a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

(3) "Public water system" means any system providing water intended for, or used for, human consumption or other domestic uses. It includes, but is not limited to, the source, treatment for purifying purposes only, storage, transmission, pumping, and distribution facilities where water is furnished to any community, or number of individuals, or is made available to the public for human consumption or domestic use, but excluding water systems serving one single family residence. However, systems existing on September 21, 1977 which are owner operated and serve less than ten single family residences or which serve only one industrial plant shall be excluded from this definition and the provisions of this chapter.

(4) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates for wholesale or retail service a public water system. It also means the authorized agents of any such entities.

(5) "Secretary" means the secretary of the department of (~~social and health services~~) health or the secretary's authorized representative.

(6) "Service area" means a specific geographical area serviced or for which service is planned by a purveyor.

Sec. 367. RCW 70.118.020 and 1977 ex.s. c 133 s 2 are each amended to read as follows:

As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Nonwater-carried sewage disposal devices" means any device that stores and treats nonwater-carried human urine and feces.

(2) "Alternative methods of effluent disposal" means systems approved by the department of (~~social and health services~~) health, including at least, mound systems, alternating drain fields, anaerobic filters, evapotranspiration systems, and aerobic systems.

(3) "Failure" means: (a) Effluent has been discharged on the surface of the ground prior to approved treatment; or (b) effluent has percolated to the surface of the ground; or (c) effluent has contaminated or threatens to contaminate a ground water supply.

Sec. 368. RCW 70.118.040 and 1977 ex.s. c 133 s 4 are each amended to read as follows:

With the advice of the secretary of the department of (~~social and health services~~) health, local boards of health are hereby authorized to waive applicable sections of local plumbing and/or building codes that might prohibit the use of an alternative method for correcting a failure.

Sec. 369. RCW 70.119.020 and 1983 c 292 s 2 are each amended to read as follows:

As used in this chapter unless context requires another meaning:

(1) "Board" means the board established pursuant to RCW 70.95B-.070 which shall be known as the water and waste water operator certification board of examiners.

(2) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

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

(4) "Distribution system" means that portion of a public water supply system which stores, transmits, pumps and distributes water to consumers.

(5) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems

and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(6) "Certified operator" means an individual employed or appointed by any county, water district, municipality, public or private corporation, company, institution, person, or the state of Washington who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

(7) "Public water supply system" means any water supply system intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission and distribution facilities where water is furnished to any community or group of individuals, or is made available to the public for human consumption or domestic use, but excluding all water supply systems serving one single family residence.

(8) "Purification plant" means that portion of a public water supply system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(9) "Secretary" means the secretary of the department of (~~social and health services~~) health.

Sec. 370. RCW 70.119A.020 and 1989 c 422 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

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

(2) "Local board of health" means the city, town, county, or district board of health.

(3) "Local health jurisdiction" means an entity created under chapter 70.05, 70.08, or 70.46 RCW which provides public health services to persons within the area.

(4) "Public water system" means any system, excluding a system serving only one single-family residence, which provides piped water for human consumption, including:

(a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and

(b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.

(5) "Order" means a written direction to comply with a provision of the regulations adopted under RCW 43.20.050(2)(a) or 70.119.050 or to take an action or a series of actions to comply with the regulations.

(6) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual(;) or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.

(7) "Regulations" means rules adopted to carry out the purposes of this chapter.

(8) "Federal safe drinking water act" means the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., as now in effect or hereafter amended.

(9) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county, or district public health department.

(10) "Person" includes, but is not limited to, natural persons, municipal corporations, governmental agencies, firms, companies, mutual or cooperative associations, institutions, and partnerships. It also means the authorized agents of any such entities.

(11) "Public health emergency" means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent.

(12) "Secretary" means the secretary of the department of ~~((social and health services))~~ health.

(13) "State board of health" is the board created by RCW 43.20.030.

Sec. 371. RCW 70.119A.080 and 1989 c 422 s 5 are each amended to read as follows:

(1) The department shall administer a drinking water program which includes, but is not limited to, those program elements necessary to assume primary enforcement responsibility for part B, and section 1428 of part C of the federal safe drinking water act. No rule ~~((or regulation))~~ promulgated or implemented by the department of ~~((social and health services))~~ health or the state board of health for the purpose of compliance with the requirements of the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., shall be applicable to public water systems to which that federal law is not applicable, unless the department or the state board determines that such rule ~~((or regulation))~~ is necessary for the protection of public health.

(2) The department shall enter into an agreement of administration with the department of ecology and any other appropriate agencies, to administer the federal safe drinking water act.

(3) The department is authorized to accept federal grants for the administration of a primary program.

Sec. 372. RCW 70.121.020 and 1987 c 184 s 1 are each amended to read as follows:

Unless the context clearly requires a different meaning, the definitions in this section apply throughout this chapter.

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

(2) "Secretary" means the secretary of ~~((social and health services))~~ health.

(3) "Site" means the restricted area as defined by the United States nuclear regulatory commission.

(4) "Tailings" means the residue remaining after extraction of uranium or thorium from the ore whether or not the residue is left in piles, but shall not include ore bodies nor ore stock piles.

(5) "License" means a radioactive materials license issued under chapter 70.98 RCW and the rules adopted under chapter 70.98 RCW.

(6) "Termination of license" means the cancellation of the license after permanent cessation of operations. Temporary interruptions or suspensions of production due to economic or other conditions are not a permanent cessation of operations.

(7) "Milling" means grinding, cutting, working, or concentrating ore which has been extracted from the earth by mechanical (conventional) or chemical (in situ) processes.

(8) "Obligor-licensee" means any person who obtains a license to operate a uranium or thorium mill in the state of Washington or any person who owns the property on which the mill operates and who owes money to the state for the licensing fee, for reclamation of the site, for perpetual surveillance and maintenance of the site, or for any other obligation owed the state under this chapter.

(9) "Statement of claim" means the document recorded or filed pursuant to this chapter, which names an obligor-licensee, names the state as obligee, describes the obligation owed to the state, and describes property owned by the obligor-licensee on which a lien will attach for the benefit of the state, and which creates the lien when filed.

Sec. 373. RCW 70.127.010 and 1988 c 245 s 2 are each amended to read as follows:

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

(1) "Branch office" means a location or site from which a home health, hospice, or home care agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the agency and is located sufficiently close to share administration, supervision, and services.

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

(3) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence.

(4) "Home care services" means personal care services, homemaker services, respite care services, or any other nonmedical services provided to ill, disabled, or infirm persons which services enable these persons to remain in their own residences consistent with their desires, abilities, and safety.

(5) "Home health agency" means a private or public agency or organization that administers or provides home health aide services or two or more home health services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence.

(6) "Home health services" means health or medical services provided to ill, disabled, or infirm persons. These services may be of an acute or maintenance care nature, and include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and medical supplies or equipment services.

(7) "Home health aide services" means services provided by a home health agency or a hospice under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services needed to achieve medically desired results.

(8) "Homemaker services" means services that assist ill, disabled, or infirm persons with household tasks essential to achieving adequate household and family management.

(9) "Hospice agency" means a private or public agency or organization administering or providing hospice care directly or through a contract arrangement to terminally ill persons in places of temporary or permanent residence by using an interdisciplinary team composed of at least nursing, social work, physician, and pastoral or spiritual counseling.

(10) "Hospice care" means: (a) Palliative care provided to a terminally ill person in a place of temporary or permanent residence that alleviates physical symptoms, including pain, as well as alleviates the emotional and spiritual discomfort associated with dying; and (b) bereavement care provided to the family of a terminally ill person that alleviates the emotional and spiritual discomfort associated with the death of a family member. Hospice care may include health and medical services and personal care, respite, or homemaker services. Family means individuals who are important to and designated by the patient, and who need not be relatives.

(11) "Ill, disabled, or infirm persons" means persons who need home health, hospice, or home care services in order to maintain themselves in their places of temporary or permanent residence.

(12) "Personal care services" means services that assist ill, disabled, or infirm persons with dressing, feeding, and personal hygiene to facilitate self-care.

(13) "Respite care services" means services that assist or support the primary care giver on a scheduled basis.

Sec. 374. RCW 70.142.020 and 1984 c 187 s 2 are each amended to read as follows:

The state board of health shall conduct public hearings and establish by rule monitoring requirements for chemical contaminants in public water supplies. Results of tests conducted pursuant to such requirements shall be submitted to the department of ~~((social and health services))~~ health and to the local health department. The state board of health may review and revise monitoring requirements for chemical contaminants.

Sec. 375. RCW 70.142.050 and 1984 c 187 s 4 are each amended to read as follows:

Public water supply systems as defined by RCW 70.119.020 that the state board of health or local health department determines do not comply with the water quality standards applicable to the system shall immediately initiate preparation of a corrective plan designed to meet or exceed the minimum standards for submission to the department of ~~((social and health services))~~ health. The owner of such system shall within one year take any action required to bring the water into full compliance with the standards(~~(: PROVIDED, That))~~). The department of ~~((social and health services))~~ health may require compliance as promptly as necessary to abate an immediate public health threat or may extend the period of compliance if substantial new construction is required: PROVIDED FURTHER, That the extension shall be granted only upon a determination by the department, after a public hearing, that the extension will not pose an imminent threat to public health. Each such system shall include a notice identifying the water quality standards exceeded, and the amount by which the water tested exceeded the standards, in all customer bills mailed after such determination. The notification shall continue until water quality tests conducted in accordance with this chapter establish that the system meets or exceeds the minimum standards.

Sec. 376. RCW 74.15.060 and 1989 1st ex.s. c 9 s 265 are each amended to read as follows:

The secretary of health shall have the power and it shall be his or her duty:

In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to develop minimum requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and

RCW 74.13.031, necessary to promote the health of all persons residing therein.

The secretary of health or the city, county, or district health department designated by ((him)) the secretary shall have the power and the duty:

- (1) To make or cause to be made such inspections and investigations of agencies as may be deemed necessary; and
- (2) To issue to applicants for licenses hereunder who comply with the requirements adopted hereunder, a certificate of compliance, a copy of which shall be presented to the department of social and health services before a license shall be issued, except that a provisional license may be issued as provided in RCW 74.15.120.

NEW SECTION. Sec. 377. A new section is added to chapter 43.70 RCW to read as follows:

This section governs the denial of an application for a license or the suspension, revocation, or modification of a license by the department. This section does not govern actions taken under chapter 18.130 RCW.

(1) The department shall give written notice of the denial of an application for a license to the applicant or his or her agent. The department shall give written notice of revocation, suspension, or modification of a license to the licensee or his or her agent. The notice shall state the reasons for the action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in an other [another] manner that shows proof of receipt.

(2) Except as otherwise provided in this subsection and in subsection (4) of this section, revocation, suspension, or modification is effective twenty-eight days after the licensee or the agent receives the notice.

(a) The department may make the date the action is effective later than twenty-eight days after receipt. If the department does so, it shall state the effective date in the written notice given the licensee or agent.

(b) The department may make the date the action is effective sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare. When the department does so, it shall state the effective date and the reasons supporting the effective date in the written notice given to the licensee or agent.

(3) A license applicant or licensee who is aggrieved by a department denial, revocation, suspension, or modification has the right to an adjudicative proceeding. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the license applicant's or licensee's receiving the adverse notice, and be served in a manner that shows proof of receipt.

(4)(a) If the department gives a licensee twenty-eight or more days notice of revocation, suspension, or modification and the licensee files an

appeal before its effective date, the department shall not implement the adverse action until the final order has been entered. The presiding or reviewing officer may permit the department to implement part or all of the adverse action while the proceedings are pending if the appellant causes an unreasonable delay in the proceeding, if the circumstances change so that implementation is in the public interest, or for other good cause.

(b) If the department gives a licensee less than twenty-eight days notice of revocation, suspension, or modification and the licensee timely files a sufficient appeal, the department may implement the adverse action on the effective date stated in the notice. The presiding or reviewing officer may order the department to stay implementation of part or all of the adverse action while the proceedings are pending if staying implementation is in the public interest or for other good cause.

NEW SECTION. Sec. 378. A new section is added to chapter 43.70 RCW to read as follows:

This section governs the assessment of a civil fine against a person by the department. This section does not govern actions taken under chapter 18.130 RCW.

(1) The department shall give written notice to the person against whom it assesses a civil fine. The notice shall state the reasons for the adverse action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in an other [another] manner that shows proof of receipt.

(2) Except as otherwise provided in subsection (4) of this section, the civil fine is due and payable twenty-eight days after receipt. The department may make the date the fine is due later than twenty-eight days after receipt. When the department does so, it shall state the effective date in the written notice given the person against whom it assesses the fine.

(3) The person against whom the department assesses a civil fine has the right to an adjudicative proceeding. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the fine, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the person's receiving the notice of civil fine, and be served in a manner which shows proof of receipt.

(4) If the person files a timely and sufficient appeal, the department shall not implement the action until the final order has been served. The presiding or reviewing officer may permit the department to implement part or all of the action while the proceedings are pending if the appellant causes an unreasonable delay in the proceedings or for other good cause.

Passed the House March 6, 1991.

Passed the Senate March 7, 1991.

Approved by the Governor March 22, 1991.

Filed in Office of Secretary of State March 22, 1991.

CHAPTER 4

[Substitute Senate Bill 5806]

UNDERGROUND PETROLEUM STORAGE TANKS—FINANCIAL ASSISTANCE
TO OPERATORS MEETING A VITAL LOCAL NEED

Effective Date: 3/29/91

AN ACT Relating to underground storage tanks for petroleum products; amending RCW 70.148.020 and 82.23A.020; adding new sections to chapter 70.148 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes as a fundamental government purpose the need to protect the environment and human health and safety. To that end the state has enacted laws designed to limit and prevent environmental damage and risk to public health and safety caused by underground petroleum storage tank leaks. Because of the costs associated with compliance with such laws and the high costs associated with correcting past environmental damage, many owners and operators of underground petroleum storage tanks have discontinued the use of or have planned to discontinue the use of such tanks. As a consequence, isolated communities face the loss of their source of motor vehicle fuel and face the risk that the owner or operator will have insufficient funds to take corrective action for pollution caused by past leaks from the tanks. In particular, rural communities face the risk that essential emergency, medical, fire and police services may be disrupted through the diminution or elimination of local sellers of petroleum products and by the closure of underground storage tanks owned by local government entities serving these communities.

The legislature also recognizes as a fundamental government purpose the need to preserve a minimum level of economic viability in rural communities so that public revenues generated from economic activity are sufficient to sustain necessary governmental functions. The closing of local service stations adversely affects local economies by reducing or eliminating reasonable access to fuel for agricultural, commercial, and transportation needs.

The legislature intends to assist small communities within this state by authorizing:

(1) Cities, towns, and counties to certify that a local private owner or operator of an underground petroleum storage tank meets a vital local government, public health or safety need thereby qualifying the owner or operator for state financial assistance in complying with environmental regulations and assistance in taking needed corrective action for existing tank leaks; and

(2) Local government entities to obtain state financial assistance to bring local government underground petroleum storage tanks into compliance with environmental regulations and to take needed corrective action for existing tank leaks.

NEW SECTION. Sec. 2. (1) Subject to the conditions and limitations of sections 1 through 6 of this act, the director shall establish and manage a program for providing financial assistance to public and private owners and operators of underground storage tanks who have been certified by the governing body of the county, city, or town in which the tanks are located as meeting a vital local government, public health or safety need. In providing such financial assistance the director shall:

(a) Require owners and operators, including local government owners and operators, to demonstrate serious financial hardship;

(b) Limit assistance to only that amount necessary to supplement applicant financial resources;

(c) Limit assistance to no more than one hundred fifty thousand dollars in value for any one underground storage tank site of which amount no more than seventy-five thousand dollars in value may be provided for corrective action; and

(d) Whenever practicable, provide assistance through the direct payment of contractors and other professionals for labor, materials, and other services.

(2) Except as otherwise provided in sections 1 through 6 of this act, no grant of financial assistance may be used for any purpose other than for corrective action and repair, replacement, reconstruction, and improvement of underground storage tanks and tank sites. If at any time prior to providing financial assistance or in the course of providing such assistance, it appears to the director that corrective action costs may exceed seventy-five thousand dollars, the director may not provide further financial assistance until the owner or operator has developed and implemented a corrective action plan with the department of ecology.

(3) When requests for financial assistance exceed available funds, the director shall give preference to providing assistance first to those underground storage tank sites which constitute the sole source of petroleum products in remote rural communities.

(4) The director shall consult with the department of ecology in approving financial assistance for corrective action to ensure compliance with regulations governing underground petroleum storage tanks and corrective action.

(5) The director shall approve or disapprove applications for financial assistance within sixty days of receipt of a completed application meeting the requirements of sections 1 through 6 of this act. The certification by local government of an owner or operator shall not preclude the director from disapproving an application for financial assistance if the director finds that

such assistance would not meet the purposes of sections 1 through 6 of this act.

(6) The director may adopt all rules necessary to implement the financial assistance program and shall consult with the technical advisory committee established under RCW 70.148.030 in developing such rules and in reviewing applications for financial assistance.

NEW SECTION. Sec. 3. (1) To qualify for financial assistance, a private owner or operator retailing petroleum products to the public must:

(a) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(b) If the director makes a preliminary determination of possible eligibility for financial assistance, apply to the appropriate governing body of the city or town in which the tanks are located or in the case where the tanks are located outside of the jurisdiction of a city or town, then to the appropriate governing body of the county in which the tanks are located, for a determination by the governing body of the city, town, or county that the continued operation of the tanks meets a vital local government, or public health or safety need; and

(c) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided.

(2) In consideration for financial assistance and prior to receiving such assistance the owner and operator must enter into an agreement with the state whereby the owner and operator agree:

(a) To sell petroleum products to the public;

(b) To maintain the tank site for use in the retail sale of petroleum products for a period of not less than fifteen years from the date of agreement;

(c) To sell petroleum products to local government entities within the affected community on a cost-plus basis periodically negotiated between the owner and operator and the city, town, or county in which the tanks are located; and

(d) To maintain compliance with state underground storage tank financial responsibility and environmental regulations.

(3) The agreement shall be filed as a real property lien against the tank site with the county auditor in which the tanks are located. If the owner or operator transfers his or her interest in such property, the new owner or operator must agree to abide by the agreement or any financial assistance provided under sections 1 through 6 of this act shall be immediately repaid to the state by the owner or operator who received such assistance.

(4) As determined by the director, if an owner or operator materially breaches the agreement, any financial assistance provided shall be immediately repaid by such owner or operator.

(5) The agreement between an owner and operator and the state required under this section shall expire fifteen years from the date of entering into the agreement.

NEW SECTION. Sec. 4. (1) To qualify for financial assistance, a public owner or operator must:

(a) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(b) Provide to the director a copy of the resolution by the governing body of the city, town, or county having jurisdiction, finding that the continued operation of the tanks is necessary to maintain vital local public health, education, or safety needs;

(c) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided.

(2) The director shall give priority to and shall encourage local government entities to consolidate multiple operational underground storage tank sites into as few sites as possible. For this purpose, the director may provide financial assistance for the establishment of a new local government underground storage tank site contingent upon the closure of other operational sites in accordance with environmental regulations. Within the per site financial limits imposed under sections 1 through 6 of this act, the director may authorize financial assistance for the closure of operational sites when closure is for the purpose of consolidation.

NEW SECTION. Sec. 5. To qualify for financial assistance, a rural hospital as defined in RCW 18.89.020, owning or operating an underground storage tank must:

(1) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(2) Apply to the governing body of the city, town, or county in which the hospital is located for certification that the continued operation of the tank or tanks is necessary to maintain vital local public health or safety needs;

(3) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided; and

(4) Agree to provide charity care as defined in RCW 70.39.020 in an amount of equivalent value to the financial assistance provided under sections 1 through 6 of this act. The director shall consult with the department of health to monitor and determine the time period over which such care should be expected to be provided in the local community.

NEW SECTION. Sec. 6. (1) The director shall develop and distribute to appropriate cities, towns, and counties a form for use by the local government in making the certification required for all private owner and operator financial assistance along with instructions on the use of such form.

(2) In certifying a private owner or operator retailing petroleum products to the public as meeting vital local government, public health or safety needs, the local government shall:

(a) Consider and find that other retail suppliers of petroleum products are located remote from the local community;

(b) Consider and find that the owner or operator requesting certification is capable of faithfully fulfilling the agreement required for financial assistance;

(c) Designate the local government official who will be responsible for negotiating the price of petroleum products to be sold on a cost-plus basis to the local government entities in the affected communities and the entities eligible to receive petroleum products at such price; and

(d) State the vital need or needs that the owner or operator meets.

(3) In certifying a hospital as meeting local public health and safety needs the local government shall:

(a) Consider and find that the continued use of the underground storage tank by the hospital is necessary; and

(b) Consider and find that the hospital provides health care services to the poor and otherwise provides charity care.

(4) The director shall notify the governing body of the city, town, or county providing certification when financial assistance for a private owner or operator has been approved.

Sec. 7. RCW 70.148.020 and 1990 c 64 s 3 are each amended to read as follows:

(1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the pollution liability insurance and underground storage tank community assistance programs. The account is subject to allotment procedures under chapter 43.88 RCW. Expenditures for payment of the costs of administering the program may be made only after appropriation by statute. No appropriation is required for other expenditures from the account. The earnings on any surplus balances in the pollution liability insurance program trust account shall be credited to the account notwithstanding RCW 43.84.090.

(2) Each calendar quarter, the director shall report to the insurance commissioner and the chairs of the senate ways and means, senate financial institutions, house of representatives revenue, and house of representatives

financial institutions committees, the loss and surplus reserves required for the calendar quarter. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) Each calendar quarter the director shall report to the chairs of the senate ways and means, senate financial institutions, house of representatives revenue, and house of representatives financial institutions and insurance committees, the amount of reserves necessary to fund commitments made to provide financial assistance under section 2 of this act to the extent that the financial assistance reserves do not jeopardize the operations and liabilities of the pollution liability insurance program. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter. The director may immediately establish an initial financial assistance reserve of five million dollars from available revenues. The director may not expend more than fifteen million dollars for the financial assistance program.

Sec. 8. RCW 82.23A.020 and 1990 c 64 s 12 are each amended to read as follows:

(1) A tax is imposed on the privilege of possession of petroleum products in this state. The rate of the tax shall be fifty one-hundredths of one percent multiplied by the wholesale value of the petroleum product.

(2) Moneys collected under this chapter shall be deposited in the pollution liability insurance program trust account under RCW 70.148.020.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

(4) Within thirty days after the end of each calendar quarter the department shall determine the "quarterly balance," which shall be the cash balance in the pollution liability insurance program trust account as of the last day of that calendar quarter, after excluding the reserves determined for that quarter under RCW 70.148.020(2) and (3). Balance determinations by the department under this section are final and shall not be used to challenge the validity of any tax imposed under this section. For each subsequent calendar quarter, tax shall be imposed under this section during the entire calendar quarter unless:

(a) Tax was imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than fifteen million dollars; or

(b) Tax was not imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than seven million five hundred thousand dollars.

NEW SECTION. Sec. 9. Sections 1 through 6 of this act shall each be added to chapter 70.148 RCW.

NEW SECTION. Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 11. 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 shall take effect immediately.

Passed the Senate March 27, 1991.

Passed the House March 27, 1991.

Approved by the Governor March 29, 1991.

Filed in Office of Secretary of State March 29, 1991.

CHAPTER 5

[House Bill 1060]

CLAIMS AGAINST DECEDENT'S ESTATE—FILING WITH COURT REQUIRED

Effective Date: 4/8/91

AN ACT Relating to notice to the creditors of a deceased person; amending RCW 11.40.010; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 11.40.010 and 1989 c 333 s 1 are each amended to read as follows:

Every personal representative shall, after appointment and qualification, give a notice to the creditors of the deceased, stating such appointment and qualification as personal representative and requiring all persons having claims against the deceased to serve the same on the personal representative or the estate's attorney of record, and file an executed copy thereof with the clerk of the court, within four months after the date of the first publication of such notice described in this section or within four months after the date of the filing of the copy of such notice with the clerk of the court, whichever is the later, or within the time otherwise provided in RCW 11.40.013. The four-month time period after the later of the date of the first publication of the notice to creditors or the date of the filing of such notice with the clerk of the court is referred to in this chapter as the "four-month time limitation." Such notice shall be given as follows:

(1) The personal representative shall give actual notice, as provided in RCW 11.40.013, to such creditors who become known to the personal representative within such four-month time limitation;

(2) The personal representative shall cause such notice to be published once in each week for three successive weeks in the county in which the estate is being administered; and

(3) The personal representative shall file a copy of such notice with the clerk of the court.

Except as otherwise provided in RCW 11.40.011 or 11.40.013, any claim not filed within the four-month time limitation shall be forever barred, if not already barred by any otherwise applicable statute of limitations. Proof by affidavit of the giving and publication of such notice shall be filed with the court by the personal representative.

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 shall take effect immediately.

Passed the House February 15, 1991.

Passed the Senate March 27, 1991.

Approved by the Governor April 8, 1991.

Filed in Office of Secretary of State April 8, 1991.

CHAPTER 6

[Substitute House Bill 1062]

TRUSTS—POWER OF FIDUCIARY TO DIVIDE

Effective Date: 7/28/91

AN ACT Relating to power of fiduciaries to divide trusts; and amending RCW 11.108-.025 and 11.98.080.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 11.108.025 and 1990 c 179 s 2 are each amended to read as follows:

Unless a governing instrument directs to the contrary:

(1) The fiduciary shall have the power to make elections, in whole or in part, to qualify property for the marital deduction as qualified terminable interest property under section 2056(b)(7) of the internal revenue code or, if the surviving spouse is not a citizen of the United States, under section 2056A of the internal revenue code.

(2) The fiduciary making an election under section 2056(b)(7) or 2056A of the internal revenue code or making an allocation under section 2632 of the internal revenue code may benefit personally from the election or allocation, with no duty to reimburse any other person interested in the election or allocation. The fiduciary shall have no duty to make any equitable adjustment and shall have no duty to treat interested persons impartially in respect of the election or allocation.

(3) ~~((The fiduciary making an election under section 2056(b)(7) or 2056A of the internal revenue code shall have the power to divide the trust into two or more separate trusts, of equal or unequal value, provided that the division shall not prevent a separate trust for which the election is made~~

~~from qualifying for the marital deduction under the internal revenue code and its regulations:))~~ The fiduciary of a trust, if an election is made under section 2056(b)(7) or 2056A of the internal revenue code, if an allocation is made under section 2632 of the internal revenue code, or if division of a trust is of benefit to the persons interested in the trust, may divide the trust into two or more separate trusts, of equal or unequal value, provided that the terms of the separate trusts which result are substantially identical to the terms of the trust before division, and provided further, in the case of a trust otherwise qualifying for the marital deduction under the internal revenue code and its regulations, that the division shall not prevent a separate trust for which the election is made from qualifying for the marital deduction.

Sec. 2. RCW 11.98.080 and 1985 c 30 s 51 are each amended to read as follows:

(1) Two or more trusts may be consolidated if:

(a) The trusts so provide; or

(b) Whether provided in the trusts or not, in accordance with subsection (2) of this section, if all interested persons consent as provided in subsection (2)(b) of this section and the requirements of subsection (1)(d) of this section are satisfied; or

(c) Whether provided in the trusts or not, in accordance with subsection (3) of this section if the requirements of subsection (1)(d) of this section are satisfied;

(d) Consolidation under subsection (2) or (3) of this section is permitted only if:

(i) The dispositive provisions of each trust to be consolidated are substantially similar;

(ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries;

(e) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

(2) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96.170.

(a) The trustee shall give written notice of proposed consolidation by personal service or by certified mail to the beneficiaries of every trust affected by the consolidation as provided in RCW 11.96.100 and 11.96.110 and to any trustee of such trusts who does not join in the notice. The notice shall: (i) State the name and mailing address of the trustee; (ii) include a

copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)(d) of this section. The notice shall advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed consolidation may be indicated.

(b) If the trustee receives written consent to the proposed consolidation from all persons entitled to notice as provided in RCW 11.96.100 and 11.96.110, the trustee may consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

(3)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the principal place of administration of a trust is located for an order consolidating two or more trusts under chapter 11.96 RCW. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection (1)(d) of this section have been satisfied, it may direct consolidation of two or more trusts on such terms and conditions as appropriate. The court in its discretion may provide for payment from one or more of the trusts of reasonable fees and expenses for any party to the proceeding.

(4) This section applies to all trusts whenever created.

(5) For powers of fiduciaries to divide trusts, see RCW 11.108.025.

Passed the House February 27, 1991.

Passed the Senate March 27, 1991.

Approved by the Governor April 8, 1991.

Filed in Office of Secretary of State April 8, 1991.

CHAPTER 7

[House Bill 1063]

WILLS—DISPOSITION OF DISCLAIMED INTEREST

Effective Date: 7/28/91

AN ACT Relating to disposition of disclaimed interest; and amending RCW 11.86.041.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 11.86.041 and 1989 c 34 s 4 are each amended to read as follows:

(1) Unless the instrument creating an interest directs to the contrary, the interest disclaimed shall pass as if the beneficiary had died immediately prior to the date of the transfer of the interest. The disclaimer shall relate back to this date for all purposes.

(2) Unless the disclaimer directs to the contrary, the beneficiary may receive another interest in the property subject to the disclaimer.

(3) Any future interest taking effect in possession or enjoyment after termination of the interest disclaimed takes effect as if the beneficiary had died prior to the date of the beneficiary's final ascertainment as a beneficiary and the indefeasible vesting of the interest.

(4) The disclaimer is binding upon the beneficiary and all persons claiming through or under the beneficiary.

(5) ~~((Notwithstanding subsection (1) or (3) of this section, no beneficiary whose interest has been disclaimed shall be deemed to have died for purposes of RCW 11.12.120))~~ Unless the instrument creating the interest directs to the contrary, a beneficiary whose interest in a devise or bequest under a will has been disclaimed shall be deemed to have died for purposes of RCW 11.12.110.

Passed the House February 20, 1991.

Passed the Senate March 27, 1991.

Approved by the Governor April 8, 1991.

Filed in Office of Secretary of State April 8, 1991.

CHAPTER 8

[House Bill 1195]

IRRIGATION DISTRICTS—AUTHORITY TO ESTABLISH CONSOLIDATED LOCAL IMPROVEMENT DISTRICTS

Effective Date: 7/28/91

AN ACT Relating to irrigation districts; and adding a new section to chapter 87.03 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 87.03 RCW to read as follows:

For the purpose of issuing bonds only, the governing body of any irrigation district may authorize the establishment of consolidated local improvement districts. The local improvements within such consolidated districts need not be adjoining, vicinal, or neighboring. If the governing body orders the creation of such consolidated local improvement districts, the moneys received from the installment payment of the principal of and interest on assessments levied within original local assessment districts shall be deposited in a consolidated local improvement district bond redemption

fund to be used to redeem outstanding consolidated local improvement district bonds.

Passed the House March 4, 1991.

Passed the Senate March 27, 1991.

Approved by the Governor April 8, 1991.

Filed in Office of Secretary of State April 8, 1991.

CHAPTER 9

[Substitute House Bill 1702]

BEEF COMMISSION MEMBERSHIP—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to the beef commission; and amending RCW 16.67.040, 16.67.050, 16.67.060, and 16.67.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 16.67.040 and 1969 c 133 s 3 are each amended to read as follows:

There is hereby created a Washington state beef commission to be thus known and designated. The commission shall be composed of three beef producers, ~~((one))~~ two dairy (beef) producers, three feeders, one livestock salesyard operator, and one meat packer. In addition there will be one ex officio member without the right to vote from the department of agriculture to be designated by the director thereof.

A majority of voting members shall constitute a quorum for the transaction of any business.

All appointed members as stated in RCW 16.67.060 shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in that phase of the cattle industry he represents for a period of five years, and has during that period derived a substantial portion of his income therefrom, or have a substantial investment in cattle as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of cattle or dressed beef, or a manager or executive officer of such corporation. Producer members of the commission shall not be directly engaged in the business of being a meat packer, or as a feeder, feeding cattle other than their own. Said qualifications must continue throughout each member's term of office.

Sec. 2. RCW 16.67.050 and 1969 c 133 s 4 are each amended to read as follows:

The appointive positions on the commission shall be designated as follows: The three beef producers shall be designated positions one, two and three; ~~((the))~~ one dairy (beef) producer shall be designated position four and one, position ten; the three feeders shall be designated positions five, six

and seven; the livestock salesyard operator shall be designated position eight; the meat packer shall be designated position nine.

The regular term of office shall be three years from the date of appointment and until their successors are appointed(~~(-PROVIDED, That))~~. However, the first term of office for position ten shall terminate July 1, 1994, and the first terms of the members whose terms began on July 1, 1969 shall be as follows: Positions one, four and seven shall terminate July 1, 1970; positions two, five and eight shall terminate July 1, 1971; positions three, six and nine shall terminate July 1, 1972.

Sec. 3. RCW 16.67.060 and 1969 c 133 s 5 are each amended to read as follows:

The ~~((governor))~~ director shall appoint the members of the commission. In making such appointments, the ~~((governor))~~ director shall take into consideration recommendations made to him or her by organizations who represent or who are engaged in the same type of production or business as the person recommended for appointment as a member of the commission.

~~((The appointment shall be carried out immediately, subsequent to June 1, 1969 and members so appointed as set forth in this chapter shall serve for the periods set forth for the original members of the commission in RCW 16.67.050.))~~

Sec. 4. RCW 16.67.070 and 1984 c 287 s 19 are each amended to read as follows:

In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of such position shall be filled by the ~~((governor))~~ director forthwith.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

Passed the House March 12, 1991.

Passed the Senate March 29, 1991.

Approved by the Governor April 8, 1991.

Filed in Office of Secretary of State April 8, 1991.

CHAPTER 10

[House Bill 1267]

FOREST LANDS—RECONVEYANCE OF STATE LANDS LEASED FOR SANITARY LANDFILLS

Effective Date: 7/28/91

AN ACT Relating to the reconveyance of state forest lands leased for sanitary landfills; and adding a new section to chapter 76.12 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 76.12 RCW to read as follows:

If the board of natural resources determines that any forest lands deeded to the board or the state pursuant to this chapter, which are leased to any county for uses which have as one permitted use a sanitary landfill and/or transfer station, are no longer appropriate for management by the board, the board may reconvey all of the lands included within any such lease to that county. Reconveyance shall be by quitclaim deed executed by the chairman of the board. Upon execution of such deed, full legal and equitable title to such lands shall be vested in that county, and any leases on such lands shall terminate. A county that receives any such reconveyed lands shall indemnify and hold the state of Washington harmless from any liability or expense arising out of the reconveyed lands.

Passed the House February 18, 1991.

Passed the Senate March 29, 1991.

Approved by the Governor April 8, 1991.

Filed in Office of Secretary of State April 8, 1991.

CHAPTER 11

[Substitute House Bill 1304]

RECYCLING—STATE PARKS, MARINAS, AND AIRPORTS—REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to recycling in state parks, marinas, and airports; adding new sections to chapter 70.93 RCW; and making appropriations.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 70.93 RCW to read as follows:

(1) By July 1, 1992, the state parks and recreation commission shall provide waste reduction and recycling information in each state park campground and day-use area.

(2) By July 1, 1993, the commission shall provide recycling receptacles in the day-use and campground areas of at least fifteen state parks. The receptacles shall be clearly marked for the disposal of at least two of the following recyclable materials: Aluminum, glass, newspaper, plastic, and tin. The commission shall endeavor to provide recycling receptacles in parks that are near urban centers or in heavily used parks.

(3) The commission shall provide daily maintenance of such receptacles from April through September of each year.

(4) Beginning July 1, 1993, the commission shall provide recycling receptacles in at least five additional state parks per biennium until the total number of state parks having recycling receptacles reaches forty.

(5) The commission is authorized to enter into agreements with any person, company, or nonprofit organization to provide for the collection and transport of recyclable materials and related activities under this section.

NEW SECTION. Sec. 2. A new section is added to chapter 70.93 RCW to read as follows:

(1) Each marina with thirty or more slips and each airport providing regularly scheduled commercial passenger service shall provide adequate recycling receptacles on, or adjacent to, its facility. The receptacles shall be clearly marked for the disposal of at least two of the following recyclable materials: Aluminum, glass, newspaper, plastic, and tin.

(2) Marinas and airports subject to this section shall not be required to provide recycling receptacles until the city or county in which it is located adopts a waste reduction and recycling element of a solid waste management plan pursuant to RCW 70.95.090.

NEW SECTION. Sec. 3. (1) The sum of twenty-five thousand dollars, or as much thereof as may be necessary, is appropriated from the litter control account to the state parks and recreation commission for the purposes of section 1 of this act for the biennium ending June 30, 1993.

(2) The sum of twenty thousand dollars, or as much thereof as may be necessary, is appropriated from the trust land purchase account to the state parks and recreation commission for the purposes of section 1 of this act for the biennium ending June 30, 1993.

Passed the House March 4, 1991.

Passed the Senate April 3, 1991.

Approved by the Governor April 15, 1991.

Filed in Office of Secretary of State April 15, 1991.

CHAPTER 12

[Substitute House Bill 1200]

PHYSICAL THERAPISTS

Effective Date: 7/28/91 – Except Sections 1, 2, & 6 which become effective on 6/30/91; and Section 3 which becomes effective on 1/1/92.

AN ACT Relating to physical therapists; amending RCW 18.74.010, 18.74.012, and 18.74.023; adding new sections to chapter 18.74 RCW; repealing section 17, chapter 297, Laws of 1990; repealing section 18, chapter 297, Laws of 1990 (uncodified); providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.74.010 and 1988 c 185 s 1 are each amended to read as follows:

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

(1) "Board" means the board of physical therapy created by RCW 18.74.020.

(2) "Department" means the department of ~~((licensing))~~ health.

(3) ~~((("Director" means the director of licensing.~~

~~((4)))~~ "Physical therapy" means the treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, cold, air, light, water, electricity, sound, massage, and therapeutic exercise, which includes posture and rehabilitation procedures; the performance of tests and measurements of neuromuscular function as an aid to the diagnosis or treatment of any human condition; performance of treatments on the basis of test findings after consultation with and periodic review by an authorized health care practitioner except as provided in RCW 18.74.012 ~~((until June 30, 1991))~~; supervision of selective forms of treatment by trained supportive personnel; and provision of consultative services for health, education, and community agencies. The use of Roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the use of spinal manipulation or manipulative mobilization of the spine and its immediate articulations, are not included under the term "physical therapy" as used in this chapter.

~~((5)))~~ (4) "Physical therapist" means a person who practices physical therapy as defined in this chapter but does not include massage operators as defined in RCW 18.108.010.

(5) "Secretary" means the secretary of health.

(6) Words importing the masculine gender may be applied to females.

(7) "Authorized health care practitioner" means and includes licensed physicians, osteopathic physicians, chiropractors, naturopaths, podiatrists, and dentists: PROVIDED, HOWEVER, That nothing herein shall be construed as altering the scope of practice of such practitioners as defined in their respective licensure laws.

Sec. 2. RCW 18.74.012 and 1990 c 297 s 19 are each amended to read as follows:

Notwithstanding the provisions of RCW 18.74.010(4), a consultation and periodic review by an authorized health care practitioner is not required for treatment of neuromuscular or musculoskeletal conditions: PROVIDED, That a physical therapist may only provide treatment utilizing orthoses that support, align, prevent, or correct any structural problems intrinsic to the foot or ankle by referral or consultation from an authorized health care practitioner.

~~((This section shall expire June 30, 1991.))~~

Sec. 3. RCW 18.74.023 and 1986 c 259 s 124 are each amended to read as follows:

The board has the following powers and duties:

(1) To administer examinations to applicants for a license under this chapter.

(2) To pass upon the qualifications of applicants for a license and to certify to the ~~((director))~~ secretary duly qualified applicants.

(3) To make such rules not inconsistent with the laws of this state as may be deemed necessary or proper to carry out the purposes of this chapter.

(4) To establish and administer requirements for continuing ~~((professional education as may be necessary or proper to ensure the public health and safety and))~~ competency, which ~~((may))~~ shall be a prerequisite to ~~((granting and))~~ renewing a license under this chapter.

(5) To keep an official record of all its proceedings, which record shall be evidence of all proceedings of the board which are set forth therein.

(6) To adopt rules not inconsistent with the laws of this state, when it deems appropriate, in response to questions put to it by professional health associations, physical therapists, and consumers in this state concerning the authority of physical therapists to perform particular acts.

NEW SECTION. Sec. 4. A new section is added to chapter 18.74 RCW to read as follows:

Nothing in this chapter restricts the ability of physical therapists to work in the practice setting of their choice.

NEW SECTION. Sec. 5. A new section is added to chapter 18.74 RCW to read as follows:

Pursuant to the board's power in RCW 18.74.023(3), the board is directed to adopt rules relating to standards for appropriateness of physical therapy care. Violation of the standards adopted by rule under this section is unprofessional conduct under this chapter and chapter 18.130 RCW.

NEW SECTION. Sec. 6. The following acts or parts of acts are each repealed:

- (1) 1990 c 297 s 17; and
- (2) 1990 c 297 s 18 (uncodified).

NEW SECTION. Sec. 7. (1) Sections 1, 2, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1991.

(2) Section 3 of this act shall take effect January 1, 1992.

Passed the House March 6, 1991.

Passed the Senate April 5, 1991.

Approved by the Governor April 15, 1991.

Filed in Office of Secretary of State April 15, 1991.

CHAPTER 13

[Engrossed House Bill 1450]

BUSINESS AND OCCUPATION TAX—PUBLIC SAFETY TESTING
LABORATORIES—CREDIT FOR SERVICES PROVIDED TO STATE

Effective Date: 7/1/91

AN ACT Relating to a business and occupation tax credit for services and information provided to the state by a public safety testing laboratory; adding a new section to chapter 82-.04 RCW; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 82.04 RCW to read as follows:

(1) There may be credited against the tax imposed by this chapter, the value of services and information relating to setting of standards and testing for public safety provided to the state of Washington, without charge, at the state's request, by a nonprofit corporation that is:

(a) Organized and operated for the purpose of setting standards and testing for public safety; and

(b) Exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

(c) Organized with no direct or indirect industry affiliation.

(2) The value of the services and information requested by the state and provided to the state, without charge, shall be determined by the allocation of the cost method using generally accepted accounting standards.

(3) The credit allowed under this section shall be limited to the amount of tax imposed by this chapter. Any unused excess credit in a reporting period may be carried forward to future reporting periods for a maximum of one year.

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 shall take effect July 1, 1991.

Passed the House February 18, 1991.

Passed the Senate April 3, 1991.

Approved by the Governor April 15, 1991.

Filed in Office of Secretary of State April 15, 1991.

CHAPTER 14

[Substitute Senate Bill 5090]

FOSTER FAMILY HOME LICENSE RENEWAL APPLICATIONS

Effective Date: 7/28/91

AN ACT Relating to foster family home licenses; amending RCW 74.15.110; and repealing RCW 26.44.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 74.15.110 and 1967 c 172 s 11 are each amended to read as follows:

If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days prior to the expiration date of the license except that a request for renewal of a foster family home license shall be filed prior to the expiration of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department shall act.

NEW SECTION. Sec. 2. RCW 26.44.070 and 1987 c 524 s 12, 1987 c 206 s 6, 1986 c 269 s 3, 1984 c 97 s 6, 1981 c 164 s 4, 1977 ex.s. c 80 s 29, 1975 1st ex.s. c 217 s 7, 1972 ex.s. c 46 s 1, & 1969 ex.s. c 35 s 6 are each repealed.

Passed the Senate March 7, 1991.

Passed the House April 8, 1991.

Approved by the Governor April 17, 1991.

Filed in Office of Secretary of State April 17, 1991.

CHAPTER 15

[Substitute Senate Bill 5383]

PREVAILING WAGE—STATEMENT OF INTENT TO PAY—ALTERNATIVE PROCEDURE

Effective Date: 7/28/91

AN ACT Relating to procedures for approving statements of intent to pay prevailing wages; for certifying affidavits of wages paid; for collection of wages owed, including penalties for noncompliance; for public works projects of two thousand five hundred dollars or less; and amending RCW 39.12.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 39.12.040 and 1982 c 130 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor

and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages shall include:

~~((1))~~ (a) The contractor's registration certificate number; and

~~((2))~~ (b) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to said officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it shall be the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW 60.28.010 are released to the contractor. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to said officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency shall retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency shall require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.010. Within thirty days of receipt of the affidavit of wages paid, the awarding agency shall submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid shall be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in subsection (2) of this section, the awarding agency shall pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section shall be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by RCW 39.12.040(1).

Passed the Senate March 13, 1991.

Passed the House April 9, 1991.

Approved by the Governor April 17, 1991.

Filed in Office of Secretary of State April 17, 1991.

CHAPTER 16

[Substitute Senate Bill 5796]

NURSING ASSISTANTS—CERTIFICATION AND REGISTRATION

Effective Date: 7/28/91

AN ACT Relating to the certification and registration of nursing assistants; amending RCW 18.88A.010, 18.88A.020, 18.88A.030, 18.88A.040, 18.88A.050, 18.88A.060, 18.88A.070, 18.88A.080, and 18.88A.100; adding new sections to chapter 18.88A RCW; and repealing RCW 18.52A.010, 18.52A.020, 18.52A.030, 18.52A.040, 18.52A.050, 18.52B.050, 18.52B.080, 18.52B.110, 18.52B.120, 18.52B.150, 18.52B.160, 18.52B.900, and 18.52B.901.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.88A.010 and 1989 c 300 s 3 are each amended to read as follows:

The legislature takes special note of the contributions made by nursing assistants in health care facilities whose tasks are arduous and whose working conditions may be contributing to the high and often critical turnover among the principal cadre of health care workers who provide for the basic needs of patients. The legislature also recognizes the growing shortage of nurses as the proportion of the elderly population grows and as the acuity of patients in hospitals and nursing homes becomes generally more severe.

The legislature finds and declares that occupational nursing assistants should have a formal system of educational and experiential qualifications leading to career mobility and advancement. The establishment of such a system should bring about a more stabilized work force in health care facilities, as well as provide a valuable resource for recruitment into licensed nursing practice.

The legislature finds that the quality of patient care in health care facilities is dependent upon the competence of the personnel who staff their facilities. To assure the availability of trained personnel in health care facilities the legislature recognizes the need for training programs for nursing assistants.

The legislature declares that the registration of nursing assistants and providing for voluntary certification of those who wish to seek higher levels of qualification is in the interest of the public health, safety, and welfare.

Sec. 2. RCW 18.88A.020 and 1989 c 300 s 4 are each amended to read as follows:

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

(1) "Department" means the department of ~~((licensing))~~ health.

(2) ~~((Director))~~ Secretary means the ~~((director of licensing or the director's designee))~~ secretary of health.

(3) "Board" means the Washington state board of nursing.

(4) ~~((Nursing assistant—certified" means an individual certified under this chapter:~~

~~((5) "Nursing assistant—registered" means an individual registered under this chapter))~~ "Nursing assistant" means an individual, regardless of title, who, under the direction and supervision of a registered nurse or licensed practical nurse, assists in the delivery of nursing and nursing-related activities to patients in a health care facility. The two levels of nursing assistants are (a) "nursing assistant—certified," an individual certified under this chapter, (b) "nursing assistant—registered," an individual registered under this chapter.

~~((6))~~ (5) "Committee" means the Washington state nursing assistant advisory committee.

~~((7) "Certification program" means an educational program approved by the superintendent of public instruction or the state board for community college education in consultation with the board, and offered by or under the administration of an accredited educational institution, either at a school site or a health care facility site. A program shall be offered at or near a health care facility site only if the health care facility can provide adequate classroom and clinical facilities:~~

~~((8))~~ (6) "Approved training program" means a nursing assistant—certified training program approved by the board. For community college, vocational—technical institutes, skill centers, and secondary school as defined in chapter 28B.50 RCW, nursing assistant—certified training programs shall be approved by the board in cooperation with the board for community college education or the superintendent of public instruction.

(7) "Health care facility" means a nursing home, hospital, hospice care facility, home health care agency, hospice agency, or other entity for delivery of health care services as defined by the board.

(8) "Competency evaluation" means the measurement of an individual's knowledge and skills as related to safe, competent performance as a nursing assistant.

Sec. 3. RCW 18.88A.030 and 1989 c 300 s 5 are each amended to read as follows:

(1) A nursing assistant may assist in the care of ~~((patients))~~ individuals as delegated by and under the direction and supervision of a licensed (registered) nurse or licensed practical nurse~~(, provided that a health care facility shall not assign an assistant to provide patient care until the assistant has demonstrated skill necessary to perform assigned duties and responsibilities competently. Nothing in this chapter shall be construed as conferring on a nursing assistant the authority to administer medication or to practice as a licensed (registered) nurse or licensed practical nurse.~~

~~(2) A nursing assistant—certified may assist in the care of the ill, injured, or infirm under the direction and supervision of a licensed (registered) nurse or licensed practical nurse except that a nursing assistant—certified may not administer medication or practice as a licensed (registered) nurse as defined in chapter 18.88 RCW or licensed practical nurse as defined in chapter 18.78 RCW).~~

(2) A health care facility shall not assign a nursing assistant—registered to provide care until the nursing assistant—registered has demonstrated skills necessary to perform competently all assigned duties and responsibilities.

(3) Nothing in this chapter shall be construed to confer on a nursing assistant the authority to administer medication or to practice as a licensed (registered) nurse as defined in chapter 18.88 RCW or licensed practical nurse as defined in chapter 18.78 RCW.

(4) Certification is voluntary for nursing assistants working in health care facilities other than nursing homes unless otherwise required by state or federal law or regulation.

(5) The board of nursing shall have the authority to adopt rules to implement the provisions of this chapter.

Sec. 4. RCW 18.88A.040 and 1989 c 300 s 6 are each amended to read as follows:

(1) No person may practice or represent himself or herself as a nursing assistant—~~registered~~ by use of any title or description without being registered by the department pursuant to this chapter~~((, unless exempt under RCW 18.52B.050)).~~

(2) After ~~((January))~~ October 1, 1990, no person may by use of any title or description, practice or represent himself or herself as a nursing assistant—~~((=))~~certified without applying for certification, meeting the qualifications, and being certified by the department pursuant to this chapter.

NEW SECTION. Sec. 5. A new section is added to chapter 18.88A RCW to read as follows:

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

(1) The practice by an individual licensed, certified, or registered under the laws of this state and performing services within their authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the secretary, and whose performance of services pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor.

Sec. 6. RCW 18.88A.050 and 1989 c 300 s 7 are each amended to read as follows:

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

(1) Set all certification, registration, and renewal fees in accordance with RCW ~~((43-24-086))~~ 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW ~~((43-24-072))~~ 43.70.320;

(2) Establish forms ~~((and))~~, procedures, and examinations necessary to administer this chapter;

(3) Hire clerical, administrative, and investigative staff as needed to implement this chapter;

(4) Issue a registration to any applicant who has met the requirements for registration;

(5) After January 1, 1990, issue a certificate to any applicant who has met the education, training, and conduct requirements for certification;

(6) Maintain the official record for the department of all applicants and persons with registrations and certificates;

~~(7) ((Conduct a hearing on an appeal of a denial of a registration or a certificate based on the applicant's failure to meet the minimum qualifications for certification. The hearing shall be conducted under chapter 34.05 RCW;~~

~~(8) Issue subpoenas, statements of charges, statements of intent to deny certification, and orders and to delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements of intent to deny certification.~~

~~The uniform disciplinary act, chapter 18.130 RCW, governs unregistered or uncertified practice, issuance of certificates and registration, and the discipline of persons registered or with certificates under this chapter. The director shall be the disciplinary authority under this chapter.)~~ Exercise disciplinary authority as authorized in chapter 18.130 RCW;

(8) Deny registration to any applicant who fails to meet requirement for registration;

(9) Deny certification to applicants who do not meet the education, training, competency evaluation, and conduct requirements for certification.

NEW SECTION. Sec. 7. A new section is added to chapter 18.88A RCW to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, governs unregistered or uncertified practice, issuance of certificates and registrations, and the discipline of persons registered or with certificates under this chapter. The secretary shall be the disciplinary authority under this chapter.

Sec. 8. RCW 18.88A.060 and 1989 c 300 s 8 are each amended to read as follows:

In addition to any other authority provided by law, the state board of nursing has the authority to:

(1) Determine minimum education requirements and approve (~~certification~~) training programs;

(2) Prepare, grade, and administer, or determine the nature of, and supervise the grading and administration of, examinations of training and competency for applicants for certification;

(3) Determine whether alternative methods of training are equivalent to (~~formal education~~) approved training programs, and establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to take any qualifying examination for certification;

(4) Define and approve any experience requirement for certification;

(5) Adopt rules implementing a continuing competency evaluation program;

(6) Adopt rules to enable it to carry into effect the provisions of this chapter.

Sec. 9. RCW 18.88A.070 and 1989 c 300 s 9 are each amended to read as follows:

(1) The (~~director~~) secretary has the authority to appoint an advisory committee to the state board of nursing and the department to further the purposes of this chapter. The committee shall be composed of ten members, two members initially appointed for a term of one year, three for a term of two years, and four for a term of three years. Subsequent appointments shall be for terms of three years. No person may serve as a member of the committee for more than two consecutive terms. The committee shall consist of: A nursing assistant certified under this chapter, a representative of nursing homes, a representative of the office of the superintendent of public instruction, a representative of the state board (~~of~~) for community college education, a representative of the department of social and health services responsible for aging and adult services in nursing homes, a consumer of nursing assistant services who shall not be or have been a member of any other licensing board or committee; nor a licensee of any health occupation

board, an employee of any health care facility, nor derive primary livelihood from the provision of health services at any level of responsibility, a representative of an acute care hospital, a representative of home health care, and one member who is a licensed (registered) nurse and one member who is a licensed practical nurse.

(2) The ~~((director))~~ secretary may remove any member of the advisory committee for cause as specified by rule. In the case of a vacancy, the ~~((director))~~ secretary shall appoint a person to serve for the remainder of the unexpired term.

(3) The advisory committee shall meet at the times and places designated by the ~~((director))~~ secretary or the board and shall hold meetings during the year as necessary to provide advice to the ~~((director))~~ secretary.

Sec. 10. RCW 18.88A.080 and 1989 c 300 s 10 are each amended to read as follows:

(1) The ~~((director))~~ secretary shall issue a registration to any applicant who pays any applicable fees and submits, on forms provided by the ~~((director))~~ secretary, the applicant's name, address, and other information as determined by the ~~((director, including information necessary to determine whether))~~ secretary, provided there are no grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW.

~~(2) ((After January 1, 1990, the director shall issue a certificate to any applicant who demonstrates to the director's satisfaction that the following requirements have been met:~~

~~(a) Completion of an educational program approved by the board or successful completion of alternate training meeting established criteria approved by the board;~~

~~(b) Successful completion of an approved examination; and~~

~~(c) Successful completion of any experience requirement established by the board.~~

~~(3) In addition, applicants shall be subject to the grounds for denial of registration or certificate under chapter 18.130 RCW))~~ Applicants must file an application with the board for registration within three days of employment.

NEW SECTION. Sec. 11. A new section is added to chapter 18.88A RCW to read as follows:

(1) After January 1, 1990, the secretary shall issue a certificate to any applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(a) Completion of an approved training program or successful completion of alternate training meeting established criteria approved by the board; and

(b) Successful completion of a competency evaluation.

(2) In addition, applicants shall be subject to the grounds for denial of certification under chapter 18.130 RCW.

Sec. 12. RCW 18.88A.100 and 1989 c 300 s 12 are each amended to read as follows:

The ~~((director))~~ secretary shall waive the competency ~~((examination))~~ evaluation and certify a person ~~((authorized))~~ to practice within the state of Washington if the board determines that the person meets commonly accepted standards of education and experience for the nursing assistants. This section applies only to those individuals who file an application for waiver ~~((within one year of the establishment of the authorized practice on January 1, 1990))~~ by December 31, 1991.

NEW SECTION. Sec. 13. A new section is added to chapter 18.88A RCW to read as follows:

An applicant holding a credential in another state may be certified by endorsement to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state.

NEW SECTION. Sec. 14. A new section is added to chapter 18.88A RCW to read as follows:

Applications for registration and certification shall be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for registration and certification credentialing provided for in this chapter and chapter 18.120 RCW. Each applicant shall pay a fee determined by the secretary under RCW 43.70.250. The fee shall accompany the application.

NEW SECTION. Sec. 15. A new section is added to chapter 18.88A RCW to read as follows:

The secretary shall establish by rule the procedural requirements and fees for renewal of a registration or certificate. Failure to renew shall invalidate the credential and all privileges granted by the credential. If a certificate has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the board by taking continuing education courses, or meeting other standards determined by the board.

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

- (1) RCW 18.52A.010 and 1979 c 114 s 1;
- (2) RCW 18.52A.020 and 1989 c 300 s 13, 1988 c 267 s 19, 1985 c 284 s 5, & 1979 c 114 s 2;
- (3) RCW 18.52A.030 and 1989 c 300 s 1, 1988 c 267 s 20, 1987 c 476 s 7, 1985 c 284 s 6, & 1979 c 114 s 3;
- (4) RCW 18.52A.040 and 1989 c 300 s 2 & 1979 c 114 s 4;
- (5) RCW 18.52A.050 and 1979 c 114 s 5;

- (6) RCW 18.52B.050 and 1988 c 267 s 5;
- (7) RCW 18.52B.080 and 1988 c 267 s 8;
- (8) RCW 18.52B.110 and 1988 c 267 s 11;
- (9) RCW 18.52B.120 and 1988 c 267 s 14;
- (10) RCW 18.52B.150 and 1988 c 267 s 16;
- (11) RCW 18.52B.160 and 1988 c 267 s 17;
- (12) RCW 18.52B.900 and 1988 c 267 s 18; and
- (12) [(13)] RCW 18.52B.901 and 1988 c 267 s 25.

NEW SECTION. Sec. 17. 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.

Passed the Senate March 18, 1991.

Passed the House April 9, 1991.

Approved by the Governor April 17, 1991.

Filed in Office of Secretary of State April 17, 1991.

CHAPTER 17

[Senate Bill 5036]

LIVESTOCK MARKET NET WORTH REQUIREMENT

Effective Date: 7/28/91

AN ACT Relating to a livestock market net worth requirement; amending RCW 16.65-.030, 16.65.370, 16.65.420, and 16.65.450; and adding a new section to chapter 16.65 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 16.65.030 and 1979 ex.s. c 91 s 1 are each amended to read as follows:

(1) On and after June 10, 1959, no person shall operate a public livestock market without first having obtained a license from the director. Application for such license or renewal thereof shall be in writing on forms prescribed by the director, and shall include the following:

(a) A legal description of the property upon which the public livestock market shall be located.

(b) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens and all facilities the applicant proposes to use in the operation of such public livestock market.

(c) A detailed statement showing all the assets and liabilities of the applicant which must reflect a sufficient net worth to construct or operate a public livestock market.

(d) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(e) The weekly or monthly sales day or days on which the applicant proposes to operate his public livestock market sales.

(f) Projected source and quantity of livestock, by county, anticipated to be handled.

(g) Projected income and expense statements for the first year's operation.

(h) Facts upon which are based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(i) Such other information as the director may reasonably require.

(2) The director shall, after public hearing as provided by chapter 34-.05 RCW, grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to all of the requirements of this section and giving reasonable consideration at the same hearing to:

(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application; and

(b) The present market services elsewhere available to the trade area proposed to be served.

(3) Such application shall be accompanied by a license fee based on the average gross sales volume per official sales day of that market:

(a) Markets with an average gross sales volume up to and including ten thousand dollars, a one hundred dollar fee;

(b) Markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars, a two hundred dollar fee; and

(c) Markets with an average gross sales volume over fifty thousand dollars, a three hundred dollar fee.

(4) Any applicant operating more than one public livestock market shall make a separate application for a license to operate each such public livestock market, and each such application shall be accompanied by the appropriate license fee.

(5) Upon the approval of the application by the director and compliance with the provisions of this chapter, the applicant shall be issued a license or renewal thereof. Any license issued under the provisions of this chapter shall only be valid at location and for the sales day or days for which the license was issued.

Sec. 2. RCW 16.65.370 and 1959 c 107 s 37 are each amended to read as follows:

Pens used to hold livestock for a period of twenty-four hours or more in a public livestock market shall have watering and feeding facilities for livestock held in such pens((:)). It shall be unlawful for a public livestock market to hold livestock for a period longer than twenty-four hours ((in such pens)) without feeding and watering such livestock. An operator of a

public livestock market may also refuse to accept the consignment of any livestock that the licensee may believe to have been inadequately fed or otherwise inadequately cared for prior to the delivery of the livestock in question to the public livestock market.

Sec. 3. RCW 16.65.420 and 1963 c 232 s 16 are each amended to read as follows:

(1) Any application for sales days or days for a new salesyard, and any application for a change of sales day or days or additional sales day or days for an existing yard shall be subject to approval by the director, subsequent to a hearing as provided for in this chapter and the director is hereby authorized to allocate these dates and type and class of livestock which may be sold on these dates. In considering the allocation of such sales days, the director shall give appropriate consideration, among other relevant factors, to the following:

- (a) The geographical area which will be affected;
- (b) The conflict, if any, with sales days already allocated in the area;
- (c) The amount and class of livestock available for marketing in the area;
- (d) Buyers available to such market;
- (e) Any other conditions affecting the orderly marketing of livestock.

(2) No special sales shall be conducted by the licensee unless the licensee has applied to the director in writing fifteen days prior to such proposed sale and such sale date shall be approved at the discretion of the director.

(3) In any case that a licensee fails to conduct sales on the sales days allocated to the licensee, the director shall, subsequent to a hearing, be authorized to revoke an allocation for nonuse. The rate of usage required to maintain an allocation shall be established by rule.

Sec. 4. RCW 16.65.450 and 1959 c 107 s 46 are each amended to read as follows:

Any licensee or applicant (~~who has had his or its license revoked, suspended or denied by the director and~~) who feels (~~himself or itself~~) aggrieved by (~~said~~) an order of the director may appeal to the superior court of the county in the state of Washington of the residence of the licensee or applicant where the trial on such appeal shall be held de novo.

NEW SECTION. Sec. 5. A new section is added to chapter 16.65 RCW to read as follows:

It is lawful for the operator of a public livestock market or an open consignment horse sale, upon receiving a request to do so, to allow the announcement of the correct and accurate name of the consignor of any cattle or horses being presented for sale to potential buyers.

Passed the Senate March 4, 1991.

Passed the House April 8, 1991.

Approved by the Governor April 17, 1991.

Filed in Office of Secretary of State April 17, 1991.

CHAPTER 18

[Substitute Senate Bill 5357]

PUBLIC WATER SYSTEMS—QUALIFIED SATELLITE SYSTEM MANAGEMENT AGENCIES

Effective Date: 7/28/91

AN ACT Relating to individuals or water purveyors identified as qualified satellite system management agencies; and adding a new section to chapter 70.116 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 70.116 RCW to read as follows:

(1) The secretary shall adopt rules pursuant to chapter 34.05 RCW establishing criteria for designating individuals or water purveyors as qualified satellite system management agencies. The criteria shall set forth minimum standards for designation as a satellite system management agency qualified to assume ownership, operation, or both, of an existing or proposed public water system. The criteria shall include demonstration of financial integrity and operational capability, and may require demonstration of previous experience in successful operation and management of a public water system.

(2) Each county shall identify potential satellite system management agencies to the secretary for areas where: (a) No purveyor has been designated a future service area pursuant to this chapter, or (b) an existing purveyor is unable or unwilling to provide service. Preference shall be given to public utilities or utility districts or to investor-owned utilities under the jurisdiction of the utilities and transportation commission.

(3) The secretary shall approve satellite system management agencies meeting the established criteria and shall maintain and make available to counties a list of approved agencies. Prior to the construction of a new public water system, the individual(s) proposing the new system or requesting service shall first be directed by the local agency responsible for issuing the construction or building permit to one or more qualified satellite system management agencies designated for the service area where the new system is proposed for the purpose of exploring the possibility of a satellite agency either owning or operating the proposed new water system.

(4) Approved satellite system management agencies shall be reviewed periodically by the secretary for continued compliance with established criteria. The secretary may require status reports and other information necessary for such review. Satellite system management agencies shall be subject to reapproval at the discretion of the secretary but not less than once every five years.

(5) The secretary may assess reasonable fees to process applications for initial approval and for periodic review of satellite system management agencies. A satellite system management account is hereby created in the custody of the state treasurer. All receipts from satellite system management agencies or applicants under subsection (4) of this section shall be deposited into the account. Funds in this account may be used only for administration of the satellite system management program. Expenditures from the account shall be authorized by the secretary or the secretary's designee. The account is subject to allotment procedures under chapter 43-.88 RCW, but no appropriation is required for expenditures.

(6) For purposes of this section, "satellite system management agency" and "satellite agency" shall mean a person or entity that is certified by the secretary to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems.

Passed the Senate March 13, 1991.

Passed the House April 9, 1991.

Approved by the Governor April 17, 1991.

Filed in Office of Secretary of State April 17, 1991.

CHAPTER 19

[Senate Bill 5103]

ENGINEER—REGISTRATION REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to registration of engineers; and amending RCW 18.43.020, 18.43.040, 18.43.050, 18.43.060, 18.43.070, 18.43.130, and 18.43.100.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.43.020 and 1947 c 283 s 2 are each amended to read as follows:

Engineer: The term "engineer" as used in this chapter shall mean a professional engineer as hereinafter defined.

Professional engineer: The term "professional engineer" within the meaning and intent of this chapter, shall mean a person who, by reason of his or her special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by

professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his or her legal registration as a professional engineer.

Engineer-in-training: The term "engineer-in-training" as used in this chapter shall mean a candidate for registration as a professional engineer who is a graduate in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing, or who has had four years or more of experience in engineering work of a character satisfactory to the board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects prior to completion of the requisite years of experience in engineering work as provided in RCW 18.43.060, and who shall have received a certificate stating that he or she has successfully passed this portion of the professional examination.

Engineering: The term "engineering" as used in this chapter shall mean the "practice of engineering" as hereinafter defined.

Practice of engineering: The term "practice of engineering" within the meaning and intent of this chapter shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

Land surveyor: The term "land surveyor" as used in this chapter shall mean a person who, through technical knowledge and skill gained by education and/or by experience, is qualified to practice land surveying as hereinafter defined.

Practice of land surveying: The term "practice of land surveying" within the meaning and intent of this chapter, shall mean assuming responsible charge of the surveying of land for the establishment of corners, lines,

boundaries, and monuments, the laying out and subdivision of land, the defining and locating of corners, lines, boundaries and monuments of land after they have been established, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill.

Board: The term "board" as used in this chapter shall mean the state board of registration for professional engineers and land surveyors, provided for by this chapter.

Sec. 2. RCW 18.43.040 and 1947 c 283 s 7 are each amended to read as follows:

The following will be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, engineer-in-training, or land surveyor, respectively, to wit:

As a professional engineer: A specific record of eight years or more of experience in engineering work of a character satisfactory to the board and indicating that the applicant is competent to practice engineering; and successfully passing a written or oral examination, or both, in engineering as prescribed by the board.

Graduation in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing shall be considered equivalent to four years of such required experience. The satisfactory completion of each year of such an approved engineering course without graduation shall be considered as equivalent to a year of such required experience. Graduation in a curriculum other than engineering from a school or college approved by the board shall be considered as equivalent to two years of such required experience: PROVIDED, That no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications. The board may, at its discretion, give credit as experience not in excess of one year, for satisfactory postgraduate study in engineering.

As an engineer-in-training: The board shall permit an applicant for registration as a professional engineer, upon his or her request, to take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for ~~((certification))~~ registration as an engineer-in-training and payment of the application fee herein prescribed, at any time after the applicant has completed four years of the required engineering experience as defined above. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of engineering subjects, including mathematics and the basic sciences.

At any time after the completion of the required eight years of engineering experience as defined above, the applicant may take the second stage of the examination, upon submission of application for registration

and payment of the application fee herein prescribed. This stage of the examination shall test the applicant's ability, upon the basis of his or her greater experience, to apply his or her knowledge and experience in the field of his or her specific training and qualifications.

As a land surveyor: A specific record of six years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written or oral examination, or both, in surveying as prescribed by the board.

Graduation from a school or college approved by the board as of satisfactory standing, including the completion of an approved course in surveying, shall be considered equivalent to four years of such required experience.

No person shall be eligible for registration as a professional engineer, engineer-in-training, or land surveyor, who is not of good character and reputation.

Engineering teaching, of a character satisfactory to the board, shall be considered as experience not in excess of two years for professional engineering and one year for land surveying.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be practice of engineering.

Any person having the necessary qualifications prescribed in this chapter to entitle him or her to registration shall be eligible for such registration although ((he)) the person may not be practicing his or her profession at the time of making his or her application.

Sec. 3. RCW 18.43.050 and 1985 c 7 s 42 are each amended to read as follows:

Application for registration shall be on forms prescribed by the board and furnished by the director, shall contain statements made under oath, showing the applicant's education and detail summary of his or her technical work and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of ((his)) the applicant's engineering experience.

The registration fee for professional engineers shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate. ((The director shall also determine a fee as provided in RCW 43.24.086 to be paid upon issuance of the certificate.)) The fee for engineer-in-training shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate. ((When registration as a professional engineer is completed by an engineer-in-training an additional fee determined by the director as provided in RCW 43.24.086 shall be paid before issuance of certificate as professional engineer.))

The registration fee for land surveyors shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate. ~~((The registration fee for professional engineers also qualified as land surveyors shall be the same as for professional engineers.))~~

Should the board ~~((deny the issuance of a certificate of registration to any applicant))~~ find an applicant ineligible for registration, the ((initial)) registration fee ((deposited)) shall be retained as an application fee.

Sec. 4. RCW 18.43.060 and 1961 c 142 s 2 are each amended to read as follows:

When oral or written examinations are required, they shall be held at such time and place as the board shall determine. If examinations are required on fundamental engineering subjects (such as ordinarily given in college curricula) the applicant shall be permitted to take this part of the professional examination prior to his or her completion of the requisite years of experience in engineering work. The board shall issue to each applicant upon successfully passing the examination in fundamental engineering subjects a certificate stating that ~~((he))~~ the applicant has passed the examination in fundamental engineering subjects and that his or her name has been recorded as an engineer-in-training.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering works so as to insure the safety of life, health and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing an examination may apply for reexamination ~~((at the expiration of six months and will be reexamined without payment of additional fees))~~. Subsequent examinations will be granted upon payment of a fee to be determined by the ~~((board))~~ director as provided in RCW 43.24.086.

Sec. 5. RCW 18.43.070 and 1959 c 297 s 4 are each amended to read as follows:

The director of licensing shall issue a certificate of registration upon payment of a registration fee as provided for in this chapter, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. In case of a registered engineer, the certificate shall authorize the practice of "professional engineering" and specify the branch or branches in which specialized, and in case of a registered land surveyor, the certificate shall authorize the practice of "land surveying". ~~((In the case of a registered professional engineer also qualified as land surveyor but one certificate shall be issued.))~~

In case of engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-

training". All certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairman and the secretary of the board and by the director of licensing.

The issuance of a certificate of registration by the director of licensing shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional engineer or a registered land surveyor, while the said certificate remains unrevoked and unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered professional engineer" or "registered land surveyor". Plans, specifications, plats and reports prepared by the registrant shall be signed, dated, and stamped with said seal or facsimile thereof. Such signature and stamping shall constitute a certification by the registrant that the same was prepared by or under his or her direct supervision and that to his or her knowledge and belief the same was prepared in accordance with the requirements of the statute. It shall be unlawful for anyone to stamp or seal any document with said seal or facsimile thereof after the certificate of registrant named thereon has expired or been revoked, unless said certificate shall have been renewed or reissued.

Sec. 6. RCW 18.43.130 and 1985 c 7 s 46 are each amended to read as follows:

This chapter shall not be construed to prevent or affect:

- (1) The practice of any other legally recognized profession or trade; or
- (2) The practice of a person not a resident and having no established place of business in this state, practicing or offering to practice herein the profession of engineering or land surveying, when such practice does not exceed in the aggregate more than thirty days in any calendar year: PROVIDED, Such person ((is)) has been determined by the board to be legally qualified by registration to practice the said profession in his or her own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this chapter. The person shall request such a determination by completing an application prescribed by the board and accompanied by a fee determined by the director. Upon approval of the application, the board shall issue a permit authorizing temporary practice; or
- (3) The practice of a person not a resident and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than thirty days in any calendar year the profession of engineering or land surveying, if he or she shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this chapter: PROVIDED, That such person is legally qualified by registration to practice engineering or land surveying in his or her own state or country in which the requirements and qualifications of obtaining a certificate of registration are not lower

than those specified in this chapter. Such practice shall continue only for such time as the board requires for the consideration of the application for registration; or

(4) The work of an employee or a subordinate of a person holding a certificate of registration under this chapter, or an employee of a person practicing lawfully under provisions of this section: **PROVIDED**, That such work does not include final design or decisions and is done under the direct responsibility, checking, and supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under the provisions of this section; or

(5) The work of a person rendering engineering or land surveying services to a corporation, as an employee of such corporation, when such services are rendered in carrying on the general business of the corporation and such general business does not consist, either wholly or in part, of the rendering of engineering services to the general public: **PROVIDED**, That such corporation employs at least one person holding a certificate of registration under this chapter or practicing lawfully under the provisions of this chapter; or

(6) The practice of officers or employees of the government of the United States while engaged within the state in the practice of the profession of engineering or land surveying for said government; or

(7) Nonresident engineers employed for the purpose of making engineering examinations; or

(8) The practice of engineering in this state by a corporation or joint stock association: **PROVIDED**, That

(a) Such corporation shall file with the board an 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 such corporation is qualified in accordance with the provisions of this chapter to practice engineering in this state;

(b) Such corporation shall file with the board a certified copy of a resolution of the board of directors of the corporation which shall designate a person holding a certificate of registration under this chapter as responsible for the practice of engineering by said corporation in this state and shall provide that full authority to make all final engineering decisions on behalf of said corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the person so designated in said resolution: **PROVIDED**, That the filing of such resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract;

(c) Such corporation shall file with the board a designation in writing setting forth the name or names of a person or persons holding certificates of registration under this chapter who shall be in responsible charge of each project and each major branch of the engineering activities in which the

corporation shall specialize in this state. In the event there shall be a change in the person or persons in responsible charge of any project or major branch of the engineering activities, such changes shall be designated in writing and filed with the board within thirty days after the effective date of such changes;

(d) Upon the filing with the board of the application for certificate for authorization, certified copy of resolution, affidavit and designation of persons specified in subparagraphs (a), (b), and (c) of this section the board shall issue to such corporation a certificate of authorization to practice engineering in this state upon a determination by the board (~~((††))~~) that:

(i) The bylaws of the corporation contain provisions that all engineering decisions pertaining to any project or engineering activities in this state shall be made by the specified engineer in responsible charge, or other responsible engineers under his or her direction or supervision;

(ii) The application for certificate of authorization states the type, or types, of engineering practiced, or to be practiced by such corporation;

(iii) A current certified financial statement accurately reflecting the financial condition of the corporation has been filed with the board and is available for public inspection;

(iv) The applicant corporation has the ability to provide through qualified engineering personnel, professional services or creative work requiring engineering experience, and that with respect to the engineering services which the corporation undertakes or offers to undertake such personnel have the ability to apply special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects;

(v) The application for certificate of authorization states the professional records of the designated person or persons who shall be in responsible charge of each project and each major branch of engineering activities in which the corporation shall specialize;

(vi) The application for certificate of authorization states the experience of the corporation, if any, in furnishing engineering services during the preceding five year period and states the experience of the corporation, if any, in the furnishing of all feasibility and advisory studies made within the state of Washington;

(vii) The applicant corporation meets such other requirements related to professional competence in the furnishing of engineering services as may be established and promulgated by the board in furtherance of the objectives and provisions of this chapter; and

~~((††))~~ Upon a determination by the board based upon an evaluation of the foregoing findings and information that the applicant corporation is

possessed of the ability and competence to furnish engineering services in the public interest.

The board may in the exercise of its discretion refuse to issue or may suspend and/or revoke a certificate of authorization to a corporation where the board shall find that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of such corporation has committed misconduct or malpractice as defined in RCW 18.43.105 or has been found personally responsible for misconduct or malpractice under the provisions of subsections (f) and (g) hereof.

The certificate of authorization shall specify the major branches of engineering of which the corporation has designated a person or persons in responsible charge as provided in subsection (8)(c) of this section.

(e) In the event a corporation, organized solely by a group of engineers, each holding a certificate of registration under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to such corporation based on a review of the professional records of such incorporators, in lieu of the required qualifications set forth in this subsection. In the event the ownership of such corporation shall be altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners, if exclusively engineers or, otherwise, under the qualifications required by subparagraphs (a), (b), (c), and (d) hereof.

(f) Any corporation authorized to practice engineering under this chapter, together with its directors and officers for their own individual acts, are responsible to the same degree as an individual registered engineer, and must conduct its business without misconduct or malpractice in the practice of engineering as defined in this chapter.

(g) Any corporation which has been duly certified under the provisions of this chapter and has engaged in the practice of engineering shall have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board shall find that the corporation has committed misconduct or malpractice as defined in RCW 18.43.105. In such case any individual engineer holding a certificate of registration under this chapter, involved in such malpractice or misconduct, shall have his or her certificate of registration suspended or revoked also.

(h) 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 responsible charge of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued under the provisions of this subsection (8) of this section there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086.

(9) The practice of engineering and/or land surveying in this state by partnership: PROVIDED, That

(a) A majority of the members of the partnership are engineers or architects or land surveyors duly certificated by the state of Washington or by a state, territory, possession, district, or foreign country meeting the reciprocal provisions of RCW 18.43.100: PROVIDED, That at least one of the members is a professional engineer or land surveyor holding a certificate issued by the director under the provisions of RCW 18.43.070; and

(b) Except where all members of the partnership are professional engineers or land surveyors or a combination of professional engineers and land surveyors or where all members of the partnership are either professional engineers or land surveyors in combination with an architect or architects all of which are holding certificates of qualification therefor issued under the laws of the state of Washington, the partnership shall file with the board an instrument executed by a partner on behalf of the partnership designating the persons responsible for the practice of engineering by the partnership in this state and in all other respects such person so designated and such partnership shall meet the same qualifications and shall be subject to the same requirements and the same penalties as those pertaining to corporations and to the responsible persons designated by corporations as provided in subsection (8) of this section.

For each certificate of authorization issued under the provisions of this subsection (9) of this section there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086.

Sec. 7. RCW 18.43.100 and 1985 c 7 s 44 are each amended to read as follows:

The board may, upon application ~~((therefor;))~~ and the payment of a fee determined by the director as provided in RCW 43.24.086, issue a certificate without further examination as a professional engineer or land surveyor to any person who holds a certificate of qualification of registration issued to ~~((him))~~ the applicant following examination by proper authority, of any state or territory or possession of the United States, the District of Columbia, or of any foreign country, provided: (1) That the applicant's qualifications meet the requirements of the chapter~~((;))~~ and the rules established by the board, and (2) that the applicant is in good standing with the licensing agency in said state, territory, possession, district, or foreign country~~((; and (3) that the said state, territory, possession, district, or foreign country gives like consideration on a reciprocal basis to those persons who have been registered by examination in this state))~~.

Passed the Senate March 12, 1991.

Passed the House April 8, 1991.

Approved by the Governor April 17, 1991.

Filed in Office of Secretary of State April 17, 1991.

CHAPTER 20

[Substitute Senate Bill 5276]
IMPOUNDED VEHICLES—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to impounded vehicles; and amending RCW 46.55.100 and 46.55.140.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.55.100 and 1989 c 111 s 9 are each amended to read as follows:

(1) At the time of impoundment the registered tow truck operator providing the towing service shall give immediate notification, by telephone or radio, to a law enforcement agency having jurisdiction who shall maintain a log of such reports. A law enforcement agency, or a private communication center acting on behalf of a law enforcement agency, shall ((immediately)) within six to twelve hours of the impoundment, provide to a requesting operator the name and address of the legal and registered owners of the vehicle, the vehicle identification number, and any other necessary, pertinent information. The initial notice of impoundment shall be followed by a written or electronic facsimile notice within twenty-four hours. In the case of a vehicle from another state, time requirements of this subsection do not apply until the requesting law enforcement agency in this state receives the information.

(2) The operator shall immediately send an abandoned vehicle report to the department for any vehicle in the operator's possession after the ninety-six hour abandonment period. Such report need not be sent when the impoundment is pursuant to a writ, court order, or police hold. The owner notification and abandonment process shall be initiated by the registered tow truck operator immediately following notification by a court or law enforcement officer that the writ, court order, or police hold is no longer in effect.

(3) Following the submittal of an abandoned vehicle report, the department shall provide the registered tow truck operator with owner information within seventy-two hours.

(4) Within fifteen days of the sale of an abandoned vehicle at public auction, the towing operator shall send a copy of the abandoned vehicle report showing the disposition of the abandoned vehicle to the crime information center of the Washington state patrol.

(5) If the operator sends an abandoned vehicle report to the department and the department finds no owner information, an operator may proceed with an inspection of the vehicle to determine whether owner identification is within the vehicle.

(6) If the operator finds no owner identification, the operator shall immediately notify the appropriate law enforcement agency, which shall

search the vehicle for the vehicle identification number and check the necessary records to determine the vehicle's owners.

Sec. 2. RCW 46.55.140 and 1989 c 111 s 13 are each amended to read as follows:

(1) A registered tow truck operator who has a valid and signed impoundment authorization has a lien upon the impounded vehicle for services provided in the towing and storage of the vehicle, unless the impoundment is determined to have been invalid. The lien does not apply to personal property in or upon the vehicle that is not permanently attached to or is not an integral part of the vehicle. The registered tow truck operator also has a deficiency claim against the registered owner of the vehicle for services provided in the towing and storage of the vehicle not to exceed the sum of three hundred dollars less the amount bid at auction, and for vehicles of over ten thousand pounds gross vehicle weight, the operator has a deficiency claim of one thousand dollars less the amount bid at auction, unless the impound is determined to be invalid. In no case may the cost of the auction or a buyer's fee be added to the amount charged for the vehicle at the auction, the vehicle's lien, or the overage due. A registered owner who has completed and filed with the department the seller's report as provided for by RCW 46.12-.101 and has timely and properly filed the seller's report is relieved of liability under this section. The person named as the new owner of the vehicle on the timely and properly filed seller's report shall assume liability under this section.

(2) Any person who tows, removes, or otherwise disturbs any vehicle parked, stalled, or otherwise left on privately owned or controlled property, and any person owning or controlling the private property, or either of them, are liable to the owner or operator of a vehicle, or each of them, for consequential and incidental damages arising from any interference with the ownership or use of the vehicle which does not comply with the requirements of this chapter.

Passed the Senate March 12, 1991.

Passed the House April 9, 1991.

Approved by the Governor April 17, 1991.

Filed in Office of Secretary of State April 17, 1991.

CHAPTER 21

[Senate Bill 5219]

COMMON CARRIERS—LIMIT ON LIABILITY FOR LOSS OR DAMAGE TO BAGGAGE

Effective Date: 7/28/91

AN ACT Relating to the limits on liability for loss or damage to baggage by common carriers; and amending RCW 81.29.050.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 81.29.050 and 1961 c 14 s 81.29.050 are each amended to read as follows:

The liability of any common carrier subject to regulation by the commission for the loss of or damage to any baggage shall ~~((not exceed the sum of two hundred dollars for each trunk and its contents, fifty dollars for each valise, suitcase or traveling bag and its contents, or twenty-five dollars for each box, bundle or package and its contents unless a higher valuation is declared at the time of the delivery of such baggage to the carrier and assented thereto in writing by such carrier. PROVIDED, That in the case of the originating carrier the limitation of liability defined in this section shall only apply when the passenger or shipper shall have had constructive notice that the common law liability of such carrier has been so limited))~~ be set by the commission. The commission will review the amounts periodically and adjust the rate accordingly.

Passed the Senate February 27, 1991.

Passed the House April 9, 1991.

Approved by the Governor April 17, 1991.

Filed in Office of Secretary of State April 17, 1991.

CHAPTER 22

[Substitute Senate Bill 5106]

TRANSPORTATION BUDGET—1991 SUPPLEMENTAL

Effective Date: 4/17/91

AN ACT Relating to transportation appropriations; and amending 1990 c 298 s 15 (uncodified); amending 1990 c 298 s 19 (uncodified); amending 1990 c 298 s 20 (uncodified); and amending 1990 c 298 s 25 (uncodified).

Be it enacted by the Legislature of the State of Washington:

Sec. 1. 1990 c 298 s 15 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY CONSTRUCTION—PROGRAM A

| | | |
|--|----|----------------------------|
| Motor Vehicle Fund Appropriation—State | \$ | ((125,100,000)) |
| | | <u>125,260,000</u> |
| Motor Vehicle Fund Appropriation—Federal | \$ | ((80,000,000)) |
| | | <u>80,640,000</u> |
| Motor Vehicle Fund Appropriation—Local | \$ | 2,000,000 |
| Total Appropriation | \$ | ((207,100,000)) |
| | | <u>207,900,000</u> |

The appropriations in this section are subject to the following conditions and limitations:

(1) The appropriations in this section are provided for the location, design, right of way, and construction of state highway projects designated as category "A" under RCW 47.05.030.

(2) \$80,000 of this appropriation is provided solely for studies to identify means of mitigating the environmental effects of SR 520 on neighboring communities.

(3) Any study of east-west corridors across or in the vicinity of Lake Washington shall be conducted in a manner consistent with the regional high occupancy vehicle strategic plan.

(4) \$300,000 of this appropriation is provided solely for safety improvements to the first avenue south bridge.

(5) \$250,000 of the motor vehicle fund—state appropriation is provided solely for advanced planning, in conjunction with state and local growth management efforts.

(6) The motor vehicle fund—state appropriation contains \$1,100,000 for preliminary engineering (~~and~~), geotechnical investigations, right of way, and construction for an alternate route to state route 4 between Longview and Cathlamet.

Sec. 2. 1990 c 298 s 19 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—NONINTERSTATE BRIDGES—PROGRAM H

| | | |
|--|----|---------------------------|
| Motor Vehicle Fund Appropriation—State | \$ | ((26,637,000)) |
| | | <u>26,677,000</u> |
| Motor Vehicle Fund Appropriation—Federal | \$ | ((33,000,000)) |
| | | <u>33,160,000</u> |
| Motor Vehicle Fund Appropriation—Local | \$ | 1,000,000 |
| Total Appropriation | \$ | ((60,637,000)) |
| | | <u>60,837,000</u> |

The appropriations in this section are provided to preserve the structural and operating integrity of existing bridges. The appropriations in this section are subject to the following conditions and limitations:

(1) \$220,000 of the appropriation provided for in this section shall be used exclusively for the first avenue south bridge.

(2) \$125,000 of the motor vehicle fund—state appropriation is provided solely for a Longview bridge feasibility study which shall include soils investigation, alignment considerations, bridge alternate designs, and cost estimates.

(3) \$125,000 of the motor vehicle fund—state appropriation is provided solely for a feasibility study of the state route No. 99 bridge over the Skagit river between Mt. Vernon and Burlington, which shall include soils investigation, alignment considerations, bridge alternate designs, and cost estimates.

(4) \$387,000 of the motor vehicle fund—state appropriation is provided solely to fund the removal of the toll booths on the Spokane river toll bridge and for preliminary engineering work on the deck resurfacing of the Spokane river toll bridge.

Sec. 3. 1990 c 298 s 20 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MAINTENANCE AND OPERATIONS—PROGRAM M

| | | |
|--|----|----------------------------|
| Motor Vehicle Fund Appropriation—State | \$ | ((191,872,680)) |
| | | <u>193,372,680</u> |
| Motor Vehicle Fund Appropriation—Federal | \$ | 6,000,000 |
| Motor Vehicle Fund Appropriation—Local | \$ | 69,161 |
| Total Appropriation | \$ | ((191,941,841)) |
| | | <u>199,441,841</u> |

The appropriations in this section are subject to the following conditions and limitations:

(1) ~~((\$1,500,000))~~ \$2,000,000 of the motor vehicle fund—state appropriation is provided solely for snow and ice removal activities in excess of \$33,800,000. The excess moneys are to be matched with reprioritized maintenance funds of twenty-five percent of the total needed over \$33,800,000 until the ~~((\$1,500,000))~~ \$2,000,000 is matched. The legislative transportation committee must be notified if the resulting total of ~~((\$35,800,000))~~ \$36,425,000 is exceeded.

(2) ~~((If actual and projected expenditures for public damage repair exceed amounts presumed in the maintenance work plan as submitted in the budget request to the house of representatives and senate transportation committees, supplemental relief will be sought))~~ \$1,000,000 of the motor vehicle fund—state appropriation and the \$6,000,000 motor vehicle fund—federal appropriation is provided solely for public damage repair in excess of \$7,800,000. The legislative transportation committee must be notified if the resulting total of \$14,800,000 is exceeded.

(3) \$90,000 of the motor vehicle fund—state appropriation is provided solely for maintenance on the Spokane river bridge.

Sec. 4. 1990 c 298 s 25 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—MARINE—PROGRAM X

| | | |
|---|----|----------------------------|
| Ferry System Fund Appropriation | \$ | ((176,651,729)) |
| | | <u>180,598,729</u> |

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation is based on the budgeted expenditure of ~~((\$20,814,327))~~ \$23,814,327 for vessel operating fuel in the 1989–91 biennium. ~~((If the actual cost of fuel is less than this budgeted amount, the excess amount shall not be expended. If the actual cost exceeds this amount, the department shall request a supplemental appropriation.))~~

(2) In the event that revenues available to the ferry system fund are not sufficient to support the expenditures necessary for the operation and

maintenance of the state ferry system as authorized in this section, the department may transfer funds from the Puget Sound ferry operations account to the ferry system fund.

(3) The appropriation contained in this section provides for the compensation of ferry employees, including increases. The expenditures for compensation paid to ferry employees during the 1989-91 biennium shall not exceed \$115,999,901 plus a dollar amount, as prescribed by the office of financial management, which is equal to any insurance benefit increase granted general government employees in excess of \$224.75 a month annualized per eligible marine employee multiplied by the number of eligible marine employees for the respective fiscal year, a dollar amount as prescribed by the office of financial management for salary increases during the 1989-91 biennium, and a dollar amount as prescribed by the office of financial management for costs associated with pension amortization charges and cost of living allowances. For the purposes of this section, the expenditures for compensation paid to ferry employees shall be limited to salaries and wages and employee benefits as defined in the office of financial management's policies, regulations, and procedures named under objects of expenditure "A" and "B" (7.2.6.2). Of the \$115,999,901 provided for compensation, plus the prescribed insurance benefit, pension, and salary increase dollar amount:

(a) The maximum dollar amount which shall be allocated from the governor's compensation salary appropriation is in addition to the appropriation contained in this section and may be used in conjunction with \$19,794 to increase compensation costs, effective January 1, 1990;

(b) The prescribed insurance benefit increase dollar amount which shall be allocated from the governor's compensation insurance benefits appropriation is in addition to the appropriation contained in this section and may be used in conjunction with \$40,046 to increase compensation costs, effective July 1, 1989;

(c) The maximum dollar amount which shall be allocated from the governor's compensation salary appropriation is in addition to the appropriation contained in this section and shall be used to maintain any 1989-90 compensation increase and may be used in conjunction with \$247,242 to increase compensation costs, effective January 1, 1991.

In no event may the June 30, 1990, hourly salary rate increase exceed any average hourly salary rate increase granted during the 1989-90 fiscal year.

In no event may the June 30, 1991, hourly salary rate increase exceed any salary rate increase granted during the 1990-91 fiscal year.

(4) The department of transportation shall provide the legislative transportation committee with a monthly report concerning the status of the operating program authorized in this section.

(5) The appropriation in this section contains \$1,303,000 which shall be expended only to complete the marine division payroll/personnel integration project.

(6) The transportation commission shall propose to the legislative transportation committee a reporting structure that reflects the respective operating expenditures and revenues supporting each of the vessel routes by December 31, 1989. The proposed reporting structure should be tied to existing accounting data and should provide the legislature adequate information to examine the tax subsidy required to support the operation of the various routes.

(7) \$130,000 of this appropriation is provided solely for rent and maintenance increases for terminal property at Sidney, British Columbia.

(8) The appropriation in this section provides for passenger only service between Bremerton and Seattle, and Vashon Island and Seattle.

(9) The appropriation in this section provides \$947,000 for tort claims occurring after July 1, 1990. If the actual cost of these claims is less than this amount, the excess shall not be expended.

NEW SECTION. Sec. 5. 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 shall take effect immediately.

Passed the Senate March 7, 1991.

Passed the House April 9, 1991.

Approved by the Governor April 17, 1991.

Filed in Office of Secretary of State April 17, 1991.

CHAPTER 23

[Engrossed Senate Bill 5906]

DOMESTIC VIOLENCE—DISCLOSURE OF VICTIMS' ADDRESSES PREVENTION PROGRAM

Effective Date: 7/1/91 – Except sections 10 and 11 which become effective on 4/22/91

AN ACT Relating to protecting persons seriously threatened by domestic violence by restricting disclosure of their names or addresses; amending RCW 42.17.310, 42.17.311, and 29.01.155; adding a new section to chapter 26.04 RCW; adding a new chapter to Title 40 RCW; creating a new section; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that persons attempting to escape from actual or threatened domestic violence frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of

domestic violence, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address.

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

(1) "Address" means a residential street address, school address, or work address of an individual, as specified on the individual's application to be a program participant under this chapter.

(2) "Program participant" means a person certified as a program participant under section 3 of this act.

(3) "Domestic violence" means an act as defined in RCW 10.99.020 and includes a threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law enforcement officers.

NEW SECTION. Sec. 3. (1) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined in RCW 11.88.010, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence; and (ii) that the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(c) The mailing address where the applicant can be contacted by the secretary of state, and the phone number or numbers where the applicant can be called by the secretary of state;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence;

(e) The signature of the applicant and of any individual or representative of any office designated in writing under section 8 of this act who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is

withdrawn or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, shall be punishable under RCW 40.16.030 or other applicable statutes.

NEW SECTION. Sec. 4. (1) If the program participant obtains a name change, he or she loses certification as a program participant.

(2) The secretary of state may cancel a program participant's certification if there is a change in the residential address from the one listed on the application, unless the program participant provides the secretary of state with seven days' prior notice of the change of address.

(3) The secretary of state may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable.

(4) The secretary of state shall cancel certification of a program participant who applies using false information.

NEW SECTION. Sec. 5. (1) A program participant may request that state and local agencies use the address designated by the secretary of state as his or her address. When creating a new public record, state and local agencies shall accept the address designated by the secretary of state as a program participant's substitute address, unless the secretary of state has determined that:

(a) The agency has a bona fide statutory or administrative requirement for the use of the address which would otherwise be confidential under this chapter; and

(b) This address will be used only for those statutory and administrative purposes.

(2) A program participant may use the address designated by the secretary of state as his or her work address.

(3) The office of the secretary of state shall forward all first class mail to the appropriate program participants.

NEW SECTION. Sec. 6. (1) A program participant who is otherwise qualified to vote may apply as a service voter under RCW 29.01.155. The program participant shall automatically receive absentee ballots for all elections in the jurisdictions for which that individual resides in the same manner as absentee voters who qualify under RCW 29.36.013, except that the program participant shall not be required to reapply following January 1st of each odd-numbered year. The county auditor shall transmit the absentee ballot to the program participant at the address designated by the participant in his or her application as a service voter. Neither the name nor

the address of a program participant shall be included in any list of registered voters available to the public.

(2) The county auditor may not make the participant's address contained in voter registration records available for public inspection or copying except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; and

(b) If directed by a court order, to a person identified in the order.

NEW SECTION. Sec. 7. The secretary of state may not make a program participant's address, other than the address designated by the secretary of state, available for inspection or copying, except under the following circumstances:

(1) If requested by a law enforcement agency, to the law enforcement agency;

(2) If directed by a court order, to a person identified in the order; and

(3) If certification has been canceled.

NEW SECTION. Sec. 8. The secretary of state shall designate state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence to assist persons applying to be program participants. Any assistance and counseling rendered by the office of the secretary of state or its designees to applicants shall in no way be construed as legal advice.

NEW SECTION. Sec. 9. The secretary of state may adopt rules to facilitate the administration of this chapter by state and local agencies.

Sec. 10. RCW 42.17.310 and 1991 c 1 s 1 are each amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

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

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) 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.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

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

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) 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.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Information obtained by the board of pharmacy and its representatives as provided in RCW 69.41.044 and 69.41.280.

(y) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(z) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(aa) Financial and valuable trade information under RCW 51.36.120.

~~((bb) Effective April 19, 1991, the work and home addresses, other than the city of residence, of a person shall remain undisclosed or be omitted from all documents made available for public review if that person requests in writing, under oath, that these addresses be kept private because disclosure would endanger his or her life, physical safety, or property. This provision does not in any way restrict the sharing or collection of information by state and local governmental agencies required for the daily administration of their duties. The secretary of state shall administer this~~

~~provision and establish the procedures and rules that are necessary for its operation. An agency that has not been furnished with a request for confidentiality of address information is not liable for damages resulting from its disclosure of the information. For purpose of service of process, the secretary of state shall serve as agent for each person who submits a request under this subsection. A request shall be of no force or effect if the requester does not include a statement, along with or part of the request, designating the secretary of state as agent of the requester for purposes of service of process:))~~

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Sec. 11. RCW 42.17.311 and 1990 c 256 s 2 are each amended to read as follows:

Nothing in RCW 42.17.310(1) (t) through (v) (~~and (bb)~~) shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law.

NEW SECTION. Sec. 12. A new section is added to chapter 26.04 RCW to read as follows:

If a program participant under chapter 40.— RCW (sections 1 through 9 of this act) notifies the appropriate county auditor as required under rules adopted by the secretary of state, the county auditor shall not make available for inspection or copying the name and address of a program participant contained in marriage applications and records filed under chapter 26.04 RCW, except under the following circumstances:

(1) If requested by a law enforcement agency, to the law enforcement agency; and

(2) If directed by a court order, to a person identified in the order.

Sec. 13. RCW 29.01.155 and 1987 c 346 s 8 are each amended to read as follows:

"Service voter" means any elector of the state of Washington who is a member of the armed forces under 42 U.S.C. Sec. 1973 ff-6 while in active service, is a student or member of the faculty at a United States military academy, is a member of the merchant marine of the United States, is a program participant as defined in section 2 of this 1991 act, or is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States.

NEW SECTION. Sec. 14. The office of the secretary of state shall collect information from applicants regarding additional records for which a substitute address may not be possible but for which address information protection may be desirable. The secretary of state shall report to the legislature by July 1, 1992, on the information obtained from applicants under this section.

NEW SECTION. Sec. 15. Sections 1 through 9 of this act shall constitute a new chapter in Title 40 RCW.

NEW SECTION. Sec. 16. (1) Sections 10 and 11 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

(2) Sections 1 through 9 and 12 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991.

Passed the Senate April 18, 1991.

Passed the House April 19, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 24

[Substitute House Bill 1800]

OFFICE OF INTERNATIONAL RELATIONS AND PROTOCOL

Effective Date: 7/1/91

AN ACT Relating to international relations and protocol; amending RCW 43.31.145; adding a new chapter to Title 43 RCW; creating new sections; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that it is in the public interest to create an office of international relations and protocol in order to: Make international relations and protocol a broad-based, focused, and functional part of state government; develop and promote state policies that

increase international literacy and cross-cultural understanding among Washington state's citizens; expand Washington state's international cooperation role in such areas as the environment, education, science, culture, and sports; establish coordinated methods for responding to the increasing number of inquiries by foreign governments and institutions seeking cooperative activities within Washington state; provide leadership in state government on international relations and assistance to the legislature and state elected officials on international issues affecting the state; assist with multi-state international efforts; and coordinate and improve communication and resource sharing among various state offices, agencies, and educational institutions with international programs.

It is the purpose of this chapter to bring these functions together in a new office under the office of the governor in order to establish a visible, coordinated, and comprehensive approach to international relations and protocol.

NEW SECTION. Sec. 2. The office of international relations and protocol is created under the office of the governor. The office shall serve as the state's official liaison and protocol office with foreign governments. The governor shall appoint a director of the office of international relations and protocol, who shall serve at the pleasure of the governor. Because of the diplomatic character of this office, the director and staff will be exempt from the provisions of chapter 41.06 RCW. The director will be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The director may hire such personnel as may be necessary for the general administration of the office. To the extent permitted by law, state agencies may temporarily loan staff to the office of international relations and protocol to assist in carrying out the office's duties and responsibilities under this chapter. An arrangement to temporarily loan staff must have the approval of the staff members to be loaned and the directors of the office and the agencies involved in the loan.

***NEW SECTION.** Sec. 3. *The office of international relations and protocol shall:*

(1) Advise and assist the governor, the legislature, and other independently elected officials on international developments that may affect the state.

(2) Serve as a resource and clearinghouse for information on international activities within state government, including higher education.

(3) Coordinate protocol for foreign dignitaries visiting the governor, the legislature, the judiciary, and other state offices and agencies.

(4) Coordinate protocol for state officials visiting with foreign officials and delegations.

(5) Advise and assist state government with its protocol needs.

(6) Coordinate the state's existing sister state relationships with Hyogo Prefecture, Japan, and Sichuan Province, China. The office shall assist with

development of additional sister state relationships, as appropriate, and coordinate with the Hyogo cultural center in Seattle, Washington.

(7) Consult with and assist Washington state cities and counties in the formation of sister cities or sister counties in other countries.

(8) Serve as principal liaison between the governor, the legislature, and other offices of state government, and the Seattle consular corps and diplomatic offices serving Washington state in San Francisco, Los Angeles, New York, and Washington, D.C.

(9) Advise and assist the governor and legislature with their participation in the Pacific Northwest economic community.

*Sec. 3 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 4. The office of international relations and protocol may:

(1) Create temporary advisory committees as necessary to deal with specific international issues. Advisory committee representation may include external organizations such as the Seattle consular corps, world affairs councils, public ports, world trade organizations, private nonprofit organizations dealing with international education or international environmental issues, organizations concerned with international understanding, businesses with experience in international relations, or other organizations deemed appropriate by the director.

(2) Accept or request grants or gifts from citizens and other private sources to be used to defray the costs of appropriate hosting of foreign dignitaries, including appropriate gift-giving and reciprocal gift-giving, or other activities of the office. The office shall open and maintain a bank account into which it shall deposit all money received under this subsection. Such money and the interest accruing thereon shall not constitute public funds, shall be kept segregated and apart from funds of the state, and shall not be subject to appropriation or allotment by the state or subject to chapter 43.88 RCW.

*NEW SECTION. Sec. 5. *There is established internal to state government an international relations advisory committee to the office of international relations and protocol. The purpose of the advisory committee is to advise the office of international relations and protocol on matters pertaining to state and local government, including state and local government policy and resource coordination, and to otherwise facilitate the operation of the office. The advisory committee shall consist of members appointed by the governor to include representation of the following interests: Trade, tourism, economic development, education, agriculture, fisheries, wildlife, and environmental interests. At least one member shall be a state-wide elected official from the executive branch other than the governor, one member shall represent the state judiciary, one member shall represent the governor, two members shall be members of the Washington state house of representatives, and two members shall be members of the Washington state senate. The advisory*

committee member representing the governor shall chair the advisory committee. The governor may appoint representatives of cities, counties, and port districts.

*Sec. 5 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 6. Sections 1 through 5 of this act shall constitute a new chapter in Title 43 RCW.

Sec. 7. RCW 43.31.145 and 1985 c 466 s 18 are each amended to read as follows:

The department is charged with the primary role within state government for the establishment and operation of foreign offices created for the purpose of promoting overseas trade and commerce. ~~((The department shall serve as the state's official liaison and protocol office with foreign governments.))~~

NEW SECTION. Sec. 8. All powers, duties, and functions of the office of international relations and protocol in the department of trade and economic development are transferred to the office of international relations and protocol under the office of the governor.

NEW SECTION. Sec. 9. All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of trade and economic development pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the office of international relations and protocol. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of trade and economic development in carrying out the powers, functions, and duties transferred shall be made available to the office of international relations and protocol. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the office of international relations and protocol.

Any appropriations made to the department of trade and economic development for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the office of international relations and protocol.

Whenever 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.

*NEW SECTION. Sec. 10. *All employees of the department of trade and economic development engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the office of international relations and protocol.*

*Sec. 10 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 11. All rules and all pending business before the department of trade and economic development pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the office of international relations and protocol. All existing contracts and obligations shall remain in full force and shall be performed by the office of international relations and protocol.

NEW SECTION. Sec. 12. The transfer of the powers, duties, functions, and personnel of the department of trade and economic development shall not affect the validity of any act performed prior to the effective date of this section.

NEW SECTION. Sec. 13. If apportionments of budgeted funds are required because of the transfers directed by sections 9 through 12 of this act, 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. 14. Nothing contained in sections 8 through 13 of this act may 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 personnel board as provided by law.

NEW SECTION. Sec. 15. 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 shall take effect July 1, 1991.

Passed the House March 19, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor April 22, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 22, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 3, 5, and 10, Substitute House Bill No. 1800 entitled:

"AN ACT Relating to international relations and protocol."

This bill establishes an Office of International Relations and Protocol within the Office of the Governor and provides the office with broad powers to manage international issues affecting this state. It eliminates current responsibilities relating to this function in the Department of Trade and Economic Development.

This is a sound organizational move which I strongly support. It recognizes that activities associated with these kinds of programs are not geared solely to economic and foreign trade considerations. They also affect the broad spectrum of state and local government responsibilities, including cross-cultural exchanges, international education opportunities, global environmental impacts, scientific and agricultural issues, and many other important policy considerations. The Office of the Governor is

uniquely suited to provide the statewide leadership and intergovernmental coordination that is required by this important function.

In spite of my strong agreement with the bill's intent, the measure does have some administrative/fiscal problems that were clearly identified by my office during the session. Most importantly, the bill lacks funding to carry out certain mandated responsibilities. Both the Senate and House budgets currently provide only \$134,000 for the biennium and one staff person to perform a wide variety of required duties in section 3. These functions tend to be very resource-intensive. Without additional funding, it would be difficult to comply even minimally with some of these mandates.

In addition, section 5 requires the creation of an international relations advisory committee to consist of at least 15 members. In order for this group to function properly and exercise its statutory duties, it will have to meet regularly and be afforded reimbursement for travel expenses and lodging associated with its meetings. Without sufficient funding, it would be difficult for this group to function in the manner required by the bill.

I firmly believe that an important element in effective international relations programs is to ensure that expectations are matched with actions and resources that are consistent over time. Section 3, and to some extent, section 5, raise a set of expectations about the state performing a wide range of coordinative technical assistance, and diplomatic functions without providing the resources to carry them out. In the long run, I do not believe that will enhance our status as a credible participant in the international arena.

Section 10, which requires automatic transfer of existing employees to the new office, is inconsistent with the authority given to the Governor in section 2 to appoint staff to the program.

For these reasons, I have vetoed sections 3, 5 and 10 of this bill.

With the exception of sections 3, 5, and 10, Substitute House Bill No. 1800 is approved.*

CHAPTER 25

[House Bill 1364]

PUBLIC EMPLOYEES—MILITARY LEAVE

Effective Date: 4/22/91

AN ACT Relating to military leave for public employees; amending RCW 38.40.060; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 38.40.060 and 1989 c 19 s 50 are each amended to read as follows:

Every officer and employee of the state or of any county, city, or other political subdivision thereof who is a member of the Washington national guard or of the army, navy, air force, coast guard, or marine corps reserve of the United States, or of any organized reserve or armed forces of the United States shall be entitled to and shall be granted military leave of absence from such employment for a period not exceeding fifteen days during each calendar year. Such leave shall be granted in order that the person may report for active duty, when called, or take part in active training duty in such manner and at such time as he or she may be ordered to active duty or active training duty. Such military leave of absence shall be in addition

to any vacation or sick leave to which the officer or employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the officer or employee shall receive from the state, or the county, city, or other political subdivision, his or her normal pay.

NEW SECTION. Sec. 2. This act applies to all public employees and officers who reported for active duty or active training duty, under RCW 38.40.060, on or after August 2, 1990.

NEW SECTION. Sec. 3. 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 shall take effect immediately.

Passed the House March 11, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 26

[House Bill 1716]

RECORDING OF DOCUMENTS—REVISED PROCEDURES

Effective Date: 7/28/91

AN ACT Relating to county recording procedures; amending RCW 36.18.010, 65.04.030, 65.04.040, and 65.04.050; adding a new section to chapter 36.18 RCW; and adding a new section to chapter 65.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 36.18 RCW to read as follows:

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

(1) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

Sec. 2. RCW 36.18.010 and 1989 c 304 s 1 are each amended to read as follows:

County auditors or recording officers shall collect the following fees for their official services:

For recording instruments, for the first page, legal size (eight and one-half by ~~((thirteen))~~ fourteen inches or less), five dollars; for each additional legal size page, one dollar; the fee for recording multiple transactions contained in one instrument will be calculated individually for each transaction requiring separate indexing as required under RCW 65.04.050;

For preparing and certifying copies, for the first legal size page, three dollars; for each additional legal size page, one dollar;

For preparing noncertified copies, for each legal size page, one dollar;

For administering an oath or taking an affidavit, with or without seal, two dollars;

For issuing a marriage license, eight dollars, (this fee includes taking necessary affidavits, filing returns, indexing, and transmittal of a record of the marriage to the state registrar of vital statistics) plus an additional five-dollar fee for use and support of the prevention of child abuse and neglect activities to be transmitted monthly to the state treasurer and deposited in the state general fund, which five-dollar fee shall expire June 30, 1995, plus an additional ten-dollar fee to be transmitted monthly to the state treasurer and deposited in the state general fund. The legislature intends to appropriate an amount at least equal to the revenue generated by this fee for the purposes of the displaced homemaker act, chapter 28B.04 RCW;

For searching records per hour, eight dollars;

For recording plats, fifty cents for each lot except cemetery plats for which the charge shall be twenty-five cents per lot; also one dollar for each acknowledgment, dedication, and description: PROVIDED, That there shall be a minimum fee of twenty-five dollars per plat;

For recording of miscellaneous records, not listed above, for first legal size page, five dollars; for each additional legal size page, one dollar;

For modernization and improvement of the recording and indexing system, a surcharge as provided in RCW 36.22.170.

NEW SECTION. Sec. 3. A new section is added to chapter 65.04 RCW to read as follows:

The definitions set forth [in] this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the

auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "Record location number" means a unique number that identifies the storage location (book or volume and page, reel and frame, instrument number, auditor or recording officer file number, receiving number, electronic retrieval code, or other specific place) of each instrument in the public records accessible in the same recording office where the instrument containing the reference to the location is found.

Sec. 4. RCW 65.04.030 and 1985 c 44 s 15 are each amended to read as follows:

~~((He))~~ The auditor or recording officer must, upon the payment of ~~((his))~~ the fees as required in RCW 36.18.010 for the same, acknowledge receipt therefor in writing or printed form and record in large and well bound books, or by photographic or photomechanical or other approved process, the following:

(1) Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, instruments or agreements relating to community or separate property, powers of attorney to convey real estate, and leases which have been acknowledged or proved: PROVIDED, That deeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record;

(2) Patents to lands and receivers' receipts, whether for mineral, timber, homestead or preemption claims or cash entries;

(3) All such other papers or writing as are required by law to be recorded and such as are required by law to be filed.

Sec. 5. RCW 65.04.040 and 1985 c 44 s 16 are each amended to read as follows:

Any state, county, or municipal officer charged with the duty of recording instruments in public records(~~(, may, in lieu of transcription;))~~ shall record them by ~~((receiving))~~ record location number in the order filed, irrespective of the type of instrument, using a ~~((photographic or photomechanical))~~ process(~~(, which produces a clear, legible, and durable record and which))~~ that has been tested and approved for the intended purpose by the state archivist.

In addition, the county auditor or recording officer, in the exercise of ~~((his))~~ the duty of recording instruments in public records, may, in lieu of transcription, record all instruments, ~~((which))~~ that he or she is charged by law to record, ~~((except plats;))~~ by any photographic, photostatic, microfilm, microcard, miniature photographic or other process ~~((which))~~ that actually reproduces or forms a durable medium for so reproducing the original, and which has been tested and approved for the intended purpose by the state

archivist. If the county auditor (~~((in lieu of transcription,))~~) or recording officer records any instrument by a process (~~((herein enumerated which produces a miniature copy of the original))~~) approved by the state archivist it shall not be necessary thereafter to make any notations or marginal notes, which are otherwise required by law, thereon (~~((PROVIDED, That))~~) if, in lieu of making said notations thereon, the auditor ((shall)) or recording officer immediately makes a note of such in ((both the direct and inverted indexes and other appropriate indexes;)) the general index in the column headed "remarks," ((, opposite the appropriate entry)) listing the record number location of the instrument to which the current entry relates back.

Previously recorded or filed instruments may be processed and preserved by any means authorized under this section for the original recording of instruments. The county auditor or recording officer may provide (~~((in his office))~~) for the use of the public (~~((books)),~~) media containing reproductions of instruments and other materials that have been recorded pursuant to the provisions of this section. The contents of (~~((such books))~~) the media may be arranged according to date of filing, irrespective of type of instrument, or in such other manner as the county auditor (~~((in his discretion shall))~~) or recording officer deems proper.

Sec. 6. RCW 65.04.050 and 1893 c 119 s 12 are each amended to read as follows:

Every auditor or recording officer must keep a general index, direct and inverted. The index may be either printed on paper or produced on microfilm or microfiche, or it can be created from a computerized data base and displayed on a video display terminal. Any reference to a prior record location number may be entered in the remarks column. Any property legal description contained in the instrument must be entered in the description of property column of the general index. The direct index shall be divided into seven columns, and with heads to the respective columns, as follows: ((Time)) Date of reception, grantor, grantee, nature of instrument, volume and page where recorded, remarks, description of property. ((He)) The auditor or recording officer shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into seven columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being ((fm)) in alphabetical order. The auditor or recording officer may combine the direct and indirect indexes into a single index if it contains all the information required to be contained in the separate direct and indirect indexes and the names of all grantors and grantees can be found by a person searching the combined index. For the purposes of this ((act)) chapter, the term "grantor" ((shall be construed to)) means any person conveying or encumbering the title to any property, or any person

against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, or claims of separate or community property shall be placed on record. ~~((He shall also keep a well bound book in which shall be platted all maps of towns, villages, or additions to the same within the county, together with the description, legend, acknowledgment or other writing thereon. He shall keep an index to such books of plats, which shall contain the name of the town, village or addition. He))~~ The auditor or recording officer shall also enter in the general index ((above referred to)), the name of the party or parties platting ((such)) a town, village, or addition in the column prescribed for "grantors,"(;) describing the grantee in such case as "the public,"(;-PROVIDED, That)) However, the auditor or recording officer shall not receive or record any such plat or map until ((the same shall have)) it has been approved by the mayor and common council of the municipality in which the property so platted ((be)) is situated, or if ((such)) the property be not situated within any municipal corporation, then ((such)) the plat must be first approved by the ((board of county commissioners of such)) county(;-PROVIDED FURTHER, That)) legislative authority. The auditor or recording officer shall not receive for record any plat, map, or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in ((his)) the office. The auditor or recording officer may establish a name reservation system to preclude the possibility of duplication of names.

Passed the House March 13, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 27

[House Bill 1812]

FOREST LANDS—STEWARDSHIP ASSISTANCE FOR OWNERS OF NONINDUSTRIAL FORESTS AND WOODLANDS

Effective Date: 7/28/91

AN ACT Relating to stewardship assistance for owners of nonindustrial forests and woodlands; and adding a new chapter to Title 76 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION, Sec. 1. The legislature hereby finds and declares that:

(1) Over half of the private forest and woodland acreage in Washington is owned by landowners with less than five thousand acres who are not in the business of industrial handling or processing of timber products.

(2) Nonindustrial forests and woodlands are absorbing more demands and impacts on timber, fish, wildlife, water, recreation, and aesthetic resources, due to population growth and a shrinking commercial forest land base.

(3) Nonindustrial forests and woodlands provide valuable habitat for many of the state's numerous fish, wildlife, and plant species, including some threatened and endangered species, and many habitats can be protected and improved through knowledgeable forest resource stewardship.

(4) Providing for long-term stewardship of nonindustrial forests and woodlands in growth areas and rural areas is an important factor in maintaining Washington's special character and quality of life.

(5) In order to encourage and maintain nonindustrial forests and woodlands for their present and future benefit to all citizens, Washington's nonindustrial forest and woodland owners' long-term commitments to stewardship of forest resources must be recognized and supported by the citizens of Washington state.

NEW SECTION. Sec. 2. The purpose of this chapter is to:

(1) Promote the coordination and delivery of services with federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries and environmental organizations to nonindustrial forest and woodland owners.

(2) Facilitate the production of forest products, enhancement of wildlife and fisheries, protection of streams and wetlands, culturing of special plants, availability of recreation opportunities and the maintenance of scenic beauty for the enjoyment and benefit of nonindustrial forest and woodland owners and the citizens of Washington by meeting the landowners' stewardship objectives.

NEW SECTION. Sec. 3. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of natural resources.

(2) "Landowner" means an individual, partnership, private, public or municipal corporation, Indian tribe, state agency, county, or local government entity, educational institution, or association of individuals of whatever nature that own nonindustrial forests and woodlands.

(3) "Nonindustrial forests and woodlands" are those suburban acreages and rural lands supporting or capable of supporting trees and other flora and fauna associated with a forest ecosystem, comprised of total individual land ownerships of less than five thousand acres and not directly associated with wood processing or handling facilities.

(4) "Stewardship" means managing by caring for, promoting, protecting, renewing, or reestablishing or both, forests and associated resources for the benefit of the landowner, the natural resources and the citizens of Washington state, in accordance with each landowner's objectives, best management practices, and legal requirements.

(5) "Cooperating organization" means federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries, and environmental organizations which promote and maintain programs designed to provide information and technical assistance services to nonindustrial forest and woodland owners.

NEW SECTION. Sec. 4. In order to accomplish the purposes stated in section 2 of this act, the department may:

(1) Establish and maintain a nonindustrial forest and woodland owner assistance program, and through such a program, assist nonindustrial forest and woodland owners in meeting their stewardship objectives.

(2) Provide direct technical assistance through development of management plans, advice, and information to nonindustrial forest land owners to meet their stewardship objectives.

(3) Assist and facilitate efforts of cooperating organizations to provide stewardship education, information, technical assistance, and incentives to nonindustrial forest and woodland owners.

(4) Provide financial assistance to landowners and cooperating organizations.

(5) Appoint a stewardship advisory committee to assist in establishing and operating this program.

(6) Loan or rent surplus equipment to assist cooperating organizations and nonindustrial forest and woodland owners.

(7) Work with local governments to explain the importance of maintaining nonindustrial forests and woodlands.

(8) Take such other steps as are necessary to carry out the purposes of this chapter.

NEW SECTION. Sec. 5. The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.

(2) Receive such gifts, grants, bequests, and endowments and donations of moneys, labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources according to their terms.

(3) Charge fees for attendance at workshops and conferences, for various publications and other materials which the department may prepare.

(4) Enter into contracts with cooperating organizations having responsibility to carry out programs of similar purposes to this chapter.

NEW SECTION. Sec. 6. Sections 1 through 5 of this act shall constitute a new chapter in Title 76 RCW.

Passed the House March 12, 1991.

Passed the Senate April 8, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 28

[Substitute House Bill 1460]

DRAINAGE DISTRICTS—DISSOLUTION—ALTERNATIVE PROCEDURE

Effective Date: 7/28/91

AN ACT Relating to drainage districts; adding a new section to chapter 36.96 RCW; and adding new sections to chapter 85.38 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 36.96 RCW to read as follows:

As an alternative to this chapter a drainage district or drainage improvement district located within the boundaries of a county storm drainage and surface water management utility, and which is not currently imposing assessments, may be dissolved by ordinance of the county legislative authority. If the alternative dissolution procedure in this section is used the following shall apply:

(1) The county storm drainage and surface water management utility shall assume responsibility for payment or settlement of outstanding debts of the dissolved drainage district or drainage improvement district.

(2) All assets, including money, funds, improvements, or property, real or personal, shall become assets of the county in which the dissolved drainage district or drainage improvement district was located.

(3) Notwithstanding RCW 85.38.220, the county storm drainage and surface water management utility may determine how to best manage, operate, maintain, improve, exchange, sell, or otherwise dispose of all property, real and personal, of the dissolved drainage district or drainage improvement district.

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

As an alternative to this chapter a drainage district or drainage improvement district located within the boundaries of a county storm drainage and surface water management utility, and which is not currently imposing assessments, may be dissolved by ordinance of the county legislative authority. If the alternative dissolution procedure in this section is used the following shall apply:

(1) The county storm drainage and surface water management utility shall assume responsibility for payment or settlement of outstanding debts of the dissolved drainage district or drainage improvement district.

(2) All assets, including money, funds, improvements, or property, real or personal, shall become assets of the county in which the dissolved drainage district or drainage improvement district was located.

(3) Notwithstanding RCW 85.38.220, the county storm drainage and surface water management utility may determine how to best manage, operate, maintain, improve, exchange, sell, or otherwise dispose of all property, real and personal, of the dissolved drainage district or drainage improvement district.

NEW SECTION. Sec. 3. A new section is added to chapter 85.38 RCW to read as follows:

Any portion of a drainage district or drainage improvement district located within the boundaries of a first class city operating a storm drain utility pursuant to RCW 35.67.030 may be removed from the drainage district or drainage improvement district by ordinance of the city. The removal of an area shall not result in the impairment of any contract nor remove the liability or obligation to finance district improvements that serve the area so removed as of the effective date of the ordinance. Residents of the district to be removed shall be given substantial notice of the impending action and the opportunity to respond to the action.

Passed the House March 14, 1991.

Passed the Senate April 8, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 29

[Substitute House Bill 1915]

MENTAL HEALTH SERVICES—EMPLOYMENT SERVICES TO BE PROVIDED

Effective Date: 7/28/91

AN ACT Relating to employment services in mental health programs; and amending RCW 71.24.035, 71.24.045, and 71.24.300.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 71.24.035 and 1990 1st ex.s. c 8 s 1 are each amended to read as follows:

- (1) The department is designated as the state mental health authority.
- (2) The secretary may provide for public, client, and licensed service provider participation in developing the state mental health program.
- (3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by

including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates county biennial needs assessments and county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;

(b) Assure that any county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The acutely mentally ill; (ii) the chronically mentally ill; and (iii) the seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

~~((F))~~ (G) Community support services;

(c) Develop and promulgate rules establishing state minimum standards for the delivery of mental health services including, but not limited to:

(i) Licensed service providers;

(ii) Regional support networks; and

(iii) Residential and inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used by the counties;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers;

(g) Develop and maintain an information system to be used by the state, counties, and regional support networks when they are established which shall include a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.400, 71.05.410, 71.05.420, 71.05.430, and 71.05.440. The system shall be fully operational no later than January 1, 1993: PROVIDED, HOWEVER, That when a regional support network is established, the department shall have an operational interim tracking system for that network that will be adequate for the regional support network to perform its required duties under this chapter;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically inspect certified regional support networks and licensed service providers at reasonable times and in a reasonable manner; and

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Prior to September 1, 1989, adopt such rules as are necessary to implement the department's responsibilities under this chapter pursuant to chapter 34.05 RCW: PROVIDED, That such rules shall be submitted to the appropriate committees of the legislature for review and comment prior to adoption; and

(n) Beginning July 1, 1989, and continuing through July 1, 1993, track by region and county the use and cost of state hospital and local evaluation and treatment facilities for seventy-two hour detention, fourteen, ninety, and one hundred eighty day commitments pursuant to chapter 71.05 RCW, voluntary care in state hospitals, and voluntary community inpatient care covered by the medical assistance program. Service use and cost reports shall be provided to regions in a timely fashion at six-month intervals.

(6) The secretary shall use available resources appropriated specifically for community mental health programs only for programs under RCW 71.24.045. After July 1, 1995, or when regional support networks are established, available resources may be used only for regional support networks.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules,

and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to the law, applicable rules and regulations, or applicable standards, or failure to meet the minimum standards established pursuant to this section.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) The secretary shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to certification and licensing and other action relevant to certifying regional support networks and licensing service providers.

(12) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general who shall represent the secretary in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(13) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapter 71.05 RCW, and shall otherwise assure the effectuation of the purposes and intent of this chapter and chapter 71.05 RCW.

(14)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, and seriously disturbed as defined in chapter 71.24 RCW. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as defined in subsection (15) of this section. These factors shall include the population

concentrations resulting from commitments under the involuntary treatment act, chapter 71.05 RCW, to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The department shall submit a proposed distribution formula in accordance with this section to the ways and means and health care and corrections committees of the senate and to the ways and means and human services committees of the house of representatives by October 1, 1989. The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

(15) To supersede duties assigned under subsection (5) (a) and (b) of this section, and to assure a county-based, integrated system of care for acutely mentally ill adults and children, chronically mentally ill adults and children, and seriously disturbed adults and children who are determined by regional support networks at their sole discretion to be at risk of becoming acutely or chronically mentally ill, the secretary shall encourage the development of regional support networks as follows:

By December 1, 1989, the secretary shall recognize regional support networks requested by counties or groups of counties.

All counties wishing to be recognized as a regional support network on December 1, 1989, shall submit their intentions regarding participation in the regional support networks by October 30, 1989, along with preliminary plans. Counties wishing to be recognized as a regional support network by January 1 of any year thereafter shall submit their intentions by October 30 of the previous year along with preliminary plans. The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05 and 71.24 RCW on July 1, 1995. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The implementation of regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05 and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medic-aid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(16) The secretary shall:

(a) Disburse the first funds for the regional support networks that are ready to begin implementation by January 1, 1990, or within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks to begin implementation between January 1, 1990, and March 1, 1990, and

complete implementation by June 1995. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) By July 1, 1993, allocate one hundred percent of available resources to regional support networks created by January 1, 1990, in a single grant. Regional support networks created by January 1, 1991, shall receive a single block grant by July 1, 1993; regional support networks created by January 1, 1992, shall receive a single block grant by July 1, 1994; and regional support networks created by January 1, 1993, shall receive a single block grant by July 1, 1995. The grants shall include funds currently provided for all residential services, all services pursuant to chapter 71.05 RCW, and all community support services and shall be distributed in accordance with a formula submitted to the legislature by January 1, 1993, in accordance with subsection (14) of this section.

(d) By January 1, 1990, allocate available resources to regional support networks for community support services, resource management services, and residential services excluding evaluation and treatment facilities provided pursuant to chapter 71.05 RCW in a single grant using the distribution formula established in subsection (14) of this section.

(e) By March 1, 1990, or within sixty days of approval of the contract continuing through July 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. For regional support networks created by January 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW through July 1, 1995.

(f) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(g) Study and report to the legislature by December 1, 1989, on expanding the use of federal Title XIX funds and the definition of institutions for mental diseases to provide services to persons who are acutely mentally ill, chronically mentally ill, or at risk of becoming so. The study shall also include an assessment of the impact of Title XIX funds and the definition of institutions for mental diseases on the use of state funds to provide needed mental health services to the chronically mentally ill.

(h) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such

cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

(i) Identify in its departmental biennial operating and capital budget requests the funds requested by regional support networks to implement their responsibilities under this chapter.

(j) Contract to provide or, if requested, make grants to counties to provide technical assistance to county authorities or groups of county authorities to develop regional support networks.

(17) The department of social and health services, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the health care and corrections committee of the senate and the human services committee of the house of representatives.

(18) The secretary shall establish a task force to examine the recruitment, training, and compensation of qualified mental health professionals in the community, which shall include the advantages and disadvantages of establishing a training academy, loan forgiveness program, or educational stipends offered in exchange for commitments of employment in mental health. The task force shall report back to the appropriate committees of the legislature by January 1, 1990.

Sec. 2. RCW 71.24.045 and 1989 c 205 s 4 are each amended to read as follows:

The county authority shall:

(1) Submit biennial needs assessments beginning January 1, 1983, and mental health service plans which incorporate all services provided for by the county authority consistent with state minimum standards and which provide access to treatment for the county's residents including children and other underserved populations who are acutely mentally ill, chronically mentally ill, or seriously disturbed. The county program shall provide:

(a) Outpatient services;

(b) Emergency care services for twenty-four hours per day;

(c) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(d) Screening for patients being considered for admission to state mental health facilities to determine appropriateness of admission;

(e) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-

related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work;

~~(f)~~ Consultation and education services;

~~((f))~~ (g) Residential and inpatient services, if the county chooses to provide such optional services; and

~~((g))~~ (h) Community support services.

The county shall develop the biennial needs assessment based on clients to be served, services to be provided, and the cost of those services, and may include input from the public, clients, and licensed service providers. Each county authority may appoint a county mental health advisory board which shall review and provide comments on plans and policies developed by the county authority under this chapter. The composition of the board shall be broadly representative of the demographic character of the county and the mentally ill persons served therein. Length of terms of board members shall be determined by the county authority;

(2) Contract as needed with licensed service providers. The county authority may, in the absence of a licensed service provider entity, become a licensed service provider entity pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers;

(3) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the county authority shall comply with rules promulgated by the secretary that shall provide measurements to determine when a county provided service is more efficient and cost effective.

(4) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the county to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts, including the minimum standards of service delivery as established by the department;

(5) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this chapter;

(6) Maintain patient tracking information in a central location as required for resource management services;

(7) Use not more than two percent of state-appropriated community mental health funds, which shall not include federal funds, to administer community mental health programs under RCW 71.24.155: PROVIDED, That county authorities serving a county or combination of counties whose population is equal to or greater than that of a county of the first class may be entitled to sufficient state-appropriated community mental health funds to employ up to one full-time employee or the equivalent thereof in addition

to the two percent limit established in this subsection when such employee is providing staff services to a county mental health advisory board;

(8) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state mental hospital.

Sec. 3. RCW 71.24.300 and 1989 c 205 s 5 are each amended to read as follows:

A county authority or a group of county authorities whose combined population is no less than forty thousand may enter into a joint operating agreement to form a regional support network. The roles and responsibilities of county authorities shall be determined by the terms of that agreement and the provisions of law. The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(1) Regional support networks shall within three months of recognition submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties by July 1, 1995, instead of those presently assigned to counties under RCW 71.24.045(1):

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) By July 1, 1993, provide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks with populations of less than one hundred fifty thousand may contract to purchase evaluation and treatment services from other networks. For regional support networks that are created after June 30, 1991, the requirements of (c) of this subsection must be met by July 1, 1995.

(d) By July 1, 1993, administer a portion of funds appropriated by the legislature to house mentally ill persons in state institutions from counties within the boundaries of any regional support network, with the exception of mentally ill offenders, and provide for the care of all persons needing evaluation and treatment services for periods up to seventeen days according to chapter 71.05 RCW in appropriate residential services, which may include state institutions. The regional support networks shall reimburse the

state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium when reimbursement occurs. The duty of a state hospital to accept persons for evaluation and treatment under chapter 71.05 RCW is limited by the responsibilities assigned to regional support networks under this section. For regional support networks that are created after June 30, 1991, the requirements of (d) of this subsection must be met by July 1, 1995.

(e) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, employment services as defined in RCW 71-.24.035, and mental health services to children as provided in this chapter.

(f) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(2) Regional support networks shall assume all duties assigned to county authorities by this chapter and chapter 71.05 RCW.

(3) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the mentally ill and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(4) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter. The composition of the board shall be broadly representative of the demographic character of the region and the mentally ill persons served therein. Length of terms of board members shall be determined by the regional support network.

(5) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary.

(6) Counties or groups of counties participating in a regional support network are not subject to RCW 71.24.045(7). The office of financial management shall consider information gathered in studies required in this chapter and information about the experience of other states to propose a mental health services administrative cost lid to the 1991 legislature which shall include administrative costs of licensed service providers, the state psychiatric hospitals and the department.

(7) The first regional support network contract may include a pilot project to: Establish standards and procedures for (a) making referrals for comprehensive medical examinations and treatment programs for those whose mental illness is caused or exacerbated by organic disease, and (b)

training staff in recognizing the relationship between mental illness and organic disease.

Passed the House March 19, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 30

[Substitute House Bill 1789]

OUT-OF-STATE PRESCRIPTIONS--TIME LIMIT ON FILLING REMOVED

Effective Date: 4/22/91

AN ACT Relating to limitations on filling prescriptions written by authorized prescribers not licensed in this state; amending RCW 69.41.030; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 69.41.030 and 1990 c 219 s 2 are each amended to read as follows:

It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a ~~((podiatrist))~~ podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces ~~((, marine hospital service,))~~ or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse under chapter 18.88 RCW when authorized by the board of nursing, an osteopathic physician's assistant under chapter 18.57A RCW when authorized by the committee of osteopathic examiners, a physician ~~((s))~~ assistant under chapter 18.71A RCW when authorized by the board of medical examiners, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathy and surgery, a dentist licensed to practice dentistry, a ~~((podiatrist))~~ podiatric physician and surgeon licensed to practice ~~((podiatry))~~ podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic

that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners(~~(- PROVIDED FURTHER, That it shall be unlawful to fill a prescription written by an authorized prescriber who is not licensed in this state if more than six months has passed since the date of the issuance of the original prescription)).~~

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 shall take effect immediately.

Passed the House March 12, 1991.

Passed the Senate April 9, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 31

[House Bill 1625]

UNEMPLOYMENT COMPENSATION—AGRICULTURAL EMPLOYEES— COMBINED REPORTING REQUIREMENT REMOVED

Effective Date: 7/28/91

AN ACT Relating to combined reporting for agricultural employers; and amending RCW 49.30.005.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 49.30.005 and 1990 c 245 s 10 are each amended to read as follows:

(1) It is the intent of the legislature that the department assist agricultural employers in mitigating the costs of the state's unemployment insurance program. The department shall work with members of the agricultural community to: Improve understanding of the program's operation; increase compliance with work-search requirements; provide prompt notification of potential claims against an employer's experience rating; inform employers of their rights; inform employers of the actions necessary to appeal a claim and to protect their rights; and reduce claimant and employer fraud. These efforts shall include:

- (a) Conducting employer workshops and community seminars;
- (b) Developing new educational materials; and
- (c) Developing forms that use lay language.

(2) (~~The employment security department, the department of labor and industries, the department of licensing, and the department of revenue shall develop a plan to implement voluntary combined reporting for agricultural employers by January 1, 1992. The departments shall submit the~~

~~plan to the legislature by January 10, 1990, and include recommendations for legislation necessary to standardize and simplify statutory coverage and other requirements. Such standardization shall be as consistent with federal requirements as possible.~~

~~The departments shall consult with representatives of agricultural employer and labor associations and general business associations in the development of the plan and legislation. The departments shall ensure that they accommodate the needs of small agricultural employers in particular.~~

~~(3)) The department shall report to the appropriate standing committees of the legislature by January 10, 1990, 1991, and 1992 and include a description of the activities of the department to carry out the intents of this section and provide quantitative data where possible on the effectiveness of the activities undertaken by the department to comply with the intents of this section during the previous calendar year.~~

Passed the House March 13, 1991.

Passed the Senate April 9, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 32

[House Bill 2073]

DRUGS—SALE OF CONTROLLED OR COUNTERFEIT SUBSTANCES FOR PROFIT—PENALTIES INCREASED

Effective Date: 7/28/91

AN ACT Relating to selling controlled or counterfeit substances for profit; amending RCW 9.94A.030, 9.94A.310, and 9.94A.320; reenacting and amending RCW 69.50.435; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.94A.030 and 1990 c 3 s 602 are each amended to read as follows:

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

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant

has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW

72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to comply with any limitations on the inmate's movements while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug or the selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.

(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention has been ordered by the court, in the residence of either the defendant or a member of the defendant's immediate family, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release and home detention as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while intoxicated (RCW 46.61.502), actual physical control while intoxicated (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

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

(30) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(31) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(32) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(33) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(34) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

(35) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program. Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (a) Successfully completing twenty-one days in a work release program, (b) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (c) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (d) having no prior charges of

escape, and (e) fulfilling the other conditions of the home detention program. Participation in a home detention program shall be conditioned upon: ~~((a))~~ (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, ~~((b))~~ (ii) abiding by the rules of the home detention program, and ~~((c))~~ (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

Sec. 2. RCW 9.94A.310 and 1990 c 3 s 701 are each amended to read as follows:

(1) **TABLE 1**
Sentencing Grid

| SERIOUSNESS SCORE | OFFENDER SCORE | | | | | | | | | |
|-------------------|--|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|-----------------------|-----------------------|----------------------|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 or more |
| XV | Life Sentence without Parole/Death Penalty | | | | | | | | | |
| XIV | 23y4m 240- 320 | 24y4m 250- 333 | 25y4m 261- 347 | 26y4m 271- 361 | 27y4m 281- 374 | 28y4m 291- 388 | 30y4m 312- 416 | 32y10m 338- 450 | 36y 370- 493 | 40y 411- 548 |
| XIII | 12y 123- 164 | 13y 134- 178 | 14y 144- 192 | 15y 154- 205 | 16y 165- 219 | 17y 175- 233 | 19y 195- 260 | 21y 216- 288 | 25y 257- 342 | 29y 298- 397 |
| XII | 9y 93- 123 | 9y11m 102- 136 | 10y9m 111- 147 | 11y8m 120- 160 | 12y6m 129- 171 | 13y5m 138- 184 | 15y9m 162- 216 | 17y3m 178- 236 | 20y3m 209- 277 | 23y3m 240- 318 |
| XI | 7y6m 78- 102 | 8y4m 86- 114 | 9y2m 95- 125 | 9y11m 102- 136 | 10y9m 111- 147 | 11y7m 120- 158 | 14y2m 146- 194 | 15y5m 159- 211 | 17y11m 185- 245 | 20y5m 210- 280 |

SERIOUSNESS
SCORE

OFFENDER SCORE

| | 9 | | | | | | | | | | |
|------|-------------------|--------------------|-------------------|-------------------|-------------------|--------------------|--------------------|----------------------|----------------------|----------------------|-------------------|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | or more | |
| X | 5y 51- 68 | 5y6m 57- 75 | 6y 62- 82 | 6y6m 67- 89 | 7y 72- 96 | 7y6m 77- 102 | 9y6m 98- 130 | 10y6m 108- 144 | 12y6m 129- 171 | 14y6m 149- 198 | |
| IX | 3y 31- 41 | 3y6m 36- 48 | 4y 41- 54 | 4y6m 46- 61 | 5y 51- 68 | 5y6m 57- 75 | 7y6m 77- 102 | 8y6m 87- 116 | 10y6m 108- 144 | 12y6m 129- 171 | |
| VIII | 2y 21- 27 | 2y6m 26- 34 | 3y 31- 41 | 3y6m 36- 48 | 4y 41- 54 | 4y6m 46- 61 | 6y6m 67- 89 | 7y6m 77- 102 | 8y6m 87- 116 | 10y6m 108- 144 | |
| VII | 18m 15- 20 | 2y 21- 27 | 2y6m 26- 34 | 3y 31- 41 | 3y6m 36- 48 | 4y 41- 54 | 5y6m 57- 75 | 6y6m 67- 89 | 7y6m 77- 102 | 8y6m 87- 116 | |
| VI | 13m 12+- 14 | 18m 15- 20 | 2y 21- 27 | 2y6m 26- 34 | 3y 31- 41 | 3y6m 36- 48 | 4y6m 46- 61 | 5y6m 57- 75 | 6y6m 67- 89 | 7y6m 77- 102 | |
| V | 9m 6- 12 | 13m 12+- 14 | 15m 13- 17 | 18m 15- 20 | 2y2m 22- 29 | 3y2m 33- 43 | 4y 41- 54 | 5y 51- 68 | 6y 62- 82 | 7y 72- 96 | |
| IV | 6m 3- 9 | 9m 6- 12 | 13m 12+- 14 | 15m 13- 17 | 18m 15- 20 | 2y2m 22- 29 | 3y2m 33- 43 | 4y2m 43- 57 | 5y2m 53- 70 | 6y2m 63- 84 | |
| III | 2m 1- 3 | 5m 3- 8 | 8m 4- 12 | 11m 9- 12 | 14m 12+- 16 | 20m 17- 22 | 2y2m 22- 29 | 3y2m 33- 43 | 4y2m 43- 57 | 5y 51- 68 | |
| II | | 4m 0-90 Days | 6m 2- 9 | 8m 3- 12 | 13m 4- 14 | 16m 12+- 18 | 20m 14- 22 | 2y2m 17- 29 | 3y2m 22- 43 | 4y2m 33- 57 | 4y2m 43- 57 |
| I | | 0-60 | 3m 0-90 2- | 4m 2- | 5m 3- | 8m 4- | 13m 12+- | 16m 14- | 20m 17- | 2y2m 22- | |

**SERIOUSNESS
SCORE**

OFFENDER SCORE

| | | | | | | | | | |
|------|------|---|---|---|----|----|----|----|---------|
| | | | | | | | | | 9 |
| 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | or more |
| Days | Days | 5 | 6 | 8 | 12 | 14 | 18 | 22 | 29 |

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 percent.

(3) The following additional times shall be added to the presumptive sentence if the offender or an accomplice was armed with a deadly weapon as defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice was armed with a deadly weapon and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following times shall be added to the presumptive range determined under subsection (2) of this section:

(a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

(b) 18 months for Burglary 1 (RCW 9A.52.020)

(c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Escape 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

(4) The following additional times shall be added to the presumptive sentence if the offender or an accomplice committed the offense while in a county jail or state correctional facility as that term is defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility as that term is defined in this chapter, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following times shall be added to the presumptive sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(a)(1)(i) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(a)(1)(ii), (iii), and (iv);

(c) Twelve months for offenses committed under RCW 69.50.401(d).

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(5) An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

Sec. 3. RCW 9.94A.320 and 1990 c 3 s 702 are each amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

| | |
|------|---|
| XV | Aggravated Murder 1 (RCW 10.95.020) |
| XIV | Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055) |
| XIII | Murder 2 (RCW 9A.32.050) |
| XII | Assault 1 (RCW 9A.36.011) |
| XI | Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) |
| X | Kidnapping 1 (RCW 9A.40.020) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Child Molestation 1 (RCW 9A.44.083) Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a)) |
| IX | Robbery 1 (RCW 9A.56.200) Manslaughter 1 (RCW 9A.32.060) Explosive devices prohibited (RCW 70.74.180) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Endangering life and property by explosives with threat to human being (RCW 70.74.270) Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406) Controlled Substance Homicide (RCW 69.50.415) |

- Sexual Exploitation (RCW 9.68A.040)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- VIII Arson 1 (RCW 9A.48.020)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Selling ((heroin)) for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
- Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug or by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- Introducing Contraband 1 (RCW 9A.76.140)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Child Molestation 2 (RCW 9A.44.086)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- VI Bribery (RCW 9A.68.010)
- Manslaughter 2 (RCW 9A.32.070)
- Rape of a Child 3 (RCW 9A.44.079)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
- Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
- Incest 1 (RCW 9A.64.020(1))
- ~~((Selling for profit (controlled or counterfeit) any controlled substance (except heroin) (RCW 69.50.410)))~~
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
- Intimidating a Judge (RCW 9A.72.160)
- Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- V Criminal Mistreatment 1 (RCW 9A.42.020)

- Rape 3 (RCW 9A.44.060)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Child Molestation 3 (RCW 9A.44.089)
- Kidnapping 2 (RCW 9A.40.030)
- Extortion 1 (RCW 9A.56.120)
- Incest 2 (RCW 9A.64.020(2))
- Perjury 1 (RCW 9A.72.020)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- IV Residential Burglary (RCW 9A.52.025)
- Theft of Livestock 1 (RCW 9A.56.080)
- Robbery 2 (RCW 9A.56.210)
- Assault 2 (RCW 9A.36.021)
- Escape 1 (RCW 9A.76.110)
- Arson 2 (RCW 9A.48.030)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72-.090, 9A.72.100)
- Malicious Harassment (RCW 9A.36.080)
- Threats to Bomb (RCW 9.61.160)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- Hit and Run — Injury Accident (RCW 46.52.020(4))
- Vehicular Assault (RCW 46.61.522)
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I–V (except marijuana or methamphetamines) (RCW 69.50.401(a)(1)(ii) through (iv))
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal mistreatment 2 (RCW 9A.42.030)
- Extortion 2 (RCW 9A.56.130)
- Unlawful Imprisonment (RCW 9A.40.040)
- Assault 3 (RCW 9A.36.031)
- Custodial Assault (RCW 9A.36.100)

- Unlawful possession of firearm or pistol by felon (RCW 9.41.040)
- Harassment (RCW 9A.46.020)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- Burglary 2 (RCW 9A.52.030)
- Introducing Contraband 2 (RCW 9A.76.150)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 2 (RCW 9A.56.080)
- Securities Act violation (RCW 21.20.400)
- II Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Reckless Endangerment 1 (RCW 9A.36.045)
- I Theft 2 (RCW 9A.56.040)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)

Malicious Mischief 2 (RCW 9A.48.080)
Reckless Burning 1 (RCW 9A.48.040)
Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
False Verification for Welfare (RCW 74.08.055)
Forged Prescription (RCW 69.41.020)
Forged Prescription for a Controlled Substance (RCW
69.50.403)
Possess Controlled Substance that is a Narcotic from Schedule
III, IV, or V or Non-narcotic from Schedule I-V (except
phencyclidine) (RCW 69.50.401(d))

Sec. 4. RCW 69.50.435 and 1990 c 244 s 1 and 1990 c 33 s 588 are each reenacted and amended to read as follows:

(a) Any person who violates RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under that subsection or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana to a person in a school or on a school bus or within one thousand feet of a school bus route stop designated by the school district or within one thousand feet of the perimeter of the school grounds, in a public park or on a public transit vehicle, or in a public transit stop shelter may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(b) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, on a public transit vehicle, or in a public transit stop shelter.

(c) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, or the public transit vehicle, or at the school bus route stop or the public transit vehicle stop shelter at the time of the offense or that school was not in session.

(d) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and

that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401(a) for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(e) In a prosecution under this section, a map produced or reproduced by any municipal, school district, county, or transit authority engineer for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, or public transit vehicle stop shelter, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, or public transit vehicle stop shelter. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, or transit authority if the map or diagram is otherwise admissible under court rule.

(f) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(2) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

(3) "School bus route stop" means a school bus stop as designated on maps submitted by school districts to the office of the superintendent of public instruction;

(4) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(5) "Public transit vehicle" means any motor vehicle, street car, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;

(6) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(7) "Stop shelter" means a passenger shelter designated by a transit authority.

Passed the House March 13, 1991.

Passed the Senate April 8, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 33

[Engrossed Substitute House Bill 1824]

DISTRICT COURT JURISDICTIONAL AMOUNT INCREASED

Effective Date: 7/1/91

AN ACT Relating to district court jurisdiction; amending RCW 3.66.020, 10.14.150, 60.10.020, 60.11.060, 4.24.130, and 2.24.040; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 3.66.020 and 1984 c 258 s 41 are each amended to read as follows:

If the value of the claim or the amount at issue does not exceed twenty-five thousand dollars, exclusive of interest, costs, and attorneys' fees, the district court shall have jurisdiction and cognizance of the following civil actions and proceedings:

(1) ~~((Of an))~~ Actions arising on contract for the recovery of money ~~((only in which the sum claimed does not exceed seven thousand five hundred dollars));~~

(2) ~~((Of an))~~ Actions for damages for injuries to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue raised by the answer involves the plaintiff's title to or possession of the same ~~((when the amount of damages claimed does not exceed seven thousand five hundred dollars; also of))~~ and actions to recover the possession of personal property ~~((when the value of such property as alleged in the complaint, does not exceed seven thousand five hundred dollars));~~

(3) ~~((Of an))~~ Actions for a penalty ~~((not exceeding seven thousand five hundred dollars))~~;

(4) ~~((Of an))~~ Actions upon a bond conditioned for the payment of money, when the amount claimed does not exceed ~~((seven))~~ twenty-five thousand ~~((five hundred))~~ dollars, though the penalty of the bond exceeds that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint;

(5) ~~((Of an))~~ Actions on an undertaking or surety bond taken by the court ~~((, when the amount claimed does not exceed seven thousand five hundred dollars))~~;

(6) ~~((Of an))~~ Actions for damages for fraud in the sale, purchase, or exchange of personal property ~~((, when the damages claimed do not exceed seven thousand five hundred dollars))~~;

(7) Proceedings to take and enter judgment on confession of a defendant ~~((, when the amount of the judgment confessed does not exceed seven thousand five hundred dollars))~~;

(8) Proceedings to issue writs of attachment, garnishment and replevin upon goods, chattels, moneys, and effects ~~((, when the amount does not exceed seven thousand five hundred dollars))~~; and

(9) ~~((Of))~~ All other actions and proceedings of which jurisdiction is specially conferred by statute, when ~~((the amount involved does not exceed seven thousand five hundred dollars and))~~ the title to, or right of possession of ~~((, or a lien upon))~~ real property is not involved.

~~((The seven thousand five hundred dollar amounts provided in subsections (1) through (9) of this section shall remain in effect until June 30, 1985; effective July 1, 1985, such amount shall be increased to ten thousand dollars.~~

~~The amounts of money referred to in this section shall be exclusive of interest, costs and attorney's fees.)~~

Sec. 2. RCW 10.14.150 and 1987 c 280 s 15 are each amended to read as follows:

The ~~((superior))~~ district courts shall have jurisdiction and cognizance of any civil actions and proceedings brought under this chapter. Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where a district court judge makes findings of fact and conclusions of law showing that meritorious reasons exit [exist] for the transfer. The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170.

Sec. 3. RCW 60.10.020 and 1969 c 82 s 3 are each amended to read as follows:

Any lien upon personal property, excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code (Title 62A RCW), may be foreclosed by: (1) An action in the district court having jurisdiction in the

district in which the property is situated in accordance with RCW 61.12-.162, if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the property is situated in accordance with RCW 61.12.162, ((or it may be foreclosed by)) if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in this chapter.

Sec. 4. RCW 60.11.060 and 1986 c 242 s 6 are each amended to read as follows:

Any lien subject to this chapter, excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code, Title 62A RCW, may be foreclosed by: (1) An action in the district court having jurisdiction in the district in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070, if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070 ((or it may be foreclosed by)), if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in RCW 60.11.080.

Sec. 5. RCW 4.24.130 and Code of 1881 s 635 are each amended to read as follows:

Any person desiring a change of his or her name or that of his or her child or ward, may apply therefor to the ((superior)) district court of the ((county)) judicial district in which he or she resides, by petition setting forth the reasons for such change; thereupon such court in its discretion may order a change of the name and thenceforth the new name shall be in place of the former.

Sec. 6. RCW 2.24.040 and 1979 ex.s. c 54 s 2 are each amended to read as follows:

Such court commissioner shall have power, authority, and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

(1) To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state.

(2) To grant and enter defaults and enter judgment thereon.

(3) To issue temporary restraining orders and temporary injunctions, and to fix and approve bonds thereon.

(4) To act as referee in all matters and actions referred to him or her by the superior court as such, with all the powers now conferred upon referees by law.

(5) To hear and determine all proceedings supplemental to execution, with all the powers conferred upon the judge of the superior court in such matters.

(6) To hear and determine all petitions for the adoption of children, for the dissolution of incorporations(~~(, and to change the name of any person)~~).

(7) To hear and determine all applications for the commitment of any person to the hospital for the insane, with all the powers of the superior court in such matters: PROVIDED, That in cases where a jury is demanded, same shall be referred to the superior court for trial.

(8) To hear and determine all complaints for the commitments of minors with all powers conferred upon the superior court in such matters.

(9) To hear and determine ex parte and uncontested civil matters of any nature.

(10) To grant adjournments, administer oaths, preserve order, compel attendance of witnesses, and to punish for contempts in the refusal to obey or the neglect of ~~((his))~~ the court commissioner's lawful orders made in any matter before ~~((him))~~ the court commissioner as fully as the judge of the superior court.

(11) To take acknowledgments and proofs of deeds, mortgages and all other instruments requiring acknowledgment under the laws of this state, and to take affidavits and depositions in all cases.

(12) To provide an official seal, upon which shall be engraved the words "Court Commissioner," and the name of the county for which he or she may be appointed, and to authenticate his official acts therewith in all cases where same is necessary.

(13) To charge and collect, for his or her own use, the same fees for the official performance of official acts mentioned in subsections (4) and (11) of this section as are provided by law for referees and notaries public.

NEW SECTION. Sec. 7. 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 shall take effect July 1, 1991.

Passed the House March 20, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 34

[Engrossed House Bill 1244]

CONTRACTOR AVOIDANCE OF WORKERS' COMPENSATION AND
UNEMPLOYMENT COMPENSATION PAYMENTS STUDY

Effective Date: 7/28/91

AN ACT Relating to employers' payment of industrial insurance premiums and unemployment compensation contributions; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The employment security department and the department of labor and industries shall investigate the practice by some construction contractors of avoiding employer obligations for industrial insurance premiums and unemployment compensation contributions under RCW 51.08.180, 50.04.140, and 50.04.145 by requiring workers employed by them to register under RCW 18.27.020 as contractors. The departments shall, by December 1, 1991, submit a report to the legislature on the extent of the practice and the amount of funds lost to the state and make recommendations for legislative or agency action.

Passed the House March 11, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 35

[Substitute House Bill 1270]

RETIREMENT SYSTEM—REORGANIZATION OF STATUTES GOVERNING

Effective Date: 7/28/91

AN ACT Relating to reorganizing the statutes governing the state's retirement system; amending RCW 41.26.005, 41.26.030, 41.26.035, 41.26.040, 41.26.060, 41.26.080, 41.26.090, 41.26.120, 41.26.130, 41.26.140, 41.26.150, 41.26.160, 41.26.170, 41.26.180, 41.26.190, 41.26.240, 41.26.280, 41.26.410, 41.32.005, 41.32.010, 41.32.030, 41.32.120, 41.32.130, 41.32.160, 41.32.190, 41.32.230, 41.32.240, 41.32.242, 41.32.260, 41.32.300, 41.32.310, 41.32.330, 41.32.340, 41.32.350, 41.32.360, 41.32.366, 41.32.390, 41.32.405, 41.32.420, 41.32.430, 41.32.480, 41.32.4945, 41.32.498, 41.32.499, 41.32.500, 41.32.520, 41.32.522, 41.32.523, 41.32.540, 41.32.550, 41.32.590, 41.32.610, 41.32.620, 41.32.630, 41.32.780, 41.32.790, 41.40.010, 41.40.020, 41.40.080, 41.40.083, 41.40.100, 41.40.110, 41.40.130, 41.40.160, 41.40.170, 41.40.195, 41.40.200, 41.40.220, 41.40.230, 41.40.235, 41.40.250, 41.40.260, 41.40.280, 41.40.310, 41.40.320, 41.40.340, 41.40.350, 41.40.363, 41.40.380, 41.40.410, 41.40.412, 41.40.440, 41.40.450, 41.40.610, 41.40.625, 41.40.670, and 41.40.710; amending 1990 c 274 s 19 (uncodified); reenacting and amending RCW 41.40.005; adding new sections to chapter 41.26 RCW; adding new sections to chapter 41.32 RCW; adding new sections to chapter 41.40 RCW; adding new sections to chapter 41.50 RCW; creating new sections; recodifying RCW 41.26.060, 41.32.030, 41.32.120, 41.32.130, 41.32.190, 41.32.230, 41.32.405, 41.32.420, 41.32.430, 41.32.830, 41.40.080, 41.40.083, 41.40.100, 41.40.110, 41.40.350, 41.26.900, 41.26.910, 41.26.920, 41.25.901, 41.26.921, 41.32.011, 41.40.005, 41.40.010, 41.40.020, 41.40.120, 41.40.123, 41.40.130, 41.40.165, 41.40.223, 41.40.340, 41.40.361, 41.40.370, 41.40.380, 41.40.400, 41.40.403, 41.40.410,

41.40.412, 41.40.414, 41.40.420, 41.40.440, 41.40.450, 41.40.530, 41.40.540, 41.40.542, 41.40.800, 41.40.810, 41.40.150, 41.40.160, 41.40.170, 41.40.180, 41.40.185, 41.40.188, 41.40.190, 41.40.193, 41.40.195, 41.40.198, 41.40.1981, 41.40.200, 41.40.210, 41.40.220, 41.40.230, 41.40.235, 41.40.250, 41.40.260, 41.40.270, 41.40.280, 41.40.300, 41.40.310, 41.40.320, 41.40.325, 41.40.330, 41.40.363, 41.40.610, 41.40.620, 41.40.625, 41.40.630, 41.40.640, 41.40.650, 41.40.660, 41.40.670, 41.40.680, 41.40.690, 41.40.700, 41.40.710, 41.40.720, 41.40.730, 41.40.740, 41.40.900, and 41.40.920; decodifying RCW 41.26.043, 41.26.051, 41.26.310, 41.26.400, 41.26.475, 41.26.560, 41.32.015, 41.32.243, 41.32.2431, 41.32.2432, 41.32.245, 41.32.250, 41.32.265, 41.32.280, 41.32.290, 41.32.310, 41.32.365, 41.32.486, 41.32.491, 41.32.492, 41.32.494, 41.32.4943, 41.32.560, 41.32.561, 41.32.567, 41.32.583, 41.32.750, 41.40.011, 41.40.022, 41.40.135, 41.40.138, 41.40.1982, 41.40.199, 41.40.225, 41.40.405, 41.40.406, 41.40.407, 41.40.411, 41.40.500, 41.40.501, 41.40.502, 41.40.503, 41.40.504, 41.40.505, 41.40.506, 41.40.507, 41.40.509, 41.40.515, 41.40.516, 41.40.517, 41.40.518, 41.40.519, 41.40.520, 41.40.521, 41.40.522, 41.40.527, 41.40.535, and 41.40.600; and repealing RCW 2.10.095, 2.12.070, 2.12.080, 41.04.065, 41.26.065, 41.26.070, 41.26.320, 41.26.330, 41.26.600, 41.32.045, 41.32.140, 41.32.170, 41.32.180, 41.32.201, 41.32.202, 41.32.203, 41.32.207, 41.32.220, 41.32.320, 41.32.401, 41.32.440, 41.32.4944, 41.32.565, 41.32.600, 41.32.610, 41.32.620, 41.32.630, 41.32.650, 41.40.072, 41.40.075, 41.40.077, 41.40.090, 41.40.155, 43.43.170, 43.43.175, 43.43.180, 43.43.190, and 43.43.225.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature intends to reorganize chapter 41.26 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the Washington law enforcement officers' and fire fighters' retirement system plan I, the Washington law enforcement officers' and fire fighters' retirement system plan II, and those provisions relating to both plan I and plan II into three separate subchapters within chapter 41.26 RCW; (b) decodify or repeal obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.26 RCW or other statutory provisions or rules adopted under those provisions.

(2) The legislature intends to reorganize chapter 41.32 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the Washington teachers' retirement system plan I, the Washington teachers' retirement system plan II, and both plan I and plan II into three separate subchapters within chapter 41.32 RCW; (b) decodify or repeal obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.32 RCW or other statutory provisions or rules adopted under those provisions.

(3) The legislature intends to reorganize chapter 41.40 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the

public employees' retirement system plan I, the public employees' retirement system plan II, and both plan I and plan II into three separate subchapters within chapter 41.40 RCW; (b) decodify obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.40 RCW or other statutory provisions or rules adopted under those provisions.

(4) This act is technical in nature and shall not have the effect of terminating or in any way modifying any rights, proceedings, or liabilities, civil or criminal, which exist on the effective date of this section.

NEW SECTION. Sec. 2. If any section of the Revised Code of Washington amended by this act is also amended by any other session law enacted during the same session of the legislature, each without reference to the other, to the extent that the amendatory changes conflict so that the section cannot be published with all amendments incorporated therein, the conflicting portion of the section amended by this act shall not be given effect, and shall be omitted by the code reviser from the publication of the official code and be so noted.

NEW SECTION. Sec. 3. The following acts or parts of acts are each repealed:

- (1) RCW 2.10.095 and 1984 c 184 s 3;
- (2) RCW 2.12.070 and 1981 c 3 s 23, 1955 c 221 s 1, & 1937 c 229 s 8;
- (3) RCW 2.12.080 and 1984 c 184 s 4;
- (4) RCW 41.04.065 and 1988 c 59 s 2;
- (5) RCW 41.26.065 and 1984 c 184 s 5;
- (6) RCW 41.26.070 and 1989 c 273 s 12, 1981 c 3 s 28, 1973 1st ex.s. c 103 s 2, 1971 ex.s. c 216 s 2, & 1969 ex.s. c 209 s 7;
- (7) RCW 41.26.320 and 1977 ex.s. c 294 s 19;
- (8) RCW 41.26.330 and 1977 ex.s. c 251 s 8;
- (9) RCW 41.26.600 and 1983 c 283 s 2;
- (10) RCW 41.32.045 and 1984 c 184 s 6;
- (11) RCW 41.32.140 and 1947 c 80 s 14;
- (12) RCW 41.32.170 and 1955 c 274 s 4 & 1947 c 80 s 17;
- (13) RCW 41.32.180 and 1969 ex.s. c 150 s 5 & 1947 c 80 s 18;
- (14) RCW 41.32.201 and 1973 1st ex.s. c 103 s 3 & 1961 c 297 s 2;
- (15) RCW 41.32.202 and 1973 1st ex.s. c 103 s 4 & 1961 c 297 s 3;
- (16) RCW 41.32.203 and 1969 ex.s. c 150 s 7 & 1961 c 297 s 4;
- (17) RCW 41.32.207 and 1981 c 3 s 29 & 1973 1st ex.s. c 103 s 15;
- (18) RCW 41.32.220 and 1969 ex.s. c 150 s 8 & 1947 c 80 s 22;

- (19) RCW 41.32.320 and 1963 ex.s. c 14 s 6, 1955 c 274 s 13, & 1947 c 80 s 32;
- (20) RCW 41.32.401 and 1989 c 273 s 17, 1984 c 236 s 1, 1982 1st ex.s. c 52 s 9, 1980 c 87 s 15, & 1963 ex.s. c 14 s 11;
- (21) RCW 41.32.440 and 1947 c 80 s 44;
- (22) RCW 41.32.4944 and 1973 1st ex.s. c 189 s 5;
- (23) RCW 41.32.565 and 1973 1st ex.s. c 190 s 1;
- (24) RCW 41.32.600 and 1947 c 80 s 60;
- (25) RCW 41.32.610 and 1947 c 80 s 61;
- (26) RCW 41.32.620 and 1947 c 80 s 62;
- (27) RCW 41.32.630 and 1947 c 80 s 63;
- (28) RCW 41.32.650 and 1971 c 81 s 104 & 1947 c 80 s 65;
- (29) RCW 41.40.072 and 1981 c 3 s 30 & 1973 1st ex.s. c 103 s 16;
- (30) RCW 41.40.075 and 1981 c 3 s 31 & 1959 c 91 s 2;
- (31) RCW 41.40.077 and 1977 ex.s. c 251 s 9;
- (32) RCW 41.40.090 and 1947 c 274 s 10;
- (33) RCW 41.40.155 and 1951 c 50 s 17;
- (34) RCW 43.43.170 and 1981 c 3 s 36, 1969 c 12 s 2, & 1965 c 8 s 43.43.170;
- (35) RCW 43.43.175 and 1981 c 3 s 37 & 1965 c 8 s 43.43.175;
- (36) RCW 43.43.180 and 1965 c 8 s 43.43.180;
- (37) RCW 43.43.190 and 1965 c 8 s 43.43.190; and
- (38) RCW 43.43.225 and 1984 c 184 s 8.

NEW SECTION. Sec. 4. The following sections are each decodified:

RCW 41.26.043;
 RCW 41.26.051;
 RCW 41.26.310;
 RCW 41.26.400;
 RCW 41.26.475;
 RCW 41.26.560;
 RCW 41.32.015;
 RCW 41.32.243;
 RCW 41.32.2431;
 RCW 41.32.2432;
 RCW 41.32.245;
 RCW 41.32.250;
 RCW 41.32.265;
 RCW 41.32.280;
 RCW 41.32.290;
 RCW 41.32.310;
 RCW 41.32.365;
 RCW 41.32.486;
 RCW 41.32.491;
 RCW 41.32.492;

RCW 41.32.494;
RCW 41.32.4943;
RCW 41.32.560;
RCW 41.32.561;
RCW 41.32.567;
RCW 41.32.583;
RCW 41.32.750;
RCW 41.40.011;
RCW 41.40.022;
RCW 41.40.135;
RCW 41.40.138;
RCW 41.40.1982;
RCW 41.40.199;
RCW 41.40.225;
RCW 41.40.405;
RCW 41.40.406;
RCW 41.40.407;
RCW 41.40.411;
RCW 41.40.500;
RCW 41.40.501;
RCW 41.40.502;
RCW 41.40.503;
RCW 41.40.504;
RCW 41.40.505;
RCW 41.40.506;
RCW 41.40.507;
RCW 41.40.509;
RCW 41.40.515;
RCW 41.40.516;
RCW 41.40.517;
RCW 41.40.518;
RCW 41.40.519;
RCW 41.40.520;
RCW 41.40.521;
RCW 41.40.522;
RCW 41.40.527;
RCW 41.40.535; and
RCW 41.40.600.

NEW SECTION. Sec. 5. RCW 41.26.060 is recodified as a section in chapter 41.50 RCW.

NEW SECTION. Sec. 6. The following sections are each recodified as sections in chapter 41.50 RCW:

RCW 41.32.030, 41.32.120, 41.32.130, 41.32.190, 41.32.230, 41.32-.405, 41.32.420, 41.32.430, and 41.32.830.

NEW SECTION. Sec. 7. The following sections are each recodified as sections in chapter 41.50 RCW:

RCW 41.40.080;
RCW 41.40.083;
RCW 41.40.100;
RCW 41.40.110; ar.d
RCW 41.40.350.

NEW SECTION. Sec. 8. (1) The following sections are designated as a subchapter within chapter 41.26 RCW with the subchapter heading: "Provisions Applicable to Plan I and Plan II":

RCW 41.26.005;
RCW 41.26.010;
RCW 41.26.020;
RCW 41.26.030;
RCW 41.26.035;
RCW 41.26.040;
RCW 41.26.045;
RCW 41.26.046;
RCW 41.26.047;
RCW 41.26.210;
RCW 41.26.220;
RCW 41.26.230;
RCW 41.26.280; and
RCW 41.26.300.

(2)(a) The following sections are designated as a subchapter of chapter 41.26 RCW under the subchapter designation "Plan I":

RCW 41.26.080;
RCW 41.26.090;
RCW 41.26.100;
RCW 41.26.110;
RCW 41.26.115;
RCW 41.26.120;
RCW 41.26.125;
RCW 41.26.130;
RCW 41.26.135;
RCW 41.26.140;
RCW 41.26.150;
RCW 41.26.160;
RCW 41.26.170;
RCW 41.26.180;
RCW 41.26.190;
RCW 41.26.200;
RCW 41.26.240;
RCW 41.26.250;

RCW 41.26.260; and
RCW 41.26.270.

(b) RCW 41.26.900, 41.26.910, and 41.26.920 are each recodified within the subchapter defined by (a) of this subsection.

(3)(a) The following sections are designated as a subchapter of chapter 41.26 RCW under the subchapter designation "Plan II":

RCW 41.26.410;
RCW 41.26.420;
RCW 41.26.425;
RCW 41.26.430;
RCW 41.26.440;
RCW 41.26.450;
RCW 41.26.460;
RCW 41.26.470;
RCW 41.26.480;
RCW 41.26.490;
RCW 41.26.500;
RCW 41.26.510;
RCW 41.26.520;
RCW 41.26.530;
RCW 41.26.540; and
RCW 41.26.550.

(b) The following sections are recodified within chapter 41.26 RCW such that the sections fall within the subchapter designation created by (a) of this subsection:

RCW 41.26.901; and
RCW 41.26.921.

NEW SECTION. Sec. 9. (1) The following sections are designated as a subchapter within chapter 41.32 RCW with the subchapter heading: "Provisions Applicable to Plan I and Plan II":

RCW 41.32.005;
RCW 41.32.010;
RCW 41.32.020;
RCW 41.32.160;
RCW 41.32.242;
RCW 41.32.403;
RCW 41.32.460;
RCW 41.32.580;
RCW 41.32.590;
RCW 41.32.670;
RCW 41.32.850; and
RCW 41.32.013.

These sections shall be designated by statute numbers greater than RCW 41.32.004 and less than RCW 41.32.070.

(2)(a) The following sections are designated as a subchapter of chapter 41.32 RCW under the subchapter designation "Plan I":

- RCW 41.32.240;
- RCW 41.32.300;
- RCW 41.32.310;
- RCW 41.32.260;
- RCW 41.32.270;
- RCW 41.32.330;
- RCW 41.32.340;
- RCW 41.32.350;
- RCW 41.32.360;
- RCW 41.32.366;
- RCW 41.32.380;
- RCW 41.32.390;
- RCW 41.32.470;
- RCW 41.32.480;
- RCW 41.32.485;
- RCW 41.32.487;
- RCW 41.32.488;
- RCW 41.32.4931;
- RCW 41.32.4945;
- RCW 41.32.497;
- RCW 41.32.498;
- RCW 41.32.499;
- RCW 41.32.500;
- RCW 41.32.510;
- RCW 41.32.520;
- RCW 41.32.522;
- RCW 41.32.523;
- RCW 41.32.530;
- RCW 41.32.540;
- RCW 41.32.550;
- RCW 41.32.570; and
- RCW 41.32.575.

(b) RCW 41.32.011 is recodified within chapter 41.32 RCW such that it falls within the subchapter created under (a) of this section.

(3) The following sections are designated as a subchapter of chapter 41.32 RCW under the subchapter designation "Plan II":

- RCW 41.32.755;
- RCW 41.32.760;
- RCW 41.32.762;
- RCW 41.32.765;
- RCW 41.32.770;
- RCW 41.32.775;

RCW 41.32.780;
RCW 41.32.785;
RCW 41.32.790;
RCW 41.32.795;
RCW 41.32.800;
RCW 41.32.805;
RCW 41.32.810;
RCW 41.32.815;
RCW 41.32.820; and
RCW 41.32.825.

NEW SECTION. Sec. 10. (1) The following sections are recodified and designated as a subchapter within chapter 41.40 RCW with the subchapter heading of "Provisions Applicable to Plan I and Plan II":

RCW 41.40.005;
RCW 41.40.010;
RCW 41.40.020;
RCW 41.40.120;
RCW 41.40.123; and
RCW 41.40.130.

(2) The following sections are recodified within chapter 41.40 RCW such that the sections fall within the subchapter created under subsection (1) of this section and are designated by statute numbers greater than RCW 41.40.004 and less than RCW 41.40.126:

RCW 41.40.165;
RCW 41.40.223;
RCW 41.40.340;
RCW 41.40.361;
RCW 41.40.370;
RCW 41.40.380;
RCW 41.40.400;
RCW 41.40.403;
RCW 41.40.410;
RCW 41.40.412;
RCW 41.40.414;
RCW 41.40.420;
RCW 41.40.440;
RCW 41.40.450;
RCW 41.40.530;
RCW 41.40.540;
RCW 41.40.542;
RCW 41.40.800;
RCW 41.40.810; and
section 101 of this act.

(3) The following sections are recodified and designated as a subchapter of chapter 41.40 RCW under the subchapter designation "Plan I":

RCW 41.40.150;
RCW 41.40.160;
RCW 41.40.170;
RCW 41.40.180;
RCW 41.40.185;
RCW 41.40.188;
RCW 41.40.190;
RCW 41.40.193;
RCW 41.40.195;
RCW 41.40.198;
RCW 41.40.1981;
RCW 41.40.200;
RCW 41.40.210;
RCW 41.40.220;
RCW 41.40.230;
RCW 41.40.235;
RCW 41.40.250;
RCW 41.40.260;
RCW 41.40.270;
RCW 41.40.280;
RCW 41.40.300;
RCW 41.40.310;
RCW 41.40.320;
RCW 41.40.325;
RCW 41.40.330; and
RCW 41.40.363.

(4) The following sections are recodified and designated as a subchapter of chapter 41.40 RCW under the subchapter designation "Plan II":

RCW 41.40.610;
RCW 41.40.620;
RCW 41.40.625;
RCW 41.40.630;
RCW 41.40.640;
RCW 41.40.650;
RCW 41.40.660;
RCW 41.40.670;
RCW 41.40.680;
RCW 41.40.690;
RCW 41.40.700;
RCW 41.40.710;
RCW 41.40.720;
RCW 41.40.730;

RCW 41.40.740;
 RCW 41.40.900; and
 RCW 41.40.920.

Sec. 11. 1990 c 274 s 19 (uncodified) is amended to read as follows:

Beginning on June 7, 1990, the 1990 amendments to RCW 41.40.690, 41.26.500, (~~(41.32.780)~~) 41.32.800, and 2.10.155 regarding postretirement employment are available prospectively to all members of the retirement systems defined in RCW 2.10.040, 41.26.005(2), 41.32.005(2), and 41.40.005(2), regardless of the member's date of retirement. The legislature reserves the right to revoke or amend the 1990 amendments to RCW 41.40.690, 41.26.500, (~~(41.32.780)~~) 41.32.800, and 2.10.155. The 1990 amendments to RCW 41.40.690, 41.26.500, (~~(41.32.780)~~) 41.32.800, and 2.10.155 do not grant a contractual right to the members or retirees of the affected systems.

Sec. 12. RCW 41.26.005 and 1989 c 273 s 10 are each amended to read as follows:

~~((1) "Law enforcement officers' and fire fighters' retirement system plan I" or "plan I" means the benefits and funding provisions covering persons who first became members of the law enforcement officers' and fire fighters' retirement system prior to October 1, 1977.))~~ The provisions of the following sections of this chapter shall apply ~~((only))~~ to members of plan I and plan II: ((RCW 41.26.080, 41.26.090, 41.26.100, 41.26.110, 41.26.120, 41.26.125, 41.26.130, 41.26.140, 41.26.150, 41.26.160, 41.26.170, 41.26.190, 41.26.200, 41.26.240, 41.26.250, 41.26.260, and 41.26.270;

~~(2) "Law enforcement officers' and fire fighters' retirement system plan H" or "plan H" means the benefits and funding provisions covering persons who first became members of the law enforcement officers' and fire fighters' retirement system on or after October 1, 1977. The provisions of RCW 41.26.400 through 41.26.550 shall apply only to members of plan H))~~ RCW 41.26.010; 41.26.020; 41.26.030; 41.26.035; 41.26.040; 41.26.043; 41.26.045; 41.26.046; 41.26.047; 41.26.210; 41.26.220; 41.26.230; 41.26.280; and 41.26.300.

Sec. 13. RCW 41.26.030 and 1987 c 418 s 1 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2)(a) "Employer" for ~~((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities,

and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for ~~((persons who establish membership in the retirement system on or after October 1, 1977))~~ plan II members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter.

(3) "Law enforcement officer" means any person who is serving on a full time, fully compensated basis as a county sheriff or deputy sheriff, including sheriffs or deputy sheriffs serving under a different title pursuant to a county charter, city police officer, or town marshal or deputy marshal, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers; and

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended) if ~~((such))~~ that individual has five years previous membership in the retirement system established in chapter 41.20 RCW ~~((: PROVIDED, That for persons who establish membership in the retirement system on or after October 1, 1977;))~~. The provisions of this ((subparagraph)) subsection shall not apply((: and

~~((The term "law enforcement officer" also includes any person employed on or after November 1, 1975, and prior to December 1, 1975, as a director of public safety so long as the duties of the director substantially involve only police and/or fire duties and no other duties))~~ to plan II members.

(4) "Fire fighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a

position which requires passing a civil service examination for fire fighter, ~~((or fireman if this title is used by the department;))~~ and who is actively employed as such;

(b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) Supervisory fire fighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031 ~~((PROVIDED, That for persons who establish membership in the retirement system on or after October 1, 1977;))~~. The provisions of this ~~((subparagraph))~~ subsection shall not apply to plan II members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW ~~((PROVIDED, That for persons who establish membership in the retirement system on or after October 1, 1977;))~~. The provisions of this ~~((subparagraph))~~ subsection shall not apply to plan II members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for ~~((fireman or))~~ fire fighter; and

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971 was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW ~~((; and~~

~~((h) the term "fire fighter" also includes any person employed on or after November [1,] 1975, and prior to December 1, 1975, as a director of public safety so long as the duties of the director substantially involve only police and/or fire duties and no other duties.~~

~~((5) "Retirement board" means the Washington public employees' retirement system board established in chapter 41.40 RCW, including two members of the retirement system and two employer representatives as provided for in RCW 41.26.050. The retirement board shall be called the Washington law enforcement officers' and fire fighters' retirement board and may enter in legal relationships in that name. Any legal relationships entered into in that name prior to the adoption of this 1972 amendatory act are hereby ratified))~~;

(5) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(6) "Surviving spouse" means the surviving widow or widower of a member. The word shall not include the divorced spouse of a member.

(7)(a) "Child" or "children" ((whenever used in this chapter means every)) means an unmarried person who is under the age of eighteen or

mentally or physically handicapped as determined by the department, except a handicapped person in the full time care of a state institution, who is:

- (i) A natural born child ((and));
- (ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter((:));
- (iii) A posthumous child((:));
- (iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter((, and)); or
- (v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter((, all while unmarried, and either under the age of eighteen years or mentally or physically handicapped as determined by the retirement board except a handicapped person in the full time care of a state institution)).

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) ((above)) of this section.

(11)(a) "Beneficiary" for ((persons who establish membership in the retirement system on or before September 30, 1977)) plan I members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for ((persons who establish membership in the retirement system on or after October 1, 1977)) plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12)(a) "Final average salary" for ((persons who establish membership in the retirement system on or before September 30, 1977)) plan I members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of

retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for ~~((persons who establish membership in the retirement system on or after October 1, 1977))~~ plan II members, means the monthly average of the member's basic salary for the highest consecutive sixty months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13)(a) "Basic salary" for ~~((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for ~~((persons who establish membership in the retirement system on or after October 1, 1977))~~ plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay: PROVIDED, That in any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under ~~((subparagraph))~~ (b)(i) of this subsection is greater than basic salary under ~~((subparagraph))~~ (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(14)(a) "Service" for ~~((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members, means

all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. ~~((In addition to the foregoing,))~~

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include ~~((†))~~ (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and ~~((†))~~ (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act ~~((:PROVIDED, That if such member's prior service is not creditable due to the withdrawal of his contributions plus accrued interest thereon from a prior pension system, such member shall be credited with such prior service, as a law enforcement officer or fire fighter, by paying to the Washington law enforcement officers' and fire fighters' retirement system, on or before March 1, 1975, an amount which is equal to that which was withdrawn from the prior system by such member, as a law enforcement officer or fire fighter. PROVIDED FURTHER, That if such member's prior service is not creditable because, although employed in a position covered by a prior pension act, such member had not yet become a member of the pension system governed by such act, such member shall be credited with such prior service as a law enforcement officer or fire fighter, by paying to the Washington law enforcement officers' and fire fighters' retirement system, on or before March 1, 1975, an amount which is equal to the employer's contributions which would have been required under the prior act when such service was rendered if the member had been a member of such system during such period. AND PROVIDED FURTHER, That where))~~).

(ii) A member who is employed by two employers at the same time ~~((; he))~~ shall only be credited with service to one such employer for any month during which ~~((he))~~ the member rendered such dual service.

(b) "Service" for ~~((persons who establish membership in the retirement system on or after October 1, 1977))~~ plan II members, means periods of

employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" for plan I members means either the county disability board or the city disability board established in RCW 41.26.110 (~~for persons who establish membership in the retirement system on or before September 30, 1977~~).

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to (~~persons who establish membership in the retirement system on or before September 30, 1977~~) plan I members.

(20) "Disability retirement" for (~~persons who establish membership in the retirement system on or before September 30, 1977~~) plan I members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for (~~persons who establish membership in the retirement system on or before September 30, 1977~~) plan I members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopath licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic x-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when (~~he is~~) injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

~~(25) ("Department" means the department of retirement systems created in chapter 41.50 RCW.~~

~~(26)) "Director" means the director of the department.~~

~~((27))~~ (26) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

~~((28))~~ (27) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(28) "Plan I" means the law enforcement officers' and fire fighters' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(29) "Plan II" means the law enforcement officers' and fire fighters' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

Sec. 14. RCW 41.26.035 and 1971 ex.s. c 257 s 2 are each amended to read as follows:

The term "minimum medical and health standards" means minimum medical and health standards adopted by the ~~((retirement board pursuant to))~~ department under this chapter.

Sec. 15. RCW 41.26.040 and 1989 c 273 s 11 are each amended to read as follows:

The Washington law enforcement officers' and fire fighters' retirement system is hereby created for fire fighters and law enforcement officers.

(1) ~~((a))~~ Notwithstanding RCW 41.26.030(8) ~~((and except as provided in subsection (1)(b) of this section)),~~ all fire fighters and law enforcement officers employed as such on or after March 1, 1970, on a full time fully compensated basis in this state shall be members of the retirement system established by this chapter with respect to all periods of service as such, to the exclusion of any pension system existing under any prior act ~~((except as provided in subsection (2) of this section).~~

~~(b) No fire fighter or law enforcement officer who commences a period of employment on or after July 1, 1979, as a participant under the federal comprehensive employment and training act of 1973 (CETA) (29 U.S.C. Sec. 801 et seq.), as amended, shall be a member of this system during the period of such participation unless, at the commencement of the participation under CETA, the fire fighter or law enforcement officer either:~~

~~(i) Has at least five years of service and the full amount of the employee's contributions for such service remains on deposit in the system; or~~

~~(ii) Has previously been retired from this system)).~~

(2) Any employee serving as a law enforcement officer or fire fighter on March 1, 1970, who is then making retirement contributions under any prior act shall have his membership transferred to the system established by this chapter as of such date. Upon retirement for service or for disability, or death, of any such employee, his retirement benefits earned under this chapter shall be computed and paid. In addition, his benefits under the prior retirement act to which he was making contributions at the time of this transfer shall be computed as if he had not transferred. For the purpose of such computations, the employee's creditability of service and eligibility for service or disability retirement and survivor and all other benefits shall continue to be as provided in such prior retirement act, as if transfer of membership had not occurred. The excess, if any, of the benefits so computed, giving full value to survivor benefits, over the benefits payable under this chapter shall be paid whether or not the employee has made application under the prior act. If the employee's prior retirement system was the Washington public employees' retirement system, payment of such excess shall be made by that system; if the employee's prior retirement system was the state-wide city employees' retirement system, payment of such excess shall be made by the employer which was the member's employer when his transfer of membership occurred: PROVIDED, That any death in line of duty lump sum benefit payment shall continue to be the obligation of that system as provided in RCW 41.44.210; in the case of all other prior retirement systems, payment of such excess shall be made by the employer which was the member's employer when his transfer of membership occurred.

(3) All funds held by any firemen's or policemen's relief and pension fund shall remain in that fund for the purpose of paying the obligations of the fund. The municipality shall continue to levy the dollar rate as provided in RCW 41.16.060, and this dollar rate shall be used for the purpose of paying the benefits provided in chapters 41.16 and 41.18 RCW. The obligations of chapter 41.20 RCW shall continue to be paid from whatever financial sources the city has been using for this purpose.

~~((4) Any member transferring from the Washington public employees' retirement system or the state-wide city employees' retirement system shall have transferred from the appropriate fund of the prior system of membership, a sum sufficient to pay into the Washington law enforcement officers' and fire fighters' retirement system fund the amount of the employees' and employers' contributions plus credited interest in the prior system for all service, as defined in this chapter, from the date of the employee's entrance therein until March 1, 1970. Except as provided for in subsection (2), such transfer of funds shall discharge said state retirement~~

~~systems from any further obligation to pay benefits to such transferring members with respect to such service:))~~

Sec. 16. RCW 41.26.060 and 1982 c 163 s 6 are each amended to read as follows:

The administration of ~~((this))~~ the Washington law enforcement officers' and fire fighters' retirement system is hereby vested in the director of retirement systems, and the director shall:

(1) Keep in convenient form such data as shall be deemed necessary for actuarial evaluation purposes;

(2) As of March 1, 1970, and at least every two years thereafter, through ~~((its))~~ the state actuary, make an actuarial valuation as to the mortality and service experience of the beneficiaries under this chapter and the various accounts created for the purpose of showing the financial status of the retirement fund;

(3) Adopt for the Washington law enforcement officers' and fire fighters' retirement system the mortality tables and such other tables as shall be deemed necessary;

(4) Keep a record of all its proceedings, which shall be open to inspection by the public;

(5) From time to time adopt such rules and regulations not inconsistent with ~~((this))~~ chapter 41.26 RCW, for the administration of the provisions of this chapter, for the administration of the fund created by this chapter and the several accounts thereof, and for the transaction of the business of the system;

(6) Prepare and publish annually a financial statement showing the condition of the Washington law enforcement officers' and fire fighters' fund and the various accounts thereof, and setting forth such other facts, recommendations and data as may be of use in the advancement of knowledge concerning the Washington law enforcement officers' and fire fighters' retirement system, and furnish a copy thereof to each employer, and to such members as may request copies thereof;

(7) Perform such other functions as are required for the execution of the provisions of ~~((this))~~ chapter 41.26 RCW;

(8) Fix the amount of interest to be credited at a rate which shall be based upon the net annual earnings of the Washington law enforcement officers' and fire fighters' fund for the preceding twelve-month period and from time to time make any necessary changes in such rate;

(9) Pay from the department of retirement systems expense fund the expenses incurred in administration of the Washington law enforcement officers' and fire fighters' retirement system from those funds appropriated for that purpose;

(10) Perform any other duties prescribed elsewhere in ~~((this))~~ chapter 41.26 RCW;

(11) Issue decisions relating to appeals initiated pursuant to RCW 41.16.145 and 41.18.104 as now or hereafter amended and shall be authorized to order increased benefits pursuant to RCW 41.16.145 and 41.18.104 as now or hereafter amended.

Sec. 17. RCW 41.26.080 and 1989 c 273 s 13 are each amended to read as follows:

The total liability of the plan I system shall be funded as follows:

(1) Every plan I member shall have deducted from each payroll a sum equal to six percent of his or her basic salary for each pay period.

(2) Every employer shall contribute monthly a sum equal to six percent of the basic salary of each plan I employee who is a member of this retirement system. The employer shall transmit the employee and employer contributions with a copy of the payroll to the retirement system monthly.

(3) The remaining liabilities of the plan I system shall be funded as provided in chapter 41.45 RCW.

(4) Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his or her salary or compensation. Payment less said contributions shall be a complete discharge of all claims and demands whatsoever for the services rendered by such person during the period covered by such payments, except his or her claim to the benefits to which he or she may be entitled under the provisions of this chapter.

Sec. 18. RCW 41.26.090 and 1977 ex.s. c 294 s 22 are each amended to read as follows:

Retirement of a member for service shall be made by the ~~((board))~~ department as follows:

(1) Any member having five or more years of service and having attained the age of fifty years shall be eligible for a service retirement allowance and shall be retired upon ~~((his))~~ the member's written request effective the first day following the date upon which the member is separated from service.

(2) Any member having five or more years of service, who terminates his or her employment with any employer, may leave his or her contributions in the fund. Any employee who so elects, upon attaining age fifty, shall be eligible to apply for and receive a service retirement allowance based on his or her years of service, commencing on the first day following his or her attainment of age fifty. ~~((This section shall also apply to a person who rendered service as a law enforcement officer or fire fighter, as those terms are defined in RCW 41.26.030, on or after July 1, 1969, but who was not employed as a law enforcement officer or fire fighter on March 1, 1970, by reason of his having been elected to a public office.))~~

(3) Any member selecting ~~((this))~~ optional vesting under subsection (2) of this section with less than twenty years of service shall not be covered by the provisions of RCW 41.26.150, and ~~((his))~~ the member's survivors

shall not be entitled to the benefits of RCW 41.26.160 unless his or her death occurs after he or she has attained the age of fifty years. Those members selecting this optional vesting with twenty or more years service shall not be covered by the provisions of RCW 41.26.150 until the attainment of the age of fifty years(~~(-PROVIDED, That)~~). A member selecting this ~~((option))~~ optional vesting, with less than twenty years of service credit, who ~~((shall))~~ dies prior to attaining the age of fifty years, shall have paid from the Washington law enforcement officers' and fire fighters' retirement fund, to such member's surviving spouse, if any, otherwise to such beneficiary as the member shall have designated in writing, or if no such designation has been made, to the personal representative of his or her estate, a lump sum which is equal to the amount of such member's accumulated contributions plus accrued interest(~~(-PROVIDED FURTHER, That)~~). If the vested member has twenty or more years of service credit the surviving spouse or children shall then become eligible for the benefits of RCW 41.26.160 regardless of ~~((his))~~ the member's age at the time of his or her death, to the exclusion of the lump sum amount provided by this subsection.

~~((3))~~ (4) Any member who has attained the age of sixty years shall be retired on the first day of the calendar month next succeeding that in which said member shall have attained the age of sixty and may not thereafter be employed as a law enforcement officer or fire fighter: PROVIDED, That for any member who is elected or appointed to the office of sheriff, chief of police, or fire chief, his or her election or appointment shall be considered as a waiver of the age sixty provision for retirement and nonemployment for whatever number of years remain in his or her present term of office and any succeeding periods for which he or she may be so elected or appointed(~~(-PROVIDED FURTHER, That)~~). The provisions of this subsection shall not apply to any member who is employed as a law enforcement officer or fire fighter on March 1, 1970.

Sec. 19. RCW 41.26.120 and 1986 c 176 s 5 are each amended to read as follows:

Any member, regardless of ~~((his))~~ age or years of service may be retired by the disability board, subject to approval by the director as hereinafter provided, for any disability incurred in the line of duty which has been continuous since his or her discontinuance of service and which renders ~~((him))~~ the member unable to continue ~~((his))~~ service. No disability retirement allowance shall be paid until the expiration of a period of six months after the discontinuance of service during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of his or her application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to ~~((his))~~ the full monthly salary and shall continue to receive all other benefits provided to active employees from ~~((his))~~ the employer for such period. However, if, at any time during the initial six-month period,

the disability board finds the beneficiary is no longer disabled, ~~((his))~~ the disability leave allowance shall be canceled and ~~((he))~~ the member shall be restored to duty in the same rank or position, if any, held by the beneficiary at the time ~~((he))~~ the member became disabled. Applications for disability retirement shall be processed in accordance with the following procedures:

(1) Any member who believes he or she is or is believed to be physically or mentally disabled shall be examined by such medical authority as the disability board shall employ, upon application of said member, or a person acting in his or her behalf, stating that said member is disabled, either physically or mentally: PROVIDED, That no such application shall be considered unless said member or someone in his or her behalf, in case of the incapacity of a member, shall have filed the application within a period of one year from and after the discontinuance of service of said member.

(2) If the examination shows, to the satisfaction of the disability board, that the member is physically or mentally disabled from the further performance of duty, that such disability was incurred in the line of duty, and that such disability has been continuous from the discontinuance of service, the disability board shall enter its written decision and order, accompanied by appropriate findings of fact and by conclusions evidencing compliance with this chapter as now or hereafter amended, granting the member a disability retirement allowance; otherwise, if the member is not found by the disability board to be so disabled, the application shall be denied pursuant to a similar written decision and order, subject to appeal to the director in accordance with RCW 41.26.200: PROVIDED, That in any order granting a duty disability retirement allowance, the disability board shall make a finding that the disability was incurred in line of duty.

(3) Every order of a disability board granting a duty disability retirement allowance shall forthwith be reviewed by the director except the finding that the disability was incurred in the line of duty. The director may affirm the decision of the disability board or remand the case for further proceedings, or the director may reverse the decision of the disability board if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious.

(4) Every member who can establish, to the disability board, that he or she is physically or mentally disabled from the further performance of duty, that such disability was incurred in the line of duty, and that such disability

will be in existence for a period of at least six months may waive the six-month period of disability leave and be immediately granted a duty disability retirement allowance, subject to the approval of the director as provided in subsection (3) ~~((above))~~ of this section.

Sec. 20. RCW 41.26.130 and 1987 c 185 s 11 are each amended to read as follows:

(1) Upon retirement for disability a member shall be entitled to receive a monthly retirement allowance computed as follows: (a) A basic amount of fifty percent of final average salary at time of disability retirement, and (b) an additional five percent of final average salary for each child as defined in RCW 41.26.030(7), (c) the combined total of ~~((subsections (1)))~~(a) and ~~((1))~~(b) of this ~~((section))~~ subsection shall not exceed a maximum of sixty percent of final average salary.

(2) A disabled member shall begin receiving ~~((his))~~ the disability retirement allowance as of the expiration of his or her six month period of disability leave or, if his or her application was filed after the sixth month of discontinuance of service but prior to the one year time limit, the member's disability retirement allowance shall be retroactive to the end of the sixth month.

(3) Benefits under this section will be payable until the member recovers from the disability or dies. If at the time that the disability ceases the member is over the age of fifty, he or she shall then receive either ~~((his))~~ disability retirement allowance or ~~((his))~~ retirement for service allowance, whichever is greater.

(4) Benefits under this section for a disability that is incurred while in other employment will be reduced by any amount the member receives or is entitled to receive from workers' compensation, social security, group insurance, other pension plan, or any other similar source provided by another employer on account of the same disability.

(5) A member retired for disability shall be subject to periodic examinations by a physician approved by the disability board prior to ~~((his))~~ attainment of age fifty, pursuant to rules adopted by the director under RCW 41.26.115. Examinations of members who retired for disability prior to July 26, 1981, shall not exceed two medical examinations per year.

Sec. 21. RCW 41.26.140 and 1985 c 103 s 2 are each amended to read as follows:

(1) Upon the basis of reexaminations of members on disability retirement as provided in RCW 41.26.130, the disability board shall determine whether such disability beneficiary is still unable to perform his or her duties either physically or mentally for service in the department where he or she was employed.

(2) If the disability board shall determine that the beneficiary is not so incapacitated ~~((his))~~ the retirement allowance shall be canceled and ~~((he))~~ the member shall be restored to duty in the same civil service rank, if any,

held by the beneficiary at the time of his or her retirement or if unable to perform the duties of said rank, then, at his or her request, in such other like or lesser rank as may be or become open and available, the duties of which he or she is then able to perform. In no event, shall a beneficiary previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the said beneficiary at the date of ((his)) retirement for disability. If the disability board determines that the beneficiary is able to return to service he or she shall be entitled to notice and a hearing, both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, as now or hereafter amended.

(3) Should a disability beneficiary reenter service and be eligible for membership in the retirement system, ((his)) the retirement allowance shall be canceled and he or she shall immediately become a member of the retirement system.

(4) Should any disability beneficiary under age fifty refuse to submit to examination, ((his)) the retirement allowance shall be discontinued until ((his)) withdrawal of such refusal, and should such refusal continue for one year or more, ((his)) the retirement allowance shall be canceled.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of ((his)) the accumulated contributions at the time of ((his)) retirement over all payments made on his or her behalf under this chapter.

(6) Any person feeling aggrieved by an order of a disability board determining that a beneficiary's disability has not ceased, pursuant to RCW 41.26.130(3) has the right to appeal the order or determination to the director. The director shall have no jurisdiction to entertain the appeal unless a notice of appeal is filed with the director within thirty days following the rendition of the order by the disability board. A copy of the notice of appeal shall be served upon the director and the applicable disability board and, within ninety days thereof, the disability board shall certify its decision and order which shall include findings of fact and conclusions of law, together with a transcript of all proceedings in connection therewith, to the director for review. Upon review of the record, the director may affirm the order of the disability board or may remand the case for further proceedings if the director finds that the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or

(e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or

(f) Arbitrary or capricious.

Sec. 22. RCW 41.26.150 and 1987 c 185 s 12 are each amended to read as follows:

(1) Whenever any active member, or any member hereafter retired, on account of service, sickness or disability, not caused or brought on by dissipation or abuse, of which the disability board shall be judge, is confined in any hospital or in ((his)) home, and whether or not so confined, requires medical services, the employer shall pay for such active or retired member the necessary medical services not payable from some other source as provided for in subsection (2) of this section. In the case of active or retired fire fighters the employer may make the payments provided for in this section from the firemen's pension fund established pursuant to RCW 41.16.050 where such fund had been established prior to March 1, 1970(~~(-PROVIDED, That in the event the)~~). If this pension fund is depleted, the employer shall have the obligation to pay all benefits payable under chapters 41.16 and 41.18 RCW(~~(-PROVIDED FURTHER, That))~~;

(a) The disability board in all cases may have the active or retired member suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the disability board, for the purpose of ascertaining the nature and extent of the sickness or disability, the physician or physicians to report to the disability board the result of the examination within three days thereafter. Any active or retired member who refuses to submit to such examination or examinations shall forfeit all ((his)) rights to benefits under this section for the period of such refusal(~~(-AND PROVIDED FURTHER, That))~~;

(b) The disability board shall designate the medical services available to any sick or disabled member.

(2) The medical services payable under this section will be reduced by any amount received or eligible to be received by the member under workers' compensation, social security including the changes incorporated under Public Law 89-97 as now or hereafter amended, insurance provided by another employer, other pension plan, or any other similar source. Failure to apply for coverage if otherwise eligible under the provisions of Public Law 89-97 as now or hereafter amended shall not be deemed a refusal of payment of benefits thereby enabling collection of charges under the provisions of this chapter.

(3) Upon making such payments as are provided for in subsection (1) of this section, the employer shall be subrogated to all rights of the member against any third party who may be held liable for the member's injuries or for the payment of the cost of medical services in connection with a member's sickness or disability to the extent necessary to recover the amount of payments made by the employer.

(4) Any employer under this chapter, either singly, or jointly with any other such employer or employers through an association thereof as provided for in chapter 48.21 RCW, may provide for all or part of one or more plans of group hospitalization and medical aid insurance to cover any of its employees who are members of the Washington law enforcement officers' and fire fighters' retirement system, and/or retired former employees who were, before retirement, members of said retirement system, through contracts with regularly constituted insurance carriers, with health maintenance organizations as defined in chapter 48.46 RCW, or with health care service contractors as defined in chapter 48.44 RCW. Benefits payable under any such plan or plans shall be deemed to be amounts received or eligible to be received by the active or retired member under subsection (2) of this section.

Sec. 23. RCW 41.26.160 and 1986 c 176 s 7 are each amended to read as follows:

(1) In the event of the death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more years of service, or who is on disability leave or retired, whether for disability or service, ~~((his))~~ the surviving spouse shall become entitled to receive a monthly allowance equal to fifty percent of ~~((his))~~ the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of ~~((his))~~ death if retired for service or disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in RCW 41.26.030(7), as now or hereafter amended, subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the death of a vested member with twenty or more years service as provided ~~((above))~~ in subsection (1) of this section or a member retired for service or disability, the surviving spouse has not been lawfully married to such member for one year prior to ~~((his))~~ retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section: PROVIDED, That if a member dies as a result of a disability incurred in the line of duty, then if he or she was married at the time he or she was disabled, ~~((his))~~ a surviving spouse shall be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average

salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in RCW 41.26.030(7), as now or hereafter amended, there shall be paid to the legal heirs of said member the excess, if any, of accumulated contributions of said member at the time of ((his)) death over all payments made to ((his)) survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of said member.

(5) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in RCW 41.26.030(7), as now or hereafter amended, payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) ((above)) of this section.

(6) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date.

Sec. 24. RCW 41.26.170 and 1970 ex.s. c 6 s 14 are each amended to read as follows:

(1) Should service of a member be discontinued except by death, disability, or retirement, ((he)) the member shall, upon application therefor, be paid ((his)) the accumulated contributions within sixty days after the day of application and ((his)) the rights to all benefits as a member shall cease: PROVIDED, That any member with at least five years' service may elect the provisions of RCW 41.26.090(2).

(2) Any member whose contributions have been paid ((to him)) in accordance with subsection (1) of this section and who reenters the service of an employer within ten years of the date of ((his)) separation shall upon the restoration of all withdrawn contributions, which restoration must be completed within a total period of five years of service following resumption of employment, then receive credit toward retirement for the period of previous service which these contributions are to cover.

Sec. 25. RCW 41.26.180 and 1989 c 360 s 24 are each amended to read as follows:

(1) Subject to subsections (2) and (3) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund

created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department (~~(of retirement systems)~~) may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department (~~(of retirement systems)~~) may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section shall not prohibit the department (~~(of retirement systems)~~) from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued (~~(pursuant to chapter 41.50 RCW)~~) by the department, or (e) any administrative or court order expressly authorized by federal law.

Sec. 26. RCW 41.26.190 and 1970 ex.s. c 6 s 13 are each amended to read as follows:

Each person affected by this chapter who at the time of entering the armed services was a member of this system, and has honorably served in the armed services of the United States, shall have added to (~~(his)~~) the period of service as computed under this chapter, (~~(his)~~) the period of service in the armed forces: PROVIDED, That such credited service shall not exceed five years.

Sec. 27. RCW 41.26.240 and 1974 ex.s. c 120 s 13 are each amended to read as follows:

For purposes of this section (~~(of this chapter)~~):

(1) "Index" shall mean, for any calendar year, that year's average Consumer Price Index—Seattle, Washington area for urban wage earners and clerical workers, all items (1957–1959=100), compiled by the Bureau of Labor Statistics, United States Department of Labor;

(2) "Retirement allowance" shall mean the retirement allowance provided for in RCW 41.26.100 and 41.26.130, and the monthly allowance provided for in RCW 41.26.160.

Effective April 1 of 1971, and of each succeeding year, every retirement allowance which has been in effect for more than one year shall be adjusted to that dollar amount which exceeds its original dollar amount by

the percentage difference which the ((board)) department finds to exist between the index for the previous calendar year and the index for the calendar year prior to the effective retirement date of the person to whom, or on behalf of whom, such retirement allowance is being paid.

For the purposes of this section, basic allowance shall mean that portion of a total retirement allowance, and any cost of living adjustment thereon, attributable to a member (individually) and shall not include the increased amounts attributable to the existence of a child or children. In those cases where a child ceases to be qualified as an eligible child, so as to lessen the total allowance, the allowance shall, at that time, be reduced to the basic allowance plus the amount attributable for the appropriate number of eligible children. In those cases where a child qualifies as an eligible child subsequent to the retirement of a member so as to increase the total allowance payable, such increased allowance shall at the time of the next and appropriate subsequent cost of living adjustments, be considered the original dollar amount of the allowance.

Sec. 28. RCW 41.26.280 and 1971 ex.s. c 257 s 15 are each amended to read as follows:

If injury or death results to a member from the intentional or negligent act or omission of ((his)) a member's governmental employer, the member, the widow, widower, child, or dependent of the member shall have the privilege to benefit under this chapter and also have cause of action against the governmental employer as otherwise provided by law, for any excess of damages over the amount received or receivable under this chapter.

Sec. 29. RCW 41.26.410 and 1977 ex.s. c 294 s 2 are each amended to read as follows:

RCW 41.26.420 through 41.26.550 shall apply only to ((those persons who are initially employed by an employer on or after October 1, 1977)) plan II members.

Sec. 30. RCW 41.32.005 and 1990 c 274 s 16 are each amended to read as follows:

(1) ((["]Teachers' retirement system plan I" or "plan I" means the benefits and funding provisions covering persons who first became members of the teachers' retirement system prior to July 1, 1977.)) The provisions of the following sections of this chapter shall apply ((only)) to members of plan I and plan II: ((RCW 41.32.240, 41.32.250, 41.32.260, 41.32.270, 41.32.280, 41.32.290, 41.32.300, 41.32.310, 41.32.320, 41.32.330, 41.32.340, 41.32.350, 41.32.360, 41.32.365, 41.32.366, 41.32.380, 41.32.390, 41.32.430, 41.32.440, 41.32.470, 41.32.480, 41.32.491, 41.32.492, 41.32.493, 41.32.4931, 41.32.4932, 41.32.494, 41.32.4943, 41.32.4944, 41.32.4945, 41.32.497, 41.32.498, 41.32.499, 41.32.500, 41.32.510, 41.32.520, 41.32.522, 41.32.523, 41.32.530, 41.32.540, 41.32.550, 41.32.560, 41.32.561, 41.32.565, 41.32.567, 41.32.570, 41.32.575, and 41.32.583:

(2) ~~"Teachers' retirement system plan H" or "plan H" means the benefits and funding provisions covering persons who first became members of the teachers' retirement system on or after July 1, 1977. The provisions of RCW 41.32.760 through 41.32.830 shall apply only to the members of plan H)~~ RCW 41.32.010; 41.32.011; 41.32.020; 41.32.160; 41.32.242; 41.32.460; 41.32.580; 41.32.670; 41.32.850; and 41.32.013.

Sec. 31. RCW 41.32.010 and 1990 c 274 s 2 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) ~~"Accumulated contributions" for ((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members, means the sum of all regular annuity contributions with regular interest thereon.

(b) ~~"Accumulated contributions" for ((persons who establish membership in the retirement system on or after October 1, 1977))~~ plan II members, means the sum of all contributions standing to the credit of a member in the member's individual account together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Annuity fund" means the fund in which all of the accumulated contributions of members are held.

(5) "Annuity reserve fund" means the fund to which all accumulated contributions are transferred upon retirement.

(6)(a) ~~"Beneficiary" for ((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) ~~"Beneficiary" for ((persons who establish membership in the retirement system on or after October 1, 1977))~~ plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(7) "Contract" means any agreement for service and compensation between a member and an employer.

(8) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to ~~((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members.

(9) "Dependent" means receiving one-half or more of support from a member.

(10) "Disability allowance" means monthly payments during disability. This subsection shall apply only to ~~((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members.

(11)(a) ~~((f))~~ "Earnable compensation" for ~~((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money ~~((PROVIDED, That))~~.

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit ~~((PROVIDED FURTHER, That))~~.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(ii) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.011. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(b) "Earnable compensation" for ~~((persons who establish membership in the retirement system on or after October 1, 1977))~~ plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay(~~(PROVIDED, That)~~).

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit(~~(PROVIDED FURTHER, That)~~).

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

((~~(i)~~)) (A) The earnable compensation the member would have received had such member not served in the legislature; or

((~~(i)~~)) (B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under ((~~subparagraph (i)~~)) (b)(ii)(A) of this subsection is greater than compensation earnable under ((~~subparagraph (i)~~)) (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(12) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(13) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(14) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(15) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(16) "Member" means any teacher included in the membership of the retirement system. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the annuity fund.

(17) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers

the individual shall only receive one month's service credit during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to ~~((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members.

(18) "Pension" means the moneys payable per year during life from the pension reserve fund.

(19) "Pension reserve fund" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(20) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to ~~((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members.

(21) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to ~~((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members.

(22) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(23) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the annuity fund. This subsection shall apply only to ~~((persons establishing membership in the retirement system on or before September 30, 1977))~~ plan I members.

(24) "Regular interest" means such rate as the director may determine.

(25)(a) "Retirement allowance" for ~~((persons who establish membership in the retirement system on or before September 30, 1977))~~ plan I members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for ~~((persons who establish membership in the retirement system on or after October 1, 1977))~~ plan II members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(26) "Retirement system" means the Washington state teachers' retirement system.

(27)(a) "Service" means the time during which a member has been employed by an employer for compensation: PROVIDED, That where a member is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service is rendered.

(b) "Service" for ~~((persons who establish membership in the retirement system on or after October 1, 1977))~~ plan II members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive service credit for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position;

(ii) If a member in an eligible position does not meet the requirements of (b)(i) of this subsection, he or she will receive service credit only for those calendar months during which he or she has received compensation for ninety or more hours.

Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive service credit for the time spent in a state elective position by making the required member contributions.

When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

~~((Notwithstanding RCW 41.32.240, teachers covered by RCW 41.32.755 through 41.32.825, who render service need not serve for ninety days to obtain membership so long as the required contribution is submitted for such ninety-day period. Where a member did not receive service credit under RCW 41.32.775 through 41.32.825 due to the ninety-day period in RCW 41.32.240 the member may receive service credit for that period so long as the required contribution is submitted for the period. Anyone entering membership on or after October 1, 1977, and prior to July 1, 1979, shall have until June 30, 1980, to make the required contribution in one lump sum:))~~

The department shall adopt rules implementing this subsection (27)(b).

(28) "Survivors' benefit fund" means the fund from which survivor benefits are paid to dependents of deceased members. This subsection shall apply only to ~~((persons establishing membership in the retirement system on or before September 30, 1977))~~ plan I members.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(30) "Average final compensation" for ~~((persons who establish membership in the retirement system on or after October 1, 1977))~~ plan II members, means the member's average earnable compensation of the highest consecutive sixty months of service prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation.

(31) "Retiree" means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) ~~("Retirement board" means the director of retirement systems.~~

~~(37))~~ "Substitute teacher" means:

(a) A teacher who is hired by a school district to work as a temporary teacher, except for teachers who are contract employees of a school district and are guaranteed a minimum number of hours; or

(b) Persons who work in ineligible positions in more than one school district.

~~((38))~~ (37) "Eligible position" in plan II means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(38) "Plan I" means the teachers' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan II" means the teachers' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

Sec. 32. RCW 41.32.030 and 1989 c 273 s 16 are each amended to read as follows:

~~((All of the assets of the retirement system shall be credited according to the purposes for which they are held, to two funds to be maintained in the state treasury, namely, the teachers' retirement system plan I fund and the teachers' retirement system plan II fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of plan II.))~~

In the records of the teachers' retirement system the teachers' retirement fund plan I fund shall be subdivided into the annuity fund, the annuity

reserve fund, the survivors' benefit fund, the pension reserve fund, the disability reserve fund, the death benefit fund, the income fund, the expense fund, and ~~((such))~~ other funds as may from time to time be created by the director for the purpose of the internal accounting record.

Sec. 33. RCW 41.32.120 and 1969 ex.s. c 150 s 4 are each amended to read as follows:

The ~~((board of trustees))~~ department shall keep a record of all its proceedings, which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Washington state teachers' retirement system for the preceding school year; the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

Sec. 34. RCW 41.32.130 and 1947 c 80 s 13 are each amended to read as follows:

The ~~((board of trustees))~~ director shall designate a medical director. If required, other physicians may be employed to report on special cases. The medical director shall arrange for and pass upon all medical examinations required under the provisions of this chapter ~~((; he shall))~~, investigate all essential statements and certificates by or on behalf of a member in connection with an application for a disability allowance, and ~~((shall))~~ report in writing to the board of trustees ~~((his))~~ the conclusions and recommendations upon all matters ~~((referred to him))~~ under referral.

Sec. 35. RCW 41.32.160 and 1955 c 274 s 3 are each amended to read as follows:

~~((The board of trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this chapter and for the transaction of its business. The board of trustees shall be))~~ The department is empowered within the limits of this chapter to decide on all questions of eligibility covering membership, service credit, and benefits.

Sec. 36. RCW 41.32.190 and 1973 1st ex.s. c 189 s 7 are each amended to read as follows:

From interest and other earnings on the moneys of the Washington state teachers' retirement system, and except as otherwise provided in RCW 41.32.405 and 41.32.499, at the close of each fiscal year the ~~((board of trustees))~~ department shall make ~~((such))~~ an allowance of regular interest on the balance which was on hand at the beginning of the fiscal year in each of the teachers' retirement system funds as they may deem advisable; however, no interest shall be credited to the expense fund or the pension fund.

Sec. 37. RCW 41.32.230 and 1947 c 80 s 23 are each amended to read as follows:

No trustee or employee of the ~~((board of trustees))~~ department shall become an endorser or surety or an obligor for moneys loaned by the ~~((board of trustees))~~ department.

Sec. 38. RCW 41.32.240 and 1979 ex.s. c 45 s 3 are each amended to read as follows:

All teachers employed full time in the public schools shall be members of the system except ~~((those who have previously exempted themselves from membership and))~~ alien teachers who have been granted a temporary permit to teach as exchange teachers.

~~((No teacher who commences a period of employment on or after July 1, 1979, as a participant under the federal comprehensive employment and training act of 1973 (CETA) (29 U.S.C. Sec. 801 et seq.); as amended; shall be a member of this system during the period of such participation unless, at the commencement of the participation under CETA, the teacher either:~~

~~(1) Has at least five years of service and the full amount of the employee's contributions for such service remains on deposit in the system; or~~

~~(2) Has previously been retired from this system.))~~

A minimum of ninety days or the equivalent of ninety days of employment during a fiscal year shall be required to establish membership. A teacher shall be considered as employed full time if serving regularly for four-fifths or more of a school day or if assigned to duties which are the equivalent of four-fifths or more of a full time assignment. A teacher who is employed for less than full time service may become a member by filing an application with the retirement system, submitting satisfactory proof of teaching service and making the necessary payment before June 30 of the school year immediately following the one during which the service was rendered. ~~((If an exempted teacher desires membership he must file with the department a written request, duly executed, that his exemption certificate be canceled, present proof of service, and make the necessary payment before June 30 of the school year immediately following the one in which his request for cancellation of the exemption was filed. Any teacher who is still exempt from membership in the teachers' retirement system after July 1, 1965 and chooses not to become a member of the teachers' retirement system may continue his exemption and shall not become a member of the state employees' retirement system while employed as a teacher. All service rendered in this state subsequent to his exemption from membership must be established by proper proof and paid for, with interest at three percent, upon the same basis as he would have paid had he been a member during the period covered by his exemption. Twenty percent of the total amount due must be paid before membership can be established. Payment of the remainder, including interest, must be completed before June 30th of the fourth school year following that in which membership was established. A~~

~~minimum of five years of membership in the present system and/or the former state fund or a local fund shall be required of a member who was formerly exempt from membership before such member may qualify for a retirement allowance:))~~

Sec. 39. RCW 41.32.242 and 1984 c 256 s 2 are each amended to read as follows:

(1) Any teacher, as defined under RCW 41.32.010(29), who is first employed by a public school on or after June 7, 1984, shall become a member of the retirement system as directed under RCW ~~((41.32.240))~~ 41.32.780 if otherwise eligible.

(2) Any person who before June 7, 1984, has established service credit under chapter 41.40 RCW while employed in an educational staff associate position and who is employed in such a position on or after June 7, 1984 has the following options:

(a) To remain a member of the public employees' retirement system notwithstanding the provisions of RCW 41.32.240 or 41.32.780; or

(b) To irrevocably elect to join the retirement system under this chapter and to receive service credit for previous periods of employment in any position included under RCW 41.32.010(29). ~~((Such))~~ This service credit and corresponding employee contribution shall be computed as though the person had then been a member of the retirement system under this chapter. All employee contributions credited to a member under chapter 41.40 RCW for service now to be credited to the retirement system under this chapter shall be transferred to the system and the member shall not receive any credit nor enjoy any rights under chapter 41.40 RCW for those periods of service. The member shall pay any difference between the employee contributions made under chapter 41.40 RCW and transferred under this subsection and what would have been required under this chapter, including interest as set by the director. The member shall be given until July 1, 1989, to make the irrevocable election permitted under this section. The election shall be made by submitting written notification as required by the department requesting credit under this section and by remitting any necessary proof of service or payments within the time set by the department.

Any person, not employed as an educational staff associate on June 7, 1984, may, before June 30 of the fifth school year after that person's return to employment as a teacher, request and establish membership and credit under this subsection.

Sec. 40. RCW 41.32.260 and 1974 ex.s. c 199 s 2 are each amended to read as follows:

Any member whose public school service is interrupted by active service to the United States as a member of its military, naval or air service, or to the state of Washington, as a member of the legislature, may upon becoming reemployed in the public schools, receive credit for ~~((such))~~ that service upon presenting satisfactory proof, and contributing to the annuity

fund, either in a lump sum or installments, ((such)) amounts ((as shall be)) determined by the ((board of trustees: PROVIDED (1);)) director. Except that no ((such)) military service credit in excess of five years shall be established or reestablished after July 1, 1961, unless the service was actually rendered during time of war((: PROVIDED FURTHER (2), That a member of the retirement system who is a member of the state legislature or a state official eligible for the combined pension and annuity provided by RCW 41.32.497, or 41.32.498, as now or hereafter amended shall have deductions taken from his salary in the amount of seven and one-half percent of earnable compensation and that service credit shall be established with the retirement system while such deductions are reported to the retirement system, unless he has by reason of his employment become a contributing member of another public retirement system in the state of Washington: AND PROVIDED FURTHER (3), That such elected official who has retired or otherwise terminated his public school service may then elect to terminate his membership in the retirement system and receive retirement benefits while continuing to serve as an elected official: AND, PROVIDED FURTHER (4), That a member of the retirement system who had previous service as an elected or appointed official, for which he did not contribute to the retirement system, may receive credit for such legislative service unless he has received credit for that service in another state retirement system, upon making contributions in such amounts as shall be determined by the board of trustees)).

NEW SECTION, Sec. 41. A new section is added to chapter 41.32 RCW to read as follows:

A member of the retirement system who is a member of the state legislature or a state official eligible for the combined pension and annuity provided by RCW 41.32.497, or 41.32.498, as now or hereafter amended shall have deductions taken from his or her salary in the amount of seven and one-half percent of earnable compensation and that service credit shall be established with the retirement system while such deductions are reported to the retirement system, unless he or she has by reason of his or her employment become a contributing member of another public retirement system in the state of Washington. Such elected official who has retired or otherwise terminated his or her public school service may then elect to terminate his or her membership in the retirement system and receive retirement benefits while continuing to serve as an elected official. A member of the retirement system who had previous service as an elected or appointed official, for which he or she did not contribute to the retirement system, may receive credit for such legislative service unless he or she has received credit for that service in another state retirement system, upon making contributions in such amounts as shall be determined by the board of trustees.

Sec. 42. RCW 41.32.300 and 1963 ex.s. c 14 s 5 are each amended to read as follows:

(1) Henceforth a total of not more than four years of service outside of the state shall be credited to a member who establishes or reestablishes credit for out-of-state public school employment in this state subsequent to July 1, 1961. Foreign public school teaching service shall be creditable as out-of-state service(~~(-PROVIDED, That)~~).

(2) No out-of-state service credit shall be established or reestablished subsequent to July 1, 1964, except that a member who has been granted official leave of absence by his or her employer may, upon ((his)) return to public school service in this state, establish out-of-state membership service credit, within the limitations of this section and conditioned upon satisfactory proof and upon contributions to the annuity fund, for public school service rendered in another state or in another country.

(3) No member who establishes out-of-state service credit after July 1, 1947, shall at retirement for pension payment purposes be allowed credit for out-of-state service in excess of the number of years credit which he or she shall have earned in the public schools of the state of Washington.

Sec. 43. RCW 41.32.310 and 1974 ex.s. c 193 s 1 are each amended to read as follows:

(1) Any member desiring to establish credit for services previously rendered, must present proof and make the necessary payments on or before June 30 of the fifth school year of ((his)) membership. Payments covering all types of membership service credit must be made in a lump sum when due, or in annual installments. The first annual installment of at least twenty percent of the amount due must be paid before the above deadline date, and the final payment must be made by June 30th of the fourth school year following that in which the first installment was made. The amount of payment and the interest thereon, whether lump sum or installments, shall be made by a method and in an amount established by the ((~~board of trustees; PROVIDED, That~~)) department.

(2) A member who had the opportunity under chapter 41.32 RCW prior to July 1, 1969, to establish credit for active United States military service or credit for professional preparation and failed to do so shall be permitted to establish ((such)) additional credit within the provisions of RCW 41.32.260 and 41.32.330(~~(-PROVIDED FURTHER, That)~~). A member who was not permitted to establish credit pursuant to section 2, chapter 32, Laws of 1973 2nd ex. sess., for Washington teaching service previously rendered, must present proof and make the necessary payment to establish such credit as membership service credit. Payment for such credit must be made in a lump sum on or before June 30, 1974. Any member desiring to establish credit under the provisions of this 1969 amendment must present proof and make the necessary payment before June 30, 1974; or, if not employed on the effective date of this amendment, before June 30th of the fifth school year upon returning to public school employment in this state.

Sec. 44. RCW 41.32.330 and 1969 ex.s. c 150 s 10 are each amended to read as follows:

The ~~((board of trustees))~~ department may allow credit for professional preparation to a member for attendance at institutions of higher learning, or for a scholarship or grant under an established foundation, subsequent to becoming a public school teacher; but not more than two years of such credit may be granted to any member.

Sec. 45. RCW 41.32.340 and 1969 ex.s. c 150 s 11 are each amended to read as follows:

Creditable service of a member at retirement shall consist of the membership service rendered ~~((by him))~~ for which credit has been allowed, and also, if ~~((he has))~~ a prior service certificate ~~((that))~~ is in full force and effect, the amount of the service certified on ~~((his))~~ the prior service certificate. No pension payments shall be made for service credits established or reestablished after July 1, 1955, if such credits entitle the member to retirement benefits from any other public state or local retirement system or fund. No pension payments shall be made for service credits established or reestablished after July 1, 1961, if such credits entitle the member to retirement benefits from a public federal retirement system or fund for services rendered under a civilian program: PROVIDED, That no pension payments shall be made for service credits established or reestablished after July 1, 1969, if credit for the same service is retained for benefits under any other retirement system or fund.

Sec. 46. RCW 41.32.350 and 1990 c 274 s 7 are each amended to read as follows:

~~((Member contributions shall be placed in the annuity fund, the disability reserve fund and the death benefit fund:))~~ A member may make an additional lump sum payment at date of retirement, not to exceed ~~((his))~~ the member's accumulated contributions, to purchase additional annuity. A contribution of six percent of earnable compensation is required from each member, except as provided under RCW 41.32.013.

Sec. 47. RCW 41.32.360 and 1963 ex.s. c 14 s 8 are each amended to read as follows:

~~For each year ((during which he is employed)) of employment,~~ each member who is employed on a full time basis shall have transferred from his or her contributions ~~((such))~~ a sum ~~((as the board of trustees shall determine necessary))~~ determined by the director, in accordance with the recommendations of the state actuary ~~((appointed by the board of trustees)),~~ to ~~((create))~~ maintain a fund sufficient, with regular interest, to provide temporary disability benefits for the members whose claims will be approved by the ~~((board of trustees))~~ department in accordance with the provisions of RCW 41.32.540. These transfers shall be placed in the disability reserve fund.

Sec. 48. RCW 41.32.366 and 1963 ex.s. c 14 s 10 are each amended to read as follows:

~~((Each fiscal year))~~ During ~~((which))~~ each fiscal year that a member is employed on a full time basis, ~~((there shall be transferred from his))~~ the department shall transfer from the member's contributions ~~((such))~~ a sum ~~((as))~~ that will, with regular interest, ~~((create))~~ maintain a fund sufficient according to actuarial rates adopted by the ~~((board of trustees;))~~ department to pay the death benefits as provided for in this chapter.

Sec. 49. RCW 41.32.390 and 1955 c 274 s 18 are each amended to read as follows:

At least twenty percent of the total amount due for prior service credit must be paid before an application for ~~((such))~~ credit may be presented to the ~~((board of trustees))~~ department for approval. The balance is not due until date of retirement and may be paid at that time without additional charge. Any unpaid installments at the time the member is retired for service or disability shall constitute a first, paramount, and prior lien against his or her retirement allowance.

Sec. 50. RCW 41.32.405 and 1984 c 236 s 2 are each amended to read as follows:

~~((An))~~ The teachers' retirement system income fund is hereby created for the purpose of crediting regular interest and ~~((such))~~ other income as may be derived from the deposits and investments of the various funds of the teachers' retirement fund. All accumulated contributions in the account of a terminated employee who is a member of the Washington teachers' retirement system, except as provided for in RCW 41.32.500 (1) through (3), 41.32.510, 41.32.810, and 41.32.815, shall be transferred to the teachers' retirement system income fund. If the former employee, the former employee's beneficiary, or the former employee's estate at a future date requests the unclaimed contributions or reinstatement of the rights previously provided thereunder, the former employee's contributions shall be transferred from the teachers' retirement system income fund to the teachers' retirement system annuity fund and the former employee's account reestablished with all the rights which would have been due the former employee, the former employee's beneficiary, or the former employee's estate as if in fact the transfer to the teachers' retirement system income fund had not occurred. Any moneys that may come into the possession of the Washington teachers' retirement system in the form of gifts or bequests which are not allocated to a specific fund, or any other moneys the disposition of which is not otherwise provided herein, shall be credited to the teachers' retirement system income fund. The moneys accumulated in the teachers' retirement system income fund shall be available for transfer, upon the director's authorization, to the various funds of the teachers' retirement fund; however, no interest may be credited to the teachers' retirement system pension fund: PROVIDED, That from such accumulated moneys the director shall have

sole discretion to determine an amount thereof to be credited to the teachers' retirement system annuity fund which will thereupon be credited as regular interest to the individual members' accounts except that any accrued interest shall be credited at least annually to the individual members' accounts.

Sec. 51. RCW 41.32.420 and 1983 c 56 s 14 are each amended to read as follows:

On or before a date specified by the ~~((board of trustees))~~ department in each month every employer shall file a report with the ~~((board of trustees of the retirement system))~~ department on a form provided, stating the name of the employer and with respect to each employee who is a member or who is required to become a member of the Washington state teachers' retirement system: (1) The full name, (2) the earnable compensation paid, (3) the employee's contribution to the retirement system, and (4) ~~((such))~~ other information as the ~~((board))~~ department shall require~~((, and at the same time notify each new employee in writing with reference to the Washington state teachers' retirement system and that an application for prior service credit may be filed with the board of trustees thereof on a form furnished by the board))~~.

Sec. 52. RCW 41.32.430 and 1967 c 50 s 5 are each amended to read as follows:

Every officer authorized to issue salary warrants to teachers shall deduct from ~~((such))~~ the salary payments to any member of the Washington state teachers' retirement system plan I regularly employed an amount which will result in total deductions of ~~((five))~~ six percent of the amount of earnable compensation paid in any fiscal year. ~~((Such))~~ These deductions shall be transmitted and reported to the retirement system as directed by the ~~((board of trustees))~~ department.

Sec. 53. RCW 41.32.480 and 1974 ex.s. c 193 s 2 are each amended to read as follows:

(1) Any member who has left public school service after having completed thirty years of creditable service may retire upon the approval by the ~~((board of trustees))~~ department of an application for retirement filed on the prescribed form. Upon retirement ~~((such))~~ the member shall receive a retirement allowance consisting of an annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497 ~~((as now or hereafter amended))~~. Effective July 1, 1967, anyone then receiving a retirement allowance or a survivor retirement allowance under this chapter, based on thirty-five years of creditable service, and who has established more than thirty-five years of service credit with the retirement system, shall thereafter receive a retirement allowance based on the total years of service credit established.

(2) Any member who has attained age sixty years, but who has completed less than thirty years of creditable service, upon leaving public school service, may retire upon the approval by the ~~((board of trustees))~~ department of an application for retirement filed on the prescribed form. Upon retirement ~~((such))~~ the member shall receive a retirement allowance consisting of an annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497 ~~((as now or hereafter amended))~~.

(3) Any member who has attained age fifty-five years and who has completed not less than twenty-five years of creditable service, upon leaving public school service, may retire upon the approval by the ~~((board of trustees))~~ department of an application for retirement filed on the prescribed form. Upon retirement ~~((such))~~ the member shall receive a retirement allowance which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497 ~~((as now or hereafter amended; PROVIDED, That no))~~; An individual who has retired pursuant to this subsection, on or after July 1, 1969, shall not suffer an actuarial reduction in his or her retirement allowance, except as ~~((such))~~ the allowance may be actuarially reduced pursuant to the options contained in RCW 41.32.530~~((--PROVIDED FURTHER, That))~~. This 1974 amendment shall be retroactive to July 1, 1969.

Sec. 54. RCW 41.32.4945 and 1974 ex.s. c 199 s 6 are each amended to read as follows:

Notwithstanding any other provision of RCW 41.32.010, 41.32.260, 41.32.497, 41.32.498 and this section, when the salary of any member as a member of the legislature is increased beyond the amount provided for in Initiative Measure No. 282 then earnable compensation for the purposes of this chapter shall be based solely on the sum of (1) the compensation actually received from the salary for the job from which such leave of absence may have been taken and (2) such member's salary as a legislator during ~~((his))~~ the two highest compensated consecutive years.

Sec. 55. RCW 41.32.498 and 1990 c 249 s 4 are each amended to read as follows:

Any person who becomes a member subsequent to April 25, 1973 or who has made the election, provided by RCW 41.32.497, to receive the benefit provided by this section, shall receive a retirement allowance consisting of:

(1) An annuity which shall be the actuarial equivalent of his or her additional contributions on full salary as provided by chapter 274, Laws of 1955 and his or her lump sum payment in excess of the required contribution rate made at date of retirement, pursuant to RCW 41.32.350, if any; and

(2) A combined pension and annuity service retirement allowance which shall be equal to two percent of his or her average earnable compensation for his or her two highest compensated consecutive years of service times the total years of creditable service established with the retirement system, to a maximum of sixty percent of such average earnable compensation: PROVIDED, That any member may irrevocably elect, at time of retirement, to withdraw all or a part of his accumulated contributions and to receive, in lieu of the full retirement allowance provided by this subsection, a reduction in the standard two percent allowance, of the actuarially determined amount of monthly annuity which would have been purchased by said contributions: PROVIDED FURTHER, That no member may withdraw an amount of accumulated contributions which would lower his or her retirement allowance below the minimum allowance provided by RCW 41.32.497 as now or hereafter amended: AND PROVIDED FURTHER, That said reduced amount may be reduced even further pursuant to the options provided in RCW 41.32.530;

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the retirement allowance payable for service of a member who was state superintendent of public instruction on January 1, 1973 shall be equal to three percent of the average earnable compensation of his two highest consecutive years of service for each year of such service.

Sec. 56. RCW 41.32.499 and 1973 2nd ex.s. c 32 s 1 are each amended to read as follows:

(1) "Index" for the purposes of this section shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959 equal one hundred)—compiled by the Bureau of Labor Statistics, United States Department of Labor;

(2) "Cost-of-living factor" for the purposes of this section for any year shall mean the ratio of the index for the previous year to the index for the year preceding the initial date of payment of the retirement allowance, except that, in no event, shall the cost-of-living factor, for any year subsequent to 1971, be

(a) less than 1.000;

(b) more than one hundred three percent or less than ninety-seven percent of the previous year's cost-of-living factor; or

(c) such as to yield a retirement allowance, for any individual, less than that which was in effect July 1, 1972;

(3) The "initial date of payment" for the purposes of adjusting the annuity portion of a retirement allowance for the purposes of this section shall mean the date of retirement of a member.

(4) The "initial date of payment" for the purposes of adjusting the pension portion of a retirement allowance for the purposes of this section shall mean the date of retirement of a member or July 1, 1972, whichever is

later: PROVIDED, That this 1973 amendment to this subsection shall be retroactive to July 1, 1973.

(5) Each service retirement allowance payable from July 1, 1973, until any subsequent adjustment pursuant to subsection (6) of this section shall be adjusted so as to equal the product of the cost-of-living factor for 1973 and the amount of ~~((said))~~ the retirement allowance on the initial date of payment.

(6) Each service retirement allowance payable from July 1st of any year after 1973 until any subsequent adjustment pursuant to this subsection shall be adjusted so as to equal the product of the cost-of-living factor for ~~((such))~~ the year and the amount of ~~((said))~~ the retirement allowance on the initial date of payment: PROVIDED, That the ~~((board))~~ director finds, at ~~((its))~~ his or her sole discretion, that the cost of ~~((such))~~ the adjustments shall have been met by the excess of the growth in the assets of the system over that required for meeting the actuarial liabilities of the system at that time.

Sec. 57. RCW 41.32.500 and 1986 c 317 s 2 are each amended to read as follows:

(1) Membership in the retirement system is terminated when a member retires for service or disability, dies, withdraws ~~((his))~~ the accumulated contributions or does not establish service credit with the retirement system for five consecutive years; however, a member may retain membership in the teachers' retirement system by leaving ~~((his))~~ the accumulated contributions in the teachers' retirement fund under one of the following conditions:

(a) If he or she is eligible for retirement;

(b) If he or she is a member of another public retirement system in the state of Washington by reason of change in employment and has arranged to have membership extended during the period of such employment;

(c) If he or she is not eligible for retirement but has established five or more years of Washington membership service credit.

The prior service certificate becomes void when a member dies, withdraws ~~((his))~~ the accumulated contributions or does not establish service credit with the retirement system for five consecutive years, and any prior administrative interpretation of the board of trustees, consistent with this section, is hereby ratified, affirmed and approved.

(2) Any member, except an elected official, who reentered service and who failed to restore withdrawn contributions, shall now have from April 4, 1986, through June 30, 1987, to restore the contributions, with interest as determined by the director.

(3) Within the ninety days following the employee's resumption of employment, the employer shall notify the department of the resumption and

the department shall then return to the employer a statement of the potential service credit to be restored, the amount of funds required for restoration, and the date when the restoration must be accomplished. The employee shall be given a copy of the statement and shall sign a copy of the statement which signed copy shall be placed in the employee's personnel file.

Sec. 58. RCW 41.32.520 and 1990 c 249 s 15 are each amended to read as follows:

(1) Upon receipt of proper proofs of death of any member before retirement or before the first installment of his or her retirement allowance shall become due his or her accumulated contributions and/or other benefits payable upon his or her death shall be paid to his or her estate or to such persons as he or she shall have nominated by written designation duly executed and filed with the (~~board of trustees~~) department. If a member fails to file a new beneficiary designation subsequent to marriage, divorce, or re-establishment of membership following termination by withdrawal, lapsation, or retirement, payment of his or her accumulated contributions and/or other benefits upon death before retirement shall be made to the surviving spouse, if any; otherwise, to his or her estate. If a member had established ten or more years of Washington membership service credit or was eligible for retirement, the beneficiary or the surviving spouse if otherwise eligible may elect, in lieu of a cash refund of the member's accumulated contributions, the following survivor benefit plan:

(a) A widow or widower, without a child or children under eighteen years of age, may elect a monthly payment of fifty dollars to become effective at age fifty, provided the member had fifteen or more years of Washington membership service credit.

(b) The beneficiary, if a surviving spouse or a dependent (as that term is used in computing the dependent exemption for federal internal revenue purposes) may elect to receive a joint and one hundred percent retirement allowance under RCW 41.32.530.

(i) In the case of a dependent child the allowance shall continue until attainment of majority or so long as the (~~board~~) department judges that the circumstances which created his or her dependent status continue to exist. In any case, if at the time dependent status ceases, an amount equal to the amount of accumulated contributions of the deceased member has not been paid to the beneficiary, the remainder shall then be paid in a lump sum to the beneficiary.

(ii) If at the time of death, the member was not then qualified for a service retirement allowance, the benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(2) If no qualified beneficiary survives a member, at his or her death his or her accumulated contributions shall be paid to his or her estate, or his

or her dependents may qualify for survivor benefits under benefit plan (1)(b) in lieu of a cash refund of the members accumulated contributions in the following order: Widow or widower, guardian of a dependent child or children under age eighteen, or dependent parent or parents.

(3) Under survivors' benefit plan (1)(a) the ~~((board of trustees))~~ department shall transfer to the survivors' benefit fund the accumulated contributions of the deceased member together with an amount from the pension fund determined by actuarial tables to be sufficient to fully fund the liability. Benefits shall be paid from the survivors' benefit fund monthly and terminated at the marriage of the beneficiary.

Sec. 59. RCW 41.32.522 and 1974 ex.s. c 193 s 4 are each amended to read as follows:

(1) A death benefit of six hundred dollars shall be paid from the death benefit fund to a member's estate or to the persons the member nominates by written designation duly executed and filed with the department or to the persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520 upon receipt of proper proof of death of ((a member who)) the member if he or she:

(a) Was employed on a full time basis and who contributed to the death benefit fund during the fiscal year in which his or her death occurs((; or who));

(b) Was under contract for full time employment in a Washington public school for the fiscal year immediately following the year in which such contribution to the death fund was made((; or who));

(c) Submits an application for a retirement allowance to be approved ((at the next regular meeting of the board of trustees)) by the department immediately following termination of his or her full-time Washington public school service and who dies before the first installment of his or her retirement allowance becomes due((; or who));

(d) Is receiving or is entitled to receive temporary disability payments((; or who)); or

(e) Upon becoming eligible for a disability retirement allowance submits an application for ((such)) an allowance to be approved ((at the next regular meeting of the board of trustees)) by the department immediately following the date of his or her eligibility for a disability retirement allowance and dies before the first installment of such allowance becomes due((; a death benefit of six hundred dollars shall be paid from the death benefit fund to his estate or to such persons as he shall have nominated by written designation duly executed and filed with the board of trustees or to such persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520, as now or hereafter amended. PROVIDED, That the)).

(2) In order to receive a death benefit under this section a deceased member ((had));

(a) Must have established at least one year of credit with the retirement system for full time Washington membership service ((and that his)), A member's contribution to the death benefit fund for a given fiscal year ((shall qualify him)) qualifies the member for the death benefit in the event his or her death occurs before the beginning of the ensuing school year(=: ~~AND PROVIDED FURTHER, That a deceased member~~);

(b) Who was not employed full time in Washington public school service during the fiscal year immediately preceding the year of his or her death ((shall)) must have been employed full time in Washington public school service for at least fifty consecutive days during the fiscal year of his or her death.

Sec. 60. RCW 41.32.523 and 1974 ex.s. c 193 s 6 are each amended to read as follows:

Upon receipt of proper proof of death of a member who does not qualify for the death benefit of six hundred dollars under RCW 41.32.522 (~~as now or hereafter amended~~), or a former member who was retired for age, service, or disability, a death benefit of four hundred dollars shall be paid from the death benefit fund to ((his)) the member's estate or to ((such)) the persons as he or she shall have nominated by written designation duly executed and filed with the ((board of trustees)) department or to ((such)) the persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520(, ~~as now or hereafter amended~~): PROVIDED, That the member or the retired former member had established not less than ten years of credit with the retirement system for full time Washington membership service.

Sec. 61. RCW 41.32.540 and 1974 ex.s. c 193 s 7 are each amended to read as follows:

Upon application of a member in service or of his or her employer or of his or her legal guardian or of the legal representative of a deceased member who was eligible to apply for a temporary disability allowance based on ((his)) the final illness a member shall be granted a temporary disability allowance by the ((board of trustees)) department if the medical director, after a medical examination of ((such)) the member, ((shall certify)) certifies that ((such)) the member is mentally or physically incapacitated for the further performance of duty. Any member receiving a temporary disability allowance on July 1, 1964 or who qualifies for a temporary disability allowance effective on or after July 1, 1964 shall receive a temporary disability allowance of one hundred eighty dollars per month payable from the disability reserve fund for a period not to exceed two years, but no payments shall be made for a disability period of less than sixty days: PROVIDED, That a member who is not employed full time in Washington public school service for consecutive fiscal years shall have been employed for at least fifty consecutive days during the fiscal year in which he or she returns to full time Washington public school service before he or she may qualify for

temporary disability benefits: PROVIDED FURTHER, That no temporary disability benefits shall be paid on the basis of an application received more than four calendar years after a member became eligible to apply for such benefits.

Sec. 62. RCW 41.32.550 and 1970 ex.s. c 35 s 4 are each amended to read as follows:

(1) Should the ~~((board))~~ department determine from the report of the medical director that a member in full time service has become permanently disabled for the performance of his or her duties or at any time while a member is receiving temporary disability benefits that a member's disability will be permanent, a member shall have the option of then receiving ~~((+))~~ (a) all of ~~((his))~~ the accumulated contributions in a lump sum payment and canceling his or her membership, or ~~((2))~~ (b) of accepting a retirement allowance based on service or age, if eligible under RCW 41.32.480, or ~~((3))~~ (c) if ~~((he))~~ the member had five or more years of Washington membership service credit established with the retirement system, a retirement allowance because of disability ~~((PROVIDED, That))~~.

(2) Any member applying for a retirement allowance who is eligible for benefits on the basis of service or age shall receive a retirement allowance based on the provision of law governing retirement for service or age. If the member qualifies to receive a retirement allowance because of disability he or she shall be paid the maximum annuity which shall be the actuarial equivalent of ~~((his))~~ the accumulated contributions at his or her age of retirement and a pension equal to the service pension to which he or she would be entitled under RCW 41.32.497 ~~((as now or hereafter amended))~~. If the member dies before he or she has received in annuity payments the present value of ~~((his))~~ the accumulated contributions at the time of ~~((his))~~ retirement, the unpaid balance shall be paid to ~~((his))~~ the estate or to ~~((such))~~ the persons ~~((as he shall have))~~ nominated by written designation executed and filed with the ~~((board of trustees))~~ department.

(3) A member retired for disability may be required at any time to submit to reexamination. If medical findings reveal that the individual is no longer disabled for the performance of public school service, the retirement allowance granted because of disability may be terminated by action of the ~~((board of trustees))~~ department or upon written request of the member. In case of ~~((such))~~ termination, the individual shall be restored to full membership in the retirement system.

Sec. 63. RCW 41.32.590 and 1989 c 360 s 25 are each amended to read as follows:

(1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter

shall be unassignable, and are hereby exempt from any state, county, municipal or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under ~~((the Washington state teachers' retirement))~~ this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

Deductions under (a) and (b) of this subsection shall be made in accordance with rules ~~((and regulations))~~ that may be ~~((promulgated))~~ adopted by the director ~~((of retirement systems))~~.

(3) Subsection (1) of this section shall not prohibit the department ~~((of retirement systems))~~ from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued ~~((pursuant to chapter 41.50 RCW))~~ by the department, or (e) any administrative or court order expressly authorized by federal law.

Sec. 64. RCW 41.32.610 and 1947 c 80 s 61 are each amended to read as follows:

Any claimant feeling aggrieved by the action of the ~~((board))~~ department may take an appeal to the superior court of Thurston county within ten days from the day he or she receives written notice of the ~~((board's))~~ department's action by filing with the ~~((secretary-manager-of-the-system))~~ director a written notice of appeal and giving bond to the retirement system in the sum of two hundred and fifty dollars conditioned to pay all costs which may be adjudged against the applicant in the superior court. Sureties on the bond must be such as are approved by the court.

Sec. 65. RCW 41.32.620 and 1947 c 80 s 62 are each amended to read as follows:

Any five members feeling aggrieved by any action of the ~~((board))~~ department may take an appeal to the superior court of Thurston county within ten days from the date of such action by filing ~~((with the secretary=manager of the system))~~ a written notice of appeal with the director and giving bond to the retirement system in the sum of two hundred and fifty dollars conditioned to pay all costs which may be adjudged against appellants in the superior court, with sureties on the bond approved by the court. In case the appeal involves a claim, service of a copy of the notice of appeal on the claimant is a necessary step in perfecting the appeal.

Sec. 66. RCW 41.32.630 and 1947 c 80 s 63 are each amended to read as follows:

If an appeal involves a claimant, the ~~((secretary=manager of the retirement system shall forthwith))~~ director shall certify to the clerk of the superior court for Thurston county all matter filed with respect to the claim, together with a transcript of the record of the board upon the claim, together with the notice of appeal and appeal bond.

Sec. 67. RCW 41.32.780 and 1990 c 274 s 15 are each amended to read as follows:

~~((1) Except as provided in subsection (2) of this section,))~~ All teachers who become employed by an employer in an eligible position on or after October 1, 1977, shall be members of the retirement system and shall be governed by the provisions of RCW 41.32.755 through 41.32.825.

~~((2) No teacher who commences a period of employment on or after July 1, 1979, as a participant under the federal comprehensive employment and training act of 1973 (CETA) (29 U.S.C. Sec. 801 et seq.), as amended, shall be a member of this system during the period of such participation unless, at the commencement of the participation under CETA, the teacher either:~~

~~(a) Has at least five years of service and the full amount of the employee's contributions for such service remains on deposit in the system; or~~

~~(b) Has previously been retired from this system.))~~

Sec. 68. RCW 41.32.790 and 1990 c 249 s 20 are each amended to read as follows:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the ~~((retirement board))~~ department shall be eligible to receive an allowance under the provisions of RCW 41.32.755 through 41.32.825. ~~((Such))~~ The member shall receive a monthly disability allowance computed as provided for in RCW 41.32.760 and shall have ~~((such))~~ the allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to ~~((such))~~ comprehensive medical examinations as required by the department. If ~~((such))~~ medical examinations reveal that ~~((such))~~ a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, ~~((such))~~ the member shall cease to be eligible for ~~((such))~~ the allowance.

(2)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to ~~((such))~~ the person or persons having an insurable interest in his or her life as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no ~~((such))~~ designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither ~~((such))~~ a designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

Sec. 69. RCW 41.40.005 and 1989 c 273 s 20 and 1989 c 272 s 7 are each reenacted and amended to read as follows:

~~((1)) "Public employees' retirement system plan I" or "plan I" means the benefits and funding provisions covering persons who first became members of the public employees' retirement system prior to October 1, 1977.))~~ The provisions of the following sections of this chapter shall apply ~~((only))~~ to members of plan I and plan II: ~~((RCW 41.40.150, 41.40.160, 41.40.170, 41.40.180, 41.40.185, 41.40.190, 41.40.193, 41.40.195, 41.40.200, 41.40.210, 41.40.220, 41.40.230, 41.40.235, 41.40.250, 41.40.260, 41.40.270, 41.40.280, 41.40.300, 41.40.310, 41.40.320, 41.40.325, and 41.40.330.~~

~~((2)) "Public employees' retirement system plan H" or "plan H" means the benefits and funding provisions covering persons who first became members of the public employees' retirement system on or after October 1, 1977. The provisions of RCW 41.40.600 through 41.40.740 apply only to members of plan H))~~ RCW 41.40.010; 41.40.020; 41.40.123; 41.40.130; 41.40.165; 41.40.223; 41.40.340; 41.40.361; 41.40.370; 41.40.380; 41.40.400; 41.40.403; 41.40.410; 41.40.412; 41.40.414; 41.40.420; 41.40.440; 41.40.450; 41.40.530; 41.40.540; 41.40.542; 41.40.800; and 41.40.810.

Sec. 70. RCW 41.40.010 and 1990 c 274 s 3 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the public employees' retirement system provided for in this chapter.

(2) (~~"Retirement board" means the board provided for in this chapter and chapter 41.26 RCW~~) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for (~~(persons who establish membership in the retirement system on or before September 30, 1977)~~) plan I members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW as now or hereafter amended; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for (~~(persons who establish membership in the retirement system on or after October 1, 1977)~~) plan II members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.120.

(6) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(7) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(8)(a) "~~Compensation earnable~~" for (~~((persons who establish membership in the retirement system on or before September 30, 1977))~~) plan I members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer: PROVIDED, That retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit: PROVIDED FURTHER, That if a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee.

(b) "~~Compensation earnable~~" for (~~((persons who establish membership in the retirement system on or after October 1, 1977))~~) plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay: PROVIDED, That retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu

of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit: PROVIDED FURTHER, That in any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(i) the compensation earnable the member would have received had such member not served in the legislature; or

(ii) such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under subparagraph (i) of this subsection is greater than compensation earnable under subparagraph (ii) of this subsection shall be paid by the member for both member and employer contributions.

(9)(a) "Service" for (~~persons who establish membership in the retirement system on or before September 30, 1977~~) plan I members, means periods of employment rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Full time work for seventy hours or more in any given calendar month shall constitute one month of service except as provided in RCW 41.40.450. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system: PROVIDED FURTHER, That an individual shall receive no more than a total of twelve months of service credit during any calendar year: PROVIDED FURTHER, That where an individual is employed by two or more employers the individual shall only receive one months service credit during any calendar month in which multiple service for seventy or more hours is rendered.

(b) "Service" for (~~persons who establish membership in the retirement system on or after October 1, 1977~~) plan II members, means periods of employment by a member for one or more employers for which compensation earnable is earned for ninety or more hours per calendar month except as provided in RCW 41.40.450.

Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the teachers' retirement system or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the teachers' retirement system or law enforcement officers' and fire fighters' retirement system.

A member shall receive a total of not more than twelve months of service for such calendar year: PROVIDED, That when an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(10) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(11) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system: PROVIDED, That an amount equal to the employer and employee contributions which would have been paid to the retirement system on account of such service shall have been paid to the retirement system with interest (as computed by the department) on the employee's portion prior to retirement of such person, by the employee or his employer, except as qualified by RCW 41.40.120: PROVIDED FURTHER, That employer contributions plus employee contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employees' savings fund and be treated as any other contribution made by the employee, with the exception that the contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall be excluded from the calculation of the member's annuity in the event the member selects a benefit with an annuity option;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(12)(a) "Beneficiary" for (~~((persons who establish membership in the retirement system on or before September 30, 1977))~~) plan I members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for (~~((persons who establish membership in the retirement system on or after October 1, 1977))~~) plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(13) "Regular interest" means such rate as the director may determine.

(14) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account together with the regular interest thereon.

(15)(a) "Average final compensation" for (~~((persons who establish membership in the retirement system on or before September 30, 1977))~~) plan I members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service for which service credit is allowed; or if the member has less than two years of service then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for (~~((persons who establish membership in the retirement system on or after October 1, 1977))~~) plan II members, means the member's average compensation earnable of the highest consecutive sixty months of service prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation.

(16) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(17) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(18) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(19) "Retirement allowance" means the sum of the annuity and the pension.

(20) "Employee" means any person who may become eligible for membership under this chapter, as set forth in RCW 41.40.120.

(21) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(22) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(23) "Eligible position" means:

(a) Any position which normally requires five or more months of service a year for which regular compensation is paid to the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor for which compensation is paid.

(24) "Ineligible position" means any position which does not conform with the requirements set forth in subdivision (23).

(25) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(26) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

(27) "Retiree" means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

~~(28) ("Department" means the department of retirement systems created in chapter 41.50 RCW.~~

~~(29))~~ "Director" means the director of the department.

~~((30))~~ (29) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

~~((31))~~ (30) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(31) "Plan I" means the public employees' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(32) "Plan II" means the public employees' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

Sec. 71. RCW 41.40.020 and 1969 c 128 s 2 are each amended to read as follows:

A state employees' retirement system is hereby created for the employees of the state of Washington and its political subdivisions. The administration and management of the retirement system, the responsibility for making effective the provisions of this chapter, and the authority to

make all rules and regulations necessary therefor are hereby vested in ~~((a retirement board))~~ the department. All such rules and regulations shall be governed by the provisions of chapter 34.05 RCW, as now or hereafter amended. The retirement system herein provided for shall be known as the Washington Public Employees' Retirement System.

Sec. 72. RCW 41.40.080 and 1989 c 273 s 21 are each amended to read as follows:

~~(1) ((All bonds or other obligations purchased according to RCW 43-84.150 shall be forthwith placed in the hands of the state treasurer who is hereby designated as custodian thereof, and it shall be his duty to collect the principal thereof and the interest thereon as the same becomes due and payable, and place the same when so collected into the retirement system's funds.~~

~~(2) The state treasurer shall be the custodian of all other funds of the retirement system and all disbursements therefrom shall be paid by the state treasurer upon vouchers duly authorized by the department and bearing the signature of the duly authorized officer of the department.~~

~~(3) The state treasurer is hereby authorized and directed to deposit any portion of the funds of the retirement system not needed for immediate use in the same manner and subject to all the provisions of law with respect to the deposit of state funds by such treasurer, and all interest earned by such portion of the retirement system's funds as may be deposited by the state treasurer in pursuance of authority herewith given shall be collected by him and placed to the credit of the retirement fund or the department of retirement systems expense fund.~~

~~(4)) There is hereby established in the state treasury ((three separate funds, namely:~~

~~(a) The public employees' retirement system plan I fund and the public employees' plan II fund, into which shall be paid all moneys received by the department and from which shall be paid all refunds, adjustments, retirement allowances and other benefits provided for herein. The plan I fund shall consist of all moneys paid to finance the benefits, provided to members of plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of plan II. All contributions by members to the department of retirement systems expense fund as provided in RCW 41.40.330 and contributions by employers for the expense of operating the retirement system as provided for herein shall be transferred by the state treasurer from the retirement system fund to the department of retirement systems expense fund upon authorization of the department;~~

~~(b)) the department of retirement systems expense fund, from which shall be paid the expenses of the administration of the retirement systems established in chapters 41.26, 41.32, and 41.40 RCW.~~

~~((5)) (2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall((, after crediting~~

~~the estimated amount to be collected as employees' contributions;)) ascertain and report to each employer, as defined in RCW 41.26.030, 41.32.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of ~~((this chapter))~~ the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the said administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.~~

~~((6))~~ (3) The department shall compute and bill each employer, as defined in RCW 41.26.030, 41.32.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each such employer shall be made on a percentage rate of salary established by the department: PROVIDED, That the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

~~((7))~~ (4) For the purpose of providing amounts to be used to defray the cost of such administration, the department shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the department of retirement systems expense fund sufficient to cover estimated expenses for the said biennium.

Sec. 73. RCW 41.40.083 and 1984 c 184 s 7 are each amended to read as follows:

The director is authorized to pay from the interest earnings of the trust funds of the public employees' retirement system, the teachers' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, the judges' retirement system, or the law enforcement officers' and fire fighters' retirement system lawful obligations of the appropriate system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the appropriate trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings.

Sec. 74. RCW 41.40.100 and 1982 1st ex.s. c 52 s 18 are each amended to read as follows:

For the purpose of the internal accounting record of the public employees' retirement system and not the segregation of moneys on deposit with the state treasurer there are hereby created the employees' savings fund, the benefit account fund, the public employees' income fund and such other funds as may from time to time be required.

(1) The employees' savings fund shall be the fund in which shall be accumulated the contributions from the compensation of public employees' retirement system members. The director shall provide for the maintenance of an individual account for each member of the public employees' retirement system showing the amount of the member's contributions together with interest accumulations thereon. The contributions of a member returned to the former employee upon the individual's withdrawal from service, or paid in event of the employee's or former employee's death, as provided in ((this)) chapter 41.40 RCW, shall be paid from the employees' savings fund. The accumulated contributions of a member, upon the commencement of the individual's retirement, shall be transferred from the employees' savings fund to the benefit account fund.

(2) The benefit account fund shall be the fund in which shall be accumulated the reserves for the payment of all public employees' retirement system retirement allowances and death benefits, if any, in respect of any beneficiary. The amounts contributed by all public employees' retirement system employers to provide pension benefits shall be credited to the benefit account fund. The benefit account fund shall be the fund from which shall be paid all public employees' retirement system retirement allowances, or benefits in lieu thereof because of which reserves have been transferred from the employees' savings fund to the benefit account fund. At the time a recipient of a retirement allowance again becomes a member ((~~there shall be transferred~~)) of the public employees' retirement system, the department shall transfer from the benefit account fund to the employees' savings fund and ((~~credited~~)) credit to the individual account of such a member a sum ((~~that shall be~~)) equal to the excess, if any, of the individual's account at the date of the member's retirement over any service retirement allowance received since that date.

(3) ((~~An~~)) A public employees' income fund is hereby created for the purpose of crediting interest on the amounts in the various other public employees' retirement system funds with the exception of the department of retirement systems expense fund, and to provide a contingent fund out of which special requirements of any of the other such funds may be covered. The director shall determine when a distribution of interest and other earnings of the public employees' retirement system shall take place. The amounts to be credited and the methods for distribution to each of the funds

enumerated in subsections (1) and (2) of this section and for special requirements previously mentioned in this subsection shall be at the director's discretion.

All accumulated contributions standing to the account of a terminated member of the public employees' retirement system except as provided in RCW 41.40.150 (~~((3) and (5))~~) (4), 41.40.170, 41.40.710, and 41.40.720 shall be transferred from the employees' savings fund to the public employees' income fund. If the former employee, the former employee's beneficiary, or the former employee's estate at a future date requests the unclaimed contributions or reinstatement of the rights previously provided thereunder, the former employee's contributions shall be transferred from the public employees' income fund to the savings fund and the former employee's account reestablished with all the rights which would have been due the former employee, the former employee's beneficiary, or the former employee's estate as if in fact the transfer to the public employees' income fund had not occurred. All income, interest, and dividends derived from the deposits and investments authorized by ~~((this))~~ chapter 41.40 RCW shall be paid into the public employees' income fund with the exception of interest derived from sums deposited in the department of retirement systems expense fund. The director on behalf of the retirement system is hereby authorized to accept gifts and bequests. Any funds that may come into the possession of the public employees' retirement system in such manner, or any funds which may be transferred from the employees' savings fund by reason of lack of claimant, or because of a surplus in any fund created by ~~((this))~~ chapter 41.40 RCW, or any other moneys the disposition of which is not otherwise provided for, shall be credited to the public employees' income fund.

Sec. 75. RCW 41.40.110 and 1947 c 274 s 12 are each amended to read as follows:

The state treasurer shall furnish annually to the ~~((retirement board))~~ department a statement of the amount of the funds in ~~((his))~~ the treasurer's custody belonging to the public employees' retirement system. Copies of this annual report shall be available to public employees' retirement system members upon request. The records of the ~~((retirement board))~~ department shall be open to public inspection. Any member of the public employees' retirement system shall be furnished with a statement of the amount to the credit of his or her individual account in the employees' savings fund upon his or her written request, provided that the ~~((retirement board))~~ department shall not be required to answer more than one such request of any member in any one year.

Sec. 76. RCW 41.40.130 and 1949 c 240 s 8 are each amended to read as follows:

Within thirty days after his or her employment or his or her acceptance into membership (~~(by action of the retirement board)~~) each employee(~~(s)~~) or appointive or elective official shall submit to the (~~(retirement board)~~) department a statement of his or her name, sex, title, compensation, duties, date of birth, and length of service as an employee or appointive or elective official, and such other information as the (~~(retirement board)~~) department shall require. Each employee (~~(becoming an original)~~) who becomes a member shall file a detailed statement of all his or her prior service as an employee and shall furnish such other facts as the (~~(retirement board)~~) department may require for the proper operation of the retirement system. Compliance with the provisions set forth in this section shall be considered to be a condition of employment and failure by an employee to comply may result in separation from service.

Sec. 77. RCW 41.40.160 and 1989 c 273 s 27 are each amended to read as follows:

(1) Subject to the provisions of RCW 41.40.150, at retirement the total service credited to a member shall consist of all (~~(his)~~) membership service and, if he or she is an original member, all of (~~(his)~~) the certified prior service.

(2) Employees of a public utility or other private enterprise all or any portion of which has been heretofore or may be hereafter acquired by a public agency as a matter of public convenience and necessity, where it is in the public interest to retain the trained personnel of such enterprise, all service to that enterprise shall, upon the acquiring public agency becoming an employer as defined in RCW 41.40.010(4) be credited on the same basis as if rendered to the said employer: PROVIDED, That this shall apply only to those employees who were in the service of the enterprise at or prior to the time of acquisition by the public agency and who remain in the service of the acquiring agency until they attain membership in the state employees' retirement system; and to those employees who were in the service of the enterprise at the time of acquisition by the public agency and subsequently attain membership through employment with any participating agency: PROVIDED FURTHER, In the event that the acquiring agency is an employer at the time of the acquisition, employer's contributions in connection with members achieving service credit hereunder shall be made on the same basis as set forth in RCW 41.40.361 and 41.40.370 for an employer admitted after April 1, 1949.

Sec. 78. RCW 41.40.170 and 1981 c 294 s 12 are each amended to read as follows:

(1) A member who has served or shall serve on active federal service in the military or naval forces of the United States and who left or shall leave an employer to enter such service shall be deemed to be on military leave of absence if he or she has resumed or shall resume employment as an employee within one year from termination thereof.

(2) If he or she has applied or shall apply for reinstatement of employment, within one year from termination of the military service, and is refused employment for reasons beyond his or her control, he or she shall, upon resumption of service within ten years have such service credited to him or her.

(3) In any event, after completing twenty-five years of creditable service, any member may have ~~((his))~~ service in the armed forces credited to him or her as a member whether or not he or she left the employ of an employer to enter ~~((such))~~ the armed service: PROVIDED, That in no instance, described in ~~((subsections (1), (2), and (3) of))~~ this section, shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance the member must restore all withdrawn accumulated contributions, which restoration must be completed within five years of membership service following ~~((his))~~ the first resumption of employment or complete twenty-five years of creditable service: AND PROVIDED FURTHER, That this section will not apply to any individual, not a veteran within the meaning of RCW 41.04.005, as now or hereafter amended: AND PROVIDED FURTHER, That in no instance, described in ~~((subsections (1), (2), and (3) of))~~ this section, shall military service be credited to any member who is receiving full military retirement benefits pursuant to Title 10 United States Code.

Sec. 79. RCW 41.40.195 and 1973 2nd ex.s. c 14 s 1 are each amended to read as follows:

(1) "Index" for the purposes of this section, shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959 equal one hundred)—compiled by the Bureau of Labor Statistics, United States Department of Labor;

(2) "Cost-of-living factor", for any year shall mean the ratio of the index for the previous year to the index for the year preceding the initial date of payment of the retirement allowance, except that, in no event, shall the cost-of-living factor, for any year subsequent to 1971, be

(a) less than 1.000;

(b) more than one hundred three percent or less than ninety-seven percent of the previous year's cost-of-living factor; or

(c) such as to yield a retirement allowance, for any individual, less than that which was in effect July 1, 1971;

(3) "Initial date of payment" shall mean:

(a) The date of retirement of a member, or

(b) In the case of beneficiary receiving an allowance pursuant to the automatic application of option II pursuant to RCW 41.40.270(2), the first day of the month following the date of death;

(4) Each service retirement allowance payable from July 1, 1973 until any subsequent adjustment pursuant to subsection (5) of this section shall

be adjusted so as to equal the product of the cost-of-living factor for 1973 and the amount of said retirement allowance on the initial date of payment.

(5) Each service retirement allowance payable from July 1st of any year after 1973 until any subsequent adjustment pursuant to this subsection shall be adjusted so as to equal the product of the cost-of-living factor for such year and the amount of said retirement allowance on the initial date of payment: PROVIDED, That the ~~((board))~~ department finds, at its sole discretion, that the cost of such adjustments shall have been met by the excess of the growth in the assets of the system over that required for meeting the actuarial liabilities of the system at that time.

(6) The cost-of-living increases provided by this section shall be applicable to those individuals receiving benefits calculated pursuant to chapter 41.44 RCW and paid by the public employees' retirement system pursuant to RCW 41.40.407.

Sec. 80. RCW 41.40.200 and 1986 c 207 s 1 are each amended to read as follows:

(1) Subject to the provisions of RCW 41.40.310 and 41.40.320, upon application of a member, or his or her employer, a member who becomes totally incapacitated for duty as the natural and proximate result of an accident occurring in the actual performance of duty or who becomes totally incapacitated for duty and qualifies to receive benefits under Title 51 RCW as a result of an occupational disease, as now or hereafter defined in RCW 51.08.140, while in the service of an employer, without willful negligence on his or her part, shall be retired subject to the following conditions: ~~((PROVIDED;))~~

(a) That the medical adviser, after a medical examination of such member made by or under the direction of the ~~((said))~~ medical adviser, shall certify in writing that ~~((such))~~ the member is mentally or physically totally incapacitated for the further performance of his or her duty and that such member should be retired ~~((:PROVIDED FURTHER;));~~

(b) That the director concurs in the recommendation of the medical adviser ~~((:AND PROVIDED FURTHER;));~~

(c) That no application shall be valid or a claim thereunder enforceable unless, in the case of an accident, the claim is filed within two years after the date upon which the injury occurred or, in the case of an occupational disease, the claim is filed within two years after the member separated from service with the employer ~~((:));~~ and

(d) That the coverage provided for occupational disease under this section may be restricted in the future by the legislature for all current and future members.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington ~~((House Joint Resolution No. 37, approved by the voters November 4, 1980))~~ (Amendment 71), with the

concurrence of the director, shall be considered a retirement under subsection (1) of this section.

Sec. 81. RCW 41.40.220 and 1972 ex.s. c 151 s 9 are each amended to read as follows:

Upon retirement for disability, as provided in RCW 41.40.200, a member who has not attained age sixty shall receive the following benefits, subject to the provisions of RCW 41.40.310 and 41.40.320:

(1) A disability retirement pension of two-thirds of his or her average final compensation to his or her attainment of age sixty, subject to the provisions of RCW 41.40.310. The disability retirement pension provided by the employer shall not exceed forty-two hundred dollars per annum, and

(2) Upon attainment of age sixty, the disabled member shall receive a service retirement allowance as provided in RCW 41.40.210. ~~((Such))~~ The department shall grant the disabled member ((shall be given)) membership service for the period of time prior to age sixty he or she was out of such service due to ((such)) disability.

(3) During the period a disabled member is receiving a disability pension, as provided for in ~~((subdivision))~~ subsection (1) of this section, his or her contributions to the employees' savings fund shall be suspended and his or her balance in the employees' savings fund, standing to his or her credit as of the date his or her disability pension is to begin, shall remain in the employees' savings fund~~((: PROVIDED, That)).~~ If the disabled member should die before attaining age sixty, while a disability beneficiary, upon receipt by the ((retirement board)) department of proper proof of death, ((his)) the member's accumulated contributions standing to his or her credit in the employees' savings fund, shall be paid to such person or persons, having an insurable interest in his or her life, as he or she shall have nominated by written designation duly executed and filed with the ((retirement board: PROVIDED, HOWEVER, That)) department. If there ((be no such)) is no designated person or persons still living at the time of the member's death, ((his)) the accumulated contributions standing to ((his)) the member's credit in the employees' savings fund shall be paid to his or her surviving spouse ((as if in fact such spouse had been nominated by written designation as aforesaid)), or if there ((be no such)) is no surviving spouse, then to ((his)) the member's legal representative.

Sec. 82. RCW 41.40.230 and 1982 c 18 s 4 are each amended to read as follows:

(1) Subject to the provisions of RCW 41.40.310 and 41.40.320, upon application of a member, or his or her employer, a member who has been an employee at least five years, and who becomes totally and permanently incapacitated for duty as the result of causes occurring not in the performance of his or her duty, may be retired by the ~~((retirement board: PROVIDED;))~~ department, subject to the following conditions:

(a) That the medical adviser, after a medical examination of ~~((such))~~ the member(~~(:)~~) made by or under the direction of the ~~((said))~~ medical adviser, shall certify in writing that ~~((such))~~ the member is mentally or physically incapacitated for the further performance of duty, ~~((and such))~~ that the incapacity is likely to be permanent, and that ~~((such))~~ the member should be retired(~~(-PROVIDED FURTHER-)~~); and

(b) That the ~~((retirement board))~~ department concurs in the recommendation of the medical adviser.

(2) The retirement for disability of a judge, who is a member of the retirement system and who has been an employee at least five years, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (~~((House Joint Resolution No. 37, approved by the voters November 4, 1980))~~) (Amendment 71), with the concurrence of the ~~((retirement board))~~ department, shall be considered a retirement under subsection (1) of this section.

Sec. 83. RCW 41.40.235 and 1986 c 176 s 4 are each amended to read as follows:

(1) Upon retirement, a member shall receive a nonduty disability retirement allowance equal to two percent of average final compensation for each year of service: PROVIDED, That ~~((such))~~ this allowance shall be reduced by two percent of itself for each year or fraction thereof that his or her age is less than fifty-five years: PROVIDED FURTHER, That in no case may the allowance provided by this section exceed sixty percent of average final compensation.

(2) If the recipient of a retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to ~~((such))~~ the person or persons having an insurable interest in his or her life as the recipient has nominated by written designation duly executed and filed with the director or, if there is no ~~((such))~~ designated person or persons still living at the time of the recipient's death, then to the surviving spouse or, if there is neither ~~((such))~~ a designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

Sec. 84. RCW 41.40.250 and 1972 ex.s. c 151 s 11 are each amended to read as follows:

~~((In lieu of the nonduty disability retirement allowance provided in RCW 41.40.240,))~~ An individual who was a member(~~(:)~~) on February 25, 1972, may upon qualifying pursuant to RCW 41.40.230, make an irrevocable election to receive the nonduty disability retirement allowance provided in subsections (1) and (2) of this section subject to the provisions of RCW 41.40.310 and 41.40.320. Upon attaining or becoming disabled after age sixty ~~((he))~~ the member shall receive a service retirement allowance as provided for in RCW 41.40.190 except that the annuity portion thereof shall

consist of a continuation of the cash refund annuity previously provided to him or her. ~~((His))~~ The disability retirement allowance prior to age sixty shall consist of:

(1) A cash refund annuity which shall be the actuarial equivalent of ~~((his))~~ the member's accumulated contributions at the time of his or her retirement; and

(2) A pension, in addition to the annuity, equal to one one-hundredth of ~~((his))~~ the member's average final compensation for each year of service. If the recipient of a retirement allowance under this section ~~((shall))~~ dies before the total of the annuity portions of the retirement allowance paid to him or her equals the amount of his or her accumulated contributions at the date of retirement, then the balance shall be paid to ~~((such))~~ the person or persons having an insurable interest in his or her life as he or she shall have nominated by written designation duly executed and filed with the ~~((retirement board))~~ department, or if there ~~((be no such))~~ is no designated person or persons, still living at the time of his or her death, then to his or her surviving spouse, or if there ~~((be neither such))~~ is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representatives.

Sec. 85. RCW 41.40.260 and 1983 c 3 s 95 are each amended to read as follows:

Subject to the provisions of RCW 41.40.280, should a member cease to be an employee, he or she may request upon a form provided by the ~~((retirement board))~~ department a refund of all or part of the funds standing to his or her credit in the employees' savings fund and this amount shall be paid to him ~~((PROVIDED, That))~~ or her. Withdrawal of all or part of the funds, other than additional contributions under RCW 41.40.330(2) by a member who is eligible for a service retirement allowance in RCW 41.40.180 or a disability retirement allowance in RCW 41.40.200, 41.40.210, 41.40.220, 41.40.230, or 41.40.250 shall constitute a waiver of any service or disability retirement allowance~~((PROVIDED FURTHER, That the withdrawal of all or part of additional contributions made pursuant to RCW 41.40.330(2) shall not constitute a waiver))~~.

Sec. 86. RCW 41.40.280 and 1973 2nd ex.s. c 14 s 2 are each amended to read as follows:

The ~~((retirement board))~~ department may, in its discretion, withhold payment of all or part of a member's contributions for not more than six months after a member has ceased to be an employee~~((PROVIDED, That))~~. Termination of employment with one employer for the purpose of accepting employment with another employer or termination with one employer and reemployment with the same employer within a period of thirty days shall not qualify a member for a refund of his or her accumulated contributions. In addition, a member who files an application for a refund of his or her accumulated contributions and subsequently becomes employed in

an eligible position before the expiration of thirty days or before a refund payment has been made, shall not be eligible for ~~((such))~~ the refund payment.

Sec. 87. RCW 41.40.310 and 1984 c 184 s 14 are each amended to read as follows:

Once each year during the first five years following the retirement of a member on a disability pension or retirement allowance, and at least once in every three year period thereafter the ~~((retirement board))~~ department may, and upon the member's application shall, require any disability beneficiary, who has not attained age sixty years, to undergo a medical examination; such examination to be made by or under the direction of the medical adviser at the place of residence of ~~((said))~~ the beneficiary, or other place mutually agreed upon. Should any disability beneficiary, who has not attained age sixty years, refuse to submit to ~~((such))~~ a medical examination in any ~~((such))~~ period, his or her disability pension or retirement allowance may be discontinued until his or her withdrawal of ~~((such))~~ the refusal, and should ~~((such))~~ the refusal continue for one year, all his or her rights in and to his or her disability pension, or retirement allowance, may be revoked by the ~~((retirement board))~~ department. If upon ~~((such))~~ a medical examination of a disability beneficiary, the medical adviser reports and his or her report is concurred in by the ~~((retirement board))~~ department, that the disability beneficiary is no longer totally incapacitated for duty as the result of the injury or illness for which the disability was granted, or that he or she is engaged in a gainful occupation, his or her disability pension or retirement allowance shall cease~~((: PROVIDED, That))~~.

If the disability beneficiary resumes a gainful occupation and his or her compensation is less than his or her compensation earnable at the date of disability, the ~~((board))~~ department shall continue the disability benefits in an amount which when added to his or her compensation does not exceed his or her compensation earnable at the date of separation, but the disability benefit shall in no event exceed the disability benefit originally awarded~~((: PROVIDED FURTHER, That))~~. The compensation earnable at the date of separation ~~((is))~~ shall be adjusted July 1 of each year by the ratio of the average consumer price index (Seattle, Washington area) for urban consumers, compiled by the United States department of labor, bureau of labor statistics, for the calendar year prior to the adjustment to the average consumer price index for the calendar year in which separation from service occurred but in no event shall the adjustment result in an amount lower than the original compensation earnable at the date of separation.

Sec. 88. RCW 41.40.320 and 1953 c 200 s 16 are each amended to read as follows:

A disability beneficiary who has been or shall be reinstated to active service shall from the date of ~~((such))~~ restoration again become a member

of the retirement system; and ~~((he))~~ shall contribute to the retirement system in the same manner as prior to ~~((his))~~ the disability retirement. Any prior service and membership service, on the basis of which ~~((his))~~ retirement allowances were computed at the time of ~~((his))~~ retirement, shall be restored to full force and effect, and, except in the case of retirement for nonduty disability as provided in RCW 41.40.230, he or she shall be given membership service for the period of time ~~((he was))~~ out of service due to ~~((such))~~ the disability.

Sec. 89. RCW 41.40.340 and 1977 ex.s. c 295 s 18 are each amended to read as follows:

The deductions from the compensation of members, provided for in RCW 41.40.330 or 41.40.650, shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this chapter and ~~((shall))~~ receipt in full for his or her salary or compensation, and payment less ~~((said))~~ the deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by ~~((such))~~ the person during the period covered by ~~((such))~~ the payment, except as to benefits provided for under this chapter.

Sec. 90. RCW 41.40.350 and 1977 ex.s. c 295 s 19 are each amended to read as follows:

The person responsible for making up the payroll shall transmit promptly to the department at the end of each and every payroll period a copy of the original payroll voucher or ~~((such))~~ any other payroll report as the department may require showing thereon all deductions for the public employees' retirement system made from the compensation earnable of each member, together with warrants or checks covering the total of ~~((such))~~ the deductions. The department after making a record of all ~~((such))~~ receipts shall pay them to the state treasurer for use according to the provisions of ~~((this))~~ chapter 41.40 RCW.

Sec. 91. RCW 41.40.363 and 1963 c 225 s 3 are each amended to read as follows:

Any labor guild, association, or organization qualifying as an employer under this chapter and which is required to make contributions for an elective official qualifying for membership under RCW ~~((41.40.120(10))~~ 41.40.120(11) shall make contributions as any other employer within this chapter: PROVIDED, That the ~~((retirement board))~~ department shall cause an actuarial computation to be made of all prior service liability for which contributions are required from ~~((such))~~ the employer to be computed on an actual dollar basis, and if the ~~((board))~~ department determines that the contributions being made therefor under this chapter are insufficient to defray any cost to the state, the ~~((board))~~ department shall require

additional contributions from ~~((such))~~ the employer in ~~((such))~~ amounts and at ~~((such))~~ times as will defray all costs to the state, ~~((such))~~ the additional contributions to be completed within ten years from the date the elective official is accepted by the ~~((board))~~ department.

Sec. 92. RCW 41.40.380 and 1989 c 360 s 27 are each amended to read as follows:

(1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules ~~((and regulations))~~ that may be ~~((promulgated))~~ adopted by the state health care authority and/or the department ~~((of retirement systems))~~, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department ~~((of retirement systems))~~ from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued ~~((pursuant to chapter 41.50 RCW))~~ by the department, or (e) any administrative or court order expressly authorized by federal law.

Sec. 93. RCW 41.40.410 and 1971 ex.s. c 271 s 12 are each amended to read as follows:

(1) The employees and appointive and elective officials of any political subdivision or association of political subdivisions of the state may become members of the retirement system by the approval of the local legislative authority ~~((PROVIDED, That))~~.

(2) On and after September 1, 1965, every school district of the state of Washington shall be an employer under this chapter ~~((and))~~. Every employee of ~~((the))~~ each school district who is eligible for membership under RCW 41.40.120 shall be a member of the retirement system and participate on the same basis as a person who first becomes a member through the admission of any employer into the retirement system on and after April 1, 1949.

(3) Each ~~((such))~~ political subdivision becoming an employer under the meaning of this chapter shall make contributions to the funds of the retirement system as provided in RCW 41.40.080, 41.40.361, and 41.40.370 and its employees shall contribute to the employees' savings fund at the rate established under the provisions of RCW 41.40.330. In addition to the foregoing requirement, where the political subdivision becoming an employer ~~((hereunder))~~ under this section has its own retirement plan, any of the employee members thereof who may elect to transfer to this retirement system may, if permitted by ~~((said))~~ the plan, withdraw all or any part of their employees' contributions to the former plan and transfer ~~((such))~~ the funds to the employees' savings fund at the time of their transfer of membership. Any portion of the employees' savings fund not withdrawn shall be transferred by the employer to the retirement system over a period not to exceed fifteen years. The length of the transfer period and the method of payment to be utilized during that period shall be established by agreement between the ~~((retirement board))~~ department and the political subdivision. Employers making deferred payments of employee funds under this section shall transfer an additional amount equal to the interest that would have been credited to each employee's savings fund had his or her contributions been transferred to the state retirement system's employee savings fund on the date the political subdivision became an employer ~~((hereunder))~~ under this section. Any funds remaining in the employer's former retirement plan after all obligations of ~~((such))~~ the plan have been provided for, as evidenced by appropriate actuarial study, shall be disposed of by the governing body of the political subdivision in such manner as it deems appropriate. For the purpose of administering and interpreting this chapter the ~~((board))~~ department may substitute the names of political subdivisions of the state for the "state" and employees of the subdivisions for "state employees" whenever ~~((such))~~ those terms appear in this chapter. The ~~((board))~~ department may also alter any dates mentioned in this chapter for the purpose of making the provisions of the chapter applicable to the entry of any political subdivisions into the system. Any member transferring employment to another employer which is covered by the retirement system may continue as a member without loss of previously earned pension and annuity benefits. The ~~((board))~~ department shall keep ~~((such))~~ accounts as are necessary to show the contributions of each political subdivision to the benefit account fund

and shall have the power to debit and credit the various accounts in accordance with the transfer of the members from one employer to another.

(4) Employees of a political subdivision, maintaining its own retirement system, who have been transferred to a health district formed pursuant to chapter 70.46 RCW, but who have been allowed to remain members of the political subdivision's retirement system may be transferred as a group to the Washington public employees' retirement system. ~~((Such))~~ This transfer may be made by the action of the legislative authority of ~~((such))~~ the political subdivision maintaining its own retirement system. ~~((Such))~~ This transfer shall include employer's and member's funds in the transferring municipalities' retirement system.

(5) Employees of a political subdivision, maintaining its own retirement system, heretofore transferred to a joint airport operation of two municipalities pursuant to chapter ~~((182, Laws of 1945))~~ 14.08 RCW, may be transferred as a group to the Washington public employees' retirement system. ~~((Such))~~ This transfer may be made by the action of the legislative authority of ~~((such))~~ the political subdivision maintaining its own retirement system. ~~((Such))~~ This transfer shall include employer's and member's funds in the transferring municipalities' retirement system.

Sec. 94. RCW 41.40.412 and 1969 c 128 s 14 are each amended to read as follows:

Any person aggrieved by any decision of the ~~((retirement board))~~ department affecting his or her legal rights, duties, or privileges must before he or she appeals to the courts, file with the director ~~((of the retirement system))~~ by mail or personally within sixty days from the day ~~((such))~~ the decision was communicated to ~~((such))~~ the person, a notice for a hearing before the ~~((retirement board))~~ director's designee. The notice of hearing shall set forth in full detail the grounds upon which ~~((such))~~ the person considers ~~((such))~~ the decision unjust or unlawful and shall include every issue to be considered by the ~~((retirement board))~~ department, and it must contain a detailed statement of facts upon which ~~((such))~~ the person relies in support ~~((thereof))~~ of the appeal. ~~((Such))~~ These persons shall be deemed to have waived all objections or irregularities concerning the matter on which ~~((such))~~ the appeal is taken, other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system.

Sec. 95. RCW 41.40.440 and 1971 c 81 s 105 are each amended to read as follows:

No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the ~~((retirement board effecting such))~~ department affecting the claimant's right to retirement or disability benefits.

Sec. 96. RCW 41.40.450 and 1990 c 274 s 4 are each amended to read as follows:

(1) A plan I member who is employed by a school district or districts, an educational ((school)) service district, the state school for the deaf, the state school for the blind, institutions of higher education, or community colleges:

(a) Shall receive service credit for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for six hundred thirty hours or more during that period, and is employed during nine months of that period, except that a member may not receive credit for any period prior to the member's employment in an eligible position;

(b) If a member in an eligible position does not meet the requirements of (a) of this subsection, the member is entitled to service credit only for those calendar months during which he or she received compensation for seventy or more hours.

(2) A plan II member who is employed by a school district or districts, an educational ((school)) service district, the state school for the blind, the state school for the deaf, institutions of higher education, or community colleges:

(a) Shall receive service credit for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for eight hundred ten hours or more during that period, and is employed during nine months of that period, except that a member may not receive credit for any period prior to the member's employment in an eligible position;

(b) If a member in an eligible position does not meet the requirements of (a) of this subsection, the member is entitled to service credit only for those calendar months during which he or she received compensation for ninety or more hours.

(3) The department shall adopt rules implementing this section.

Sec. 97. RCW 41.40.610 and 1977 ex.s. c 295 s 2 are each amended to read as follows:

RCW 41.40.620 through 41.40.740 shall apply only to ~~((those persons who are initially employed by an employer on or after October 1, 1977))~~ plan II members.

Sec. 98. RCW 41.40.625 and 1982 c 144 s 3 are each amended to read as follows:

(1) On or after June 10, 1982, the director may pay a member eligible to receive a retirement allowance or the member's beneficiary, ~~((as defined in RCW 41.04.040(3);))~~ subject to the provisions of subsection (4) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.40.620 would be less

than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of ~~((such))~~ the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, ~~((as defined in RCW 41.04.040(3);))~~ subject to the provisions of subsection (4) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status ~~((as defined in RCW 41.04.040(2)))~~ reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) Only persons entitled to or receiving a service retirement allowance under RCW 41.40.620 or an earned disability allowance under RCW 41.40.670 qualify for participation under this section.

(5) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system.

Sec. 99. RCW 41.40.670 and 1990 c 249 s 21 are each amended to read as follows:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the ~~((retirement board))~~ department shall be eligible to receive an allowance under the provisions of RCW 41.40.610 through 41.40.740. ~~((Such))~~ The member shall receive a monthly disability allowance computed as provided for in RCW 41.40.620 and shall have ~~((such))~~ this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to ~~((such))~~ comprehensive medical examinations as required by the department. If ~~((such))~~ these medical examinations reveal that ~~((such))~~ a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, ~~((such))~~ the member shall cease to be eligible for ~~((such))~~ the allowance.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (~~((House Joint Resolution No. 37, approved by the voters November 4, 1980))~~) (Amendment 71), with the concurrence of the (~~(retirement board)~~) department, shall be considered a retirement under subsection (1) of this section.

(3)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to (~~(such)~~) the person or persons having an insurable interest in his or her life as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no (~~(such)~~) designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is (~~(neither such)~~) no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

Sec. 100. RCW 41.40.710 and 1977 ex.s. c 295 s 12 are each amended to read as follows:

A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.40.610 through 41.40.740.

A member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the plan II employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner(~~(-PROVIDED; That for the purpose of this subsection [section] the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.40.650)~~). The contributions required shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

A member who is inducted into the armed forces of the United States shall be deemed to be on an unpaid, authorized leave of absence.

NEW SECTION. Sec. 101. A new section is added to chapter 41.26 RCW under the subchapter heading "Provisions Applicable to Plan I" to read as follows:

The provisions of the following sections of this subchapter shall apply only to members of plan I: RCW 41.26.080; 41.26.090; 41.26.100; 41.26.110; 41.26.115; 41.26.120; 41.26.125; 41.26.130; 41.26.135; 41.26.140; 41.26.150; 41.26.160; 41.26.170; 41.26.180; 41.26.190; 41.26.200; 41.26.240; 41.26.250; 41.26.260; 41.26.270; 41.26.900; 41.26.910; and 41.26.920.

NEW SECTION. Sec. 102. A new section is added to chapter 41.26 RCW under the subchapter heading "Provisions Applicable to Plan II" to read as follows:

The provisions of the following sections of this subchapter shall apply only to members of plan II: RCW 41.26.400; 41.26.410; 41.26.420; 41.26.425; 41.26.430; 41.26.440; 41.26.450; 41.26.460; 41.26.470; 41.26.480; 41.26.490; 41.26.500; 41.26.510; 41.26.520; 41.26.530; 41.26.540; 41.26.550; 41.26.901; and 41.26.921.

NEW SECTION. Sec. 103. A new section is added to chapter 41.32 RCW under the subchapter heading "Provisions Applicable to Plan I" to read as follows:

The provisions of the following sections of this subchapter shall apply only to members of plan I: RCW 41.32.240; 41.32.260; 41.32.270; 41.32.300; 41.32.330; 41.32.340; 41.32.350; 41.32.360; 41.32.366; 41.32.380; 41.32.390; 41.32.470; 41.32.480; 41.32.485; 41.32.487; 41.32.488; 41.32.4931; 41.32.4945; 41.32.497; 41.32.498; 41.32.499; 41.32.500; 41.32.510; 41.32.520; 41.32.522; 41.32.523; 41.32.530; 41.32.540; 41.32.550; 41.32.570; and 41.32.575.

NEW SECTION. Sec. 104. A new section is added to chapter 41.32 RCW under the subchapter heading "Provisions Applicable to Plan II" to read as follows:

The provisions of the following sections of this subchapter shall apply only to members of plan II: RCW 41.32.755; 41.32.760; 41.32.762; 41.32.765; 41.32.770; 41.32.775; 41.32.780; 41.32.785; 41.32.790; 41.32.795; 41.32.800; 41.32.805; 41.32.810; 41.32.815; 41.32.820; and 41.32.825.

NEW SECTION. Sec. 105. A new section is added to chapter 41.40 RCW under the subchapter heading "Provisions Applicable to Plan I" to read as follows:

The provisions of the following sections of this subchapter shall apply only to members of plan I: RCW 41.40.150; 41.40.160; 41.40.170; 41.40.180; 41.40.185; 41.40.188; 41.40.190; 41.40.193; 41.40.195; 41.40.198; 41.40.1981; 41.40.200; 41.40.210; 41.40.220; 41.40.230; 41.40.235; 41.40.250; 41.40.260; 41.40.270; 41.40.280; 41.40.300; 41.40.310; 41.40.320; 41.40.325; 41.40.330; and 41.40.363.

NEW SECTION. Sec. 106. A new section is added to chapter 41.40 RCW under the subchapter heading "Provisions Applicable to Plan II" to read as follows:

The provisions of the following sections of this subchapter shall apply only to members of plan II: RCW 41.40.610; 41.40.620; 41.40.625; 41.40.630; 41.40.640; 41.40.650; 41.40.660; 41.40.670; 41.40.680; 41.40.690; 41.40.700; 41.40.710; 41.40.720; 41.40.730; 41.40.740; 41.40.900; and 41.40.920.

NEW SECTION. Sec. 107. A new section is added to chapter 41.40 RCW under the subchapter heading "Provisions Applicable to Plan I and Plan II" to read as follows:

(1) All classified employees employed by Washington State University on and after April 24, 1973, and otherwise eligible shall become members of the Washington public employees' retirement system to the exclusion of any other retirement benefit system at the institution unless otherwise provided by law.

(2) All classified employees employed by the University of Washington or each of the regional universities or The Evergreen State College on and after May 6, 1974, and otherwise eligible shall become members of the Washington public employees' retirement system at the institution unless otherwise provided by law: PROVIDED, That persons who, immediately prior to the date of their hiring as classified employees, have for at least two consecutive years held membership in a retirement plan underwritten by the private insurer of the retirement plan of their respective educational institution may irrevocably elect to continue their membership in the retirement plan notwithstanding the provisions of this chapter, if the election is made within thirty days from the date of their hiring as classified employees. If these persons elect to become members of the public employees' retirement system, contributions by them and their employers shall be required from their first day of employment.

NEW SECTION. Sec. 108. A new section is added to chapter 41.50 RCW to read as follows:

(1) Two funds are hereby created and established in the state treasury to be known as the Washington law enforcement officers' and fire fighters' system plan I retirement fund, and the Washington law enforcement officers' and fire fighters' system plan II retirement fund which shall consist of all moneys paid into them in accordance with the provisions of this chapter and chapter 41.26 RCW, whether such moneys take the form of cash, securities, or other assets. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan II.

(2) All of the assets of the Washington state teachers' retirement system shall be credited according to the purposes for which they are held, to two funds to be maintained in the state treasury, namely, the teachers' retirement system plan I fund and the teachers' retirement system plan II fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan II.

(3) There is hereby established in the state treasury two separate funds, namely the public employees' retirement system plan I fund and the public employees' plan II fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan II.

NEW SECTION. Sec. 109. A new section is added to chapter 41.50 RCW to read as follows:

The state treasurer is the custodian of, and accountant for, all funds and holdings of the retirement systems listed in RCW 41.50.030.

Passed the House February 20, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 36

[House Bill 1607]

STORM WATER AND SEWER FACILITIES—LIENS FOR DELINQUENT SERVICE CHARGES

Effective Date: 7/28/91

AN ACT Relating to liens for delinquent service charges of storm water control facilities and city-owned sewer systems; amending RCW 36.89.090 and 35.67.200; and adding a new section to chapter 35.67 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.89.090 and 1987 c 241 s 1 are each amended to read as follows:

The county shall have a lien for delinquent service charges, including interest thereon, against any property against which they were levied for storm water control facilities, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. Such lien shall be effective and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67-.200 through 35.67.290: PROVIDED, That a county may, by resolution or

ordinance, adopt all or any part of the alternative interest rate, lien, and foreclosure procedures as set forth in RCW 36.89.092 through 36.89.094 or by RCW 36.94.150.

Sec. 2. RCW 35.67.200 and 1965 c 7 s 35.67.200 are each amended to read as follows:

Cities and towns owning their own sewer systems shall have a lien for delinquent and unpaid rates and charges for sewer service, penalties levied pursuant to RCW 35.67.190, and connection charges, including interest thereon, against the premises to which such service has been furnished or is available, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. The city or town by ordinance may provide that delinquent charges shall bear interest at not exceeding eight percent per annum computed on a monthly basis: PROVIDED, That a city or town using the property tax system for utility billing may, by resolution or ordinance, adopt the alternative lien procedure as set forth in section 3 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 35.67 RCW to read as follows:

Any city or town may, by resolution or ordinance, provide that the sewerage lien shall be effective for a total not to exceed one year's delinquent service charges without the necessity of any writing or recording of the lien with the county auditor, in lieu of the provisions provided for in RCW 35.67.210.

Passed the House March 15, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 37

[Senate Bill 5982]

SCHOOL FOOD PROGRAMS—CONTINUATION THROUGH TEACHERS' WORK STOPPAGE

Effective Date: 4/22/91

AN ACT Relating to feeding school children during teachers' work stoppage; creating new sections; making an appropriation; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that state school feeding programs are essential to the health and well-being of many children and that continuing these programs during a teachers' work stoppage is in the best interests of the state of Washington.

The legislature intends to continue to provide food to eligible children during the teachers' work stoppage, which began on April 18, 1991, in forty-six districts throughout the state.

NEW SECTION. Sec. 2. The superintendent of public instruction may reimburse school districts with state funds for the amount of any unavailable federal share of funds for breakfasts or lunches actually provided to children during the teachers' work stoppage that began April 18, 1991.

NEW SECTION. Sec. 3. The sum of two million dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the general fund to the superintendent of public instruction solely for the purpose of section 2 of this act.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 22, 1991.

Passed the House April 22, 1991.

Approved by the Governor April 22, 1991.

Filed in Office of Secretary of State April 22, 1991.

CHAPTER 38

[Substitute Senate Bill 5030]

PROTECTION OF RECORDING RIGHTS

Effective Date: 7/28/91

AN ACT Relating to the protection of recording rights; amending RCW 19.25.010, 19.25.020, 19.25.030, and 19.25.040; adding new sections to chapter 19.25 RCW; repealing RCW 19.26.010 and 19.26.020; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 19.25.010 and 1974 ex.s. c 100 s 1 are each amended to read as follows:

As used in this chapter((:)):

(1) "Owner" means ~~((the owner of the master recording, master disc, master tape, master film, or other device used for reproducing recorded sound on a phonograph record, disc, tape, film, or other material on which sound is recorded and from which the transferred recorded sound is))~~ a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived.

(2) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived,

reproduced, or otherwise communicated for a period of more than transitory duration.

(3) "Live performance" means a recitation, rendering, or playing of a series of images; musical, spoken or other sounds; or combination of images and sounds.

(4) "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now existing or developed later on which sounds, images, or both are or can be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original.

(5) "Manufacturer" means the entity authorizing the duplication of the recording in question, but shall not include the manufacturer of the cartridge or casing itself.

Sec. 2. RCW 19.25.020 and 1974 ex.s. c 100 s 2 are each amended to read as follows:

~~((A person commits a gross misdemeanor punishable by a fine not to exceed one thousand dollars and imprisonment not to exceed one year and confiscation of illegal stock, if he:~~

~~(1) Reproduces for sale any sound recording without the written consent of the owner of the master recording; or~~

~~(2) Knowingly sells or offers for sale or advertises for sale any sound recording that has been reproduced without the written consent of the owner of the master recording;)) (1) A person commits an offense if the person:~~

(a) Knowingly reproduces for sale or causes to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

(b) Transports within this state, for commercial advantage or private financial gain, a recording with the knowledge that the sounds have been reproduced or transferred without the consent of the owner; or

(c) Advertises, offers for sale, sells, or rents, or causes the sale, resale, or rental of or possesses for one or more of these purposes any recording that the person knows has been reproduced or transferred without the consent of the owner.

(2) An offense under this section is a felony punishable by:

(a) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both if:

(i) The offense involves at least one thousand unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section;

(b) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves

more than one hundred but less than one thousand unauthorized recordings during a one hundred eighty-day period.

(3) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(4) This section does not affect the rights and remedies of a party in private litigation.

(5) This section applies only to recordings that were initially fixed before February 15, 1972.

Sec. 3. RCW 19.25.030 and 1974 ex.s. c 100 s 3 are each amended to read as follows:

(This chapter shall not be applicable to the reproduction of any sound recording that is used or intended to be used only for broadcast by commercial or educational radio or television stations:)) (1) A person commits an offense if the person:

(a) For commercial advantage or private financial gain advertises, offers for sale, sells, rents, transports, causes the sale, resale, rental, or transportation of or possesses for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(b) With the intent to sell for commercial advantage or private financial gain records or fixes or causes to be recorded or fixed on a recording a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

(2) An offense under this section is a felony punishable by:

(a) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one thousand unauthorized recordings embodying sound or at least one hundred unauthorized audiovisual recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section; or

(b) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings embodying sound or more than ten but less than one hundred unauthorized audiovisual recordings during a one hundred eighty-day period.

(3) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(4) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

(5) For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or

not the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

(6) This section does not affect the rights and remedies of a party in private litigation.

Sec. 4. RCW 19.25.040 and 1974 ex.s. c 100 s 4 are each amended to read as follows:

~~((This chapter shall not be applicable to the reproduction of a sound recording defined as a public record of any court, legislative body, or proceedings of any public body, whether or not a fee is charged or collected therefor:))~~

(1) A person is guilty of failure to disclose the origin of a recording when, for commercial advantage or private financial gain, the person knowingly advertises, or offers for sale, resale, or rent, or sells or resells, or rents, leases, or lends, or possesses for any of these purposes, any recording which does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket, or label of the recording.

(2) An offense under this section is a felony punishable by:

(a) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one hundred unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section;

(b) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than ten but less than one hundred unauthorized recordings during a one hundred eighty-day period.

(3) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(4) This section does not affect the rights and remedies of a party in private litigation.

NEW SECTION. Sec. 5. A new section is added to chapter 19.25 RCW to read as follows:

(1) All recordings which have been fixed, transferred, or possessed without the consent of the owner in violation of RCW 19.25.020 or 19.25.030, and any recording which does not contain the true name and address of the manufacturer in violation of RCW 19.25.040 shall be deemed to be contraband. The court shall order the seizure, forfeiture, and destruction or other disposition of such contraband.

(2) The owner or the prosecuting attorney may institute proceedings to forfeit contraband recordings. The provisions of this subsection shall apply to any contraband recording, regardless of lack of knowledge or intent on the part of the possessor, retail seller, manufacturer, or distributor.

(3) Whenever a person is convicted of a violation under this chapter, the court, in its judgment of conviction, shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all contraband recordings and any and all electronic, mechanical, or other devices for manufacturing, reproducing, packaging, or assembling such recordings, which were used to facilitate any violation of this chapter.

NEW SECTION. Sec. 6. A new section is added to chapter 19.25 RCW to read as follows:

This chapter shall not be applicable to any recording that is used or intended to be used only for broadcast by commercial or educational radio or television stations.

NEW SECTION. Sec. 7. A new section is added to chapter 19.25 RCW to read as follows:

This chapter shall not be applicable to any recording that is received in the ordinary course of a broadcast by a commercial or educational radio or television station where no recording is made of the broadcast.

NEW SECTION. Sec. 8. A new section is added to chapter 19.25 RCW to read as follows:

This chapter shall not be applicable to any recording defined as a public record of any court, legislative body, or proceedings of any public body, whether or not a fee is charged or collected for copies.

NEW SECTION. Sec. 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

- (1) RCW 19.26.010 and 1971 ex.s. c 113 s 1; and
- (2) RCW 19.26.020 and 1971 ex.s. c 113 s 2.

Passed the Senate March 1, 1991.

Passed the House April 10, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 39

[Substitute Senate Bill 5645]

LOW-LEVEL RADIOACTIVE MATERIALS TASK FORCE

Effective Date: 7/28/91

AN ACT Relating to liability of handlers of low-level radioactive waste; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The low-level radioactive materials task force is created, consisting of the directors of the department of general administration, department of ecology, and office of financial management, or their designees; the secretary of the department of health, or his or her designee; the chief of the Washington state patrol, or his or her designee; and the chair of the utilities and transportation commission, or his or her designee. The department of general administration shall serve as the lead agency of the task force.

(2) The task force shall create a working group that includes representatives of a broad range of affected interests in the use, handling, packaging, transporting, and disposal of low-level radioactive materials and waste, including licensees and permittees of state agencies involved in the regulation of such activities, such as hospitals, industrial radiographers, manufacturers, transporters, and insurers. The working group shall provide information, advice, and technical assistance to the task force.

(3) The task force shall report to the energy and utilities committees of the senate and the house of representatives by December 15, 1991, on its findings and recommendations as to liability insurance for the state's licensees and permittees, and an assessment of the risk and risk management for the state with regard to damages arising out of the activities of the licensees, including requirements for indemnifying and holding the state harmless for such damage. The task force shall utilize, to the maximum extent possible, recent reports to the legislature from the department of ecology and the department of health on these and related topics. The report of the task force shall, at a minimum, address the following:

(a) The risk to the state from the activities engaged in by the licensees and permittees;

(b) Possible modifications to existing requirements under state law for regulated persons to indemnify and hold the state harmless from damage arising from their activities, including limitations on the amounts of such requirements, limitations on the extent of liability to reflect the degree of fault, and exemptions from such requirements for certain categories of licensees or permittees;

(c) The availability and cost of liability insurance for the activities of licensees and permittees;

(d) The availability and cost of, and the potential for an active role by the state in obtaining from licensees or permittees, forms of financial assurance or guarantees other than liability insurance; and

(e) Existing or anticipated federal insurance requirements for such activities.

The report shall contain recommendations or alternatives for legislative action.

Passed the Senate March 13, 1991.

Passed the House April 11, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 40

[Substitute Senate Bill 5003]

ADULT FAMILY HOMES—OPERATION WITHOUT LICENSE

Effective Date: 7/28/91

AN ACT Relating to adult family homes; adding new sections to chapter 70.128 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 70.128 RCW to read as follows:

A person operating or maintaining an adult family home without a license under this chapter is guilty of a misdemeanor. Each day of a continuing violation after conviction is considered a separate offense.

NEW SECTION. Sec. 2. A new section is added to chapter 70.128 RCW to read as follows:

Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against a person to restrain or prevent the operation or maintenance of an adult family home without a license under this chapter.

NEW SECTION. Sec. 3. A new section is added to chapter 70.128 RCW to read as follows:

The department may commence an action in superior court to enjoin the operation of an adult family home if it finds that conditions there constitute an imminent danger to residents.

Passed the Senate March 19, 1991.

Passed the House April 11, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 41

[Senate Bill 5221]

MOTOR CARRIERS—TRANSPORTATION CONTRACTS TO ACCOMPANY PERMIT APPLICATIONS

Effective Date: 7/28/91

AN ACT Relating to the requirement that motor carriers provide original or duly verified photocopies of all transportation contracts when applying for permits; and amending RCW 81.80.080.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 81.80.080 and 1961 c 14 s 81.80.080 are each amended to read as follows:

Application for permits shall be made to the commission in writing and shall state the ownership, financial condition, equipment to be used and physical property of the applicant, the territory or route or routes in or over which the applicant proposes to operate, the nature of the transportation to be engaged in and such other information as the commission may require, and in case such application is that of a "contract carrier" shall have attached thereto (~~the original or duly verified copies~~) photocopies of all contracts to furnish transportation covered by such application.

Passed the Senate February 15, 1991.

Passed the House April 10, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 42

[Substitute Senate Bill 5450]

BEER—REFERENCES TO PASTEURIZATION REMOVED FROM LICENSING STATUTES

Effective Date: 7/28/91

AN ACT Relating to pasteurization in relation to licenses for the sale of beer; and amending RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.24.320 and 1987 c 458 s 11 are each amended to read as follows:

There shall be a beer retailer's license to be designated as a class A license to sell beer at retail, for consumption on the premises and to sell (~~unpasteurized~~) beer for consumption off the premises: PROVIDED, HOWEVER, That (~~unpasteurized~~) beer (~~so~~) sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler of not less than seven and three-fourths gallons: AND PROVIDED FURTHER, That (~~unpasteurized~~) beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the

tap by the retailer at the time of sale; such license to be issued only to hotels, restaurants, drug stores or soda fountains, dining places on boats and airplanes, to clubs, and at sports arenas or race tracks during recognized professional athletic events. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

| Cities and towns | Fee |
|------------------|--------|
| Less than 20,000 | \$ 205 |
| 20,000 or over | \$ 355 |

The annual fee for such license, if issued outside of cities and towns, shall be two hundred five dollars: PROVIDED, HOWEVER, That the annual license fee for such license, if issued to dining places on vessels not exceeding one thousand gross tons, plying on inland waters of the state of Washington on regular schedules, shall be two hundred five dollars.

Sec. 2. RCW 66.24.330 and 1987 c 458 s 12 are each amended to read as follows:

There shall be a beer retailer's license to be designated as a class B license to sell beer at retail, for consumption on the premises and to sell ((unpasteurized)) beer for consumption off the premises: PROVIDED, HOWEVER, That ((unpasteurized)) beer ((so)) sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler of not less than seven and three-fourths gallons: AND PROVIDED FURTHER, That ((unpasteurized)) beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale; such license to be issued only to a person operating a tavern. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

| Cities and towns | Fee |
|------------------|--------|
| Less than 20,000 | \$ 205 |
| 20,000 or over | \$ 355 |

The annual fee for such license, if issued outside of cities and towns, shall be two hundred five dollars.

Sec. 3. RCW 66.24.350 and 1981 1st ex.s. c 5 s 40 are each amended to read as follows:

There shall be a beer retailer's license to be designated as class D license to sell ((pasteurized)) beer by the opened bottle at retail, for consumption upon the premises only, such license to be issued to hotels, restaurants, dining places on boats and aeroplanes, clubs, drug stores, or soda fountains, and such other places where the sale of beer is not the principal business conducted; fee one hundred twenty-five dollars per annum.

Sec. 4. RCW 66.24.360 and 1987 c 46 s 1 are each amended to read as follows:

There shall be a beer retailer's license to be designated as class E license to sell ((pasteurized)) beer at retail in bottles and original packages, not to be consumed upon the premises where sold, at any store other than the state liquor stores(;;). Licensees holding only an E license may not sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the license is seventy-five dollars ((per annum)) for each store: PROVIDED, That a holder of a class A or a class B license shall be entitled to the privileges permitted in this section by paying an annual fee of twenty-five dollars for each store. Licensees under this section whose business is primarily the sale of beer and/or wine at retail may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section shall be subject to RCW 66.28.010 and 66.28-.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or wholesaler of liquor.

For the purpose of this section, "((pasteurized)) beer" includes, in addition to the usual and customary meaning, bottle conditioned beer which has been fermented partially or completely in the container in which it is sold to the retail customer and which may contain residual active yeast. The bottles and original packages in which such bottle conditioned beer may be sold under this section shall not exceed one hundred seventy ounces in capacity.

Passed the Senate March 13, 1991.

Passed the House April 11, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 43

[Senate Bill 5586]

STATE MILITIA CODE—TECHNICAL CORRECTIONS

Effective Date: 7/28/91

AN ACT Relating to technical corrections to the code governing the state militia; and amending RCW 38.04.010, 38.12.200, 38.16.030, 38.24.010, 38.38.132, 38.38.260, 38.38.404, 38.38.564, 38.40.110, 38.44.020, 38.44.030, 38.44.040, 38.44.050, and 38.44.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 38.04.010 and 1989 c 19 s 1 are each amended to read as follows:

When used in this ((act)) title, the following words, terms, phrases shall have the following meaning:

The word "militia" shall mean the military forces provided for in the Constitution and laws of the state of Washington.

The term "organized militia" shall be the general term to include both state and national guard and whenever used applies equally to all such organizations.

The term "national guard" shall mean that part of the military force of the state that is organized, equipped and federally recognized under the provisions of the national defense act of the United States, and, in the event the national guard is called into federal service or in the event the state guard or any part or individual member thereof is called into active state service by the commander-in-chief, the term shall also include the "Washington state guard" or any temporary organization set up in times of emergency to replace either the "national guard" or "state guard" while in actual service of the United States.

The term "state guard" shall mean that part of the military forces of the state that is organized, equipped, and recognized under the provisions of the State Defense Forces Act of the United States (32 U.S.C. Sec. 109, as amended).

The term "active state service" or "active training duty" shall be construed to be any service on behalf of the state, or at encampments whether ordered by state or federal authority or any other duty requiring the entire time of any organization or person except when called or drafted into the federal service by the president of the United States.

The term "inactive duty" shall include periods of drill and such other training and service not requiring the entire time of the organization or person, as may be required under state or federal laws, regulations, or orders, including travel to and from such duty.

The terms "in service of United States" and "not in service of United States" as used herein shall be understood to mean the same as such terms when used in the national defense act of congress and amendments thereto.

The term "military" refers to any or all of the armed forces.

The term "armory" refers to any state-owned building, warehouse, vehicle storage compound, organizational maintenance shop or other facility and the lands appurtenant thereto used by the Washington national guard for the storage and maintenance of arms or military equipment or the administration or training of the organized militia.

The term "member" refers to a soldier or airman of the organized militia.

Sec. 2. RCW 38.12.200 and 1989 c 19 s 22 are each amended to read as follows:

Every commissioned officer of the organized militia of Washington shall, within sixty days from the date of the order whereby he or she shall have been appointed, provide at the officer's own expense(~~(,with)~~) the uniform and equipment prescribed by the governor for his or her rank and assignment.

There shall be audited and may be paid, at the option of the adjutant general, to each properly uniformed and equipped officer of the active list of the organized militia of Washington, not in federal service an initial uniform allowance of one hundred dollars and annually thereafter for each twelve months state service an additional uniform allowance of fifty dollars,

subject to such regulations as the commander-in-chief may prescribe to be audited and paid upon presentation of proper voucher.

Sec. 3. RCW 38.16.030 and 1989 c 19 s 32 are each amended to read as follows:

The inactive national guard of this state shall respectively be organized by the governor in regulations in conformance with the laws, rules and regulations of the United States. It shall consist of such organizations, officers and enlisted men as the governor shall prescribe. No commissioned officer shall be transferred or furloughed to the inactive national guard (~~reserve~~) without the officer's written consent, except as otherwise expressly provided by law. Any officer of the inactive national guard may be restored to the active list by order of the governor, subject to the same examination as in the case of an original appointment to his or her rank, and in such event his or her service in the inactive national guard shall not be counted in computing total length of service for relative seniority.

Sec. 4. RCW 38.24.010 and 1989 c 19 s 36 are each amended to read as follows:

All bills, claims and demands for military purposes shall be certified or verified and audited in the manner prescribed by regulations promulgated by the governor and shall be paid by the state treasurer from funds available for that purpose. In all cases where the organized militia, or any part of the organized militia, is called into the service of the state to execute or enforce the laws or in case of war, riot, insurrection, invasion, breach of the peace, ~~((to execute or enforce the laws,))~~ public disaster, or the imminent danger of the occurrence of any of these events, warrants for allowed pay and expenses for such services or compensation for injuries or death shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund not otherwise appropriated. All such warrants shall be the obligation of the state and shall bear interest at the legal rate from the date of their presentation for payment.

Sec. 5. RCW 38.38.132 and 1989 c 48 s 15 are each amended to read as follows:

(1) Under such regulations as the governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the organized militia under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized

hereunder. If authorized by regulations of the governor, a commanding officer exercising general court-martial jurisdiction or an officer of general rank in command may delegate powers under this section to a principal assistant.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(a) Upon officers of his or her command:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive duty or drill days;

(ii) If imposed by an officer exercising general court-martial jurisdiction or an officer of general rank in command:

(A) Forfeiture of up to thirty days' pay, but not more than fifteen days' pay per month;

(B) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive drill or duty days;

(C) Detention of up to forty-five days' pay, but not more than fifteen days' pay per month;

(b) Upon other personnel of his or her command:

(i) If imposed upon a person attached to or embarked in a vessel, confinement for not more than three consecutive days;

(ii) Forfeiture of not more than seven days' pay;

(iii) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(iv) Extra duties, including fatigue or other duties for not more than fourteen duty or drill days, which need not be consecutive, and for not more than two hours per day, holidays included;

(v) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(vi) Detention of not more than fourteen days' pay;

(vii) If imposed by an officer of the grade of major or above:

(A) The punishment authorized in subsection (2)(b)(i) of this section;

(B) Forfeiture of up to thirty days' pay, but not more than fifteen days' pay per month;

(C) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(D) Extra duties, including fatigue or other duties, for not more than fourteen drill or duty days, which need not be consecutive, and for not more than two hours per day, holidays included;

(E) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(F) Detention of up to forty-five days' pay, but not more than fifteen days' pay per month.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. Extra duties and restriction may not be combined to run consecutively in the maximum amount imposable for each. Whenever any such punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment.

(3) An officer in charge may impose upon enlisted members assigned to the unit of which the officer is in charge such of the punishment authorized under subsection (2)(b) of this section as the governor may specifically prescribe by regulation.

(4) The officer who imposes the punishment authorized in subsection (2) of this section, or a successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (2) of this section, whether or not executed. In addition, the officer may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. The officer may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating extra duties to restriction, the ~~((mitigated punishment))~~ restriction shall not be ((greater) longer than the ((amount of the forfeiture)) number of hours of extra duty that may have been imposed. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(5) A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (a) Forfeiture of more than seven days' pay;
- (b) Reduction of one or more pay grades from the fourth or a higher pay grade;
- (c) Extra duties for more than ten days;
- (d) Restriction for more than ten days; or
- (e) Detention of more than fourteen days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2) of this section.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The governor may by regulation prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

Sec. 6. RCW 38.38.260 and 1989 c 48 s 27 are each amended to read as follows:

(1) (a) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The governor shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(b) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel or defense counsel detailed for a general court-martial:

(a) Must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a federal court or of the highest court of a state, or must be a member of the bar of a federal court or of the highest court of a state; and

(b) Must be certified as competent to perform such duties by the state judge advocate.

(3) In the case of a special court-martial:

(a) The accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under (~~RCW 38-38-260~~) subsection (2) of this section unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(b) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(c) If the trial counsel is a judge advocate or a member of the bar of a federal court or the highest court of a state, the defense counsel detailed by the convening authority must be one of the foregoing.

Sec. 7. RCW 38.38.404 and 1989 c 48 s 44 are each amended to read as follows:

(1) If an accused arraigned before a court-martial makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(2) With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as ~~((through))~~ though the accused had pleaded not guilty.

Sec. 8. RCW 38.38.564 and 1989 c 48 s 57 are each amended to read as follows:

(1) Upon the final review of a sentence of a general court-martial, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate, ~~((as the case may be,))~~ and before the state judge advocate.

(2) Upon the request of an accused entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the organized militia and who has the qualifications prescribed in RCW 38.38.260, if available, to represent the accused before the reviewing authority, before the staff judge advocate, and before the state judge advocate, in the review of cases specified in subsection (1) of this section.

(3) If provided by the accused, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the staff judge advocate, and before the state judge advocate.

Sec. 9. RCW 38.40.110 and 1989 c 19 s 52 are each amended to read as follows:

No club, society, association, corporation, employer, or organization shall by any constitution, rule, bylaws, resolution, vote or regulation, or otherwise, discriminate against or refuse to hire, employ, or reemploy any member of the organized militia of Washington because of his or her membership in said organized militia. Any person or persons, club, society, association, employer, corporation, or organization, violating or aiding, abetting, or assisting in the violation of any provision of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding one hundred dollars and in addition thereto shall forfeit the right to

do business for a period of thirty days. Any person who has been discriminated against in violation of this section shall have a civil cause of action for damages.

Sec. 10. RCW 38.44.020 and 1989 c 19 s 56 are each amended to read as follows:

Persons making an enrollment under (~~RCW 38.20.040 and 38.44.020 through 38.44.060~~) this chapter shall, at the time of making same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to the enrollee personally or by leaving it with some person of suitable age and discretion at his or her place of business or residence, or by mailing such notice to him or her at the enrollee's last known place of residence, and shall make a return under oath of such service to accompany the copy of the enrollment filed with the adjutant general. The return shall be prima facie evidence of the facts therein.

Sec. 11. RCW 38.44.030 and 1989 c 19 s 57 are each amended to read as follows:

Whenever an enrollment shall have been ordered under (~~RCW 38.20.040 and 38.44.020 through 38.44.060~~) this chapter, the commanding officers of existing organizations of militia, and the chiefs of all police and fire departments shall make and deliver to the enrolling officer of the county in which such organization and departments are stationed, verified lists in triplicate of the members of their respective commands and departments, and the enrolling officer shall mark "Exempt" opposite the names of all persons so listed, attaching one copy of each such list to each copy of the enrollment. The enrolling officer shall also mark "Exempt" opposite the names of all federal, state and county officers. All other persons claiming exemption must within fifteen days after service upon them of the notice of enrollment make a written verified claim in duplicate of such exemption and file the same in the office of the county auditor, who shall within five days thereafter forward one copy thereof with remarks and recommendations to the adjutant general. Upon the expiration of the time within which any claim of exemption may be filed and received by the adjutant general, the latter shall notify the county auditor of the decision in each case where exemption has been claimed, and the county auditor shall write upon the roll opposite the name of each person whose claim of exemption has been allowed by the adjutant general, the word "Exempt." All those on the roll not marked "Exempt" shall be subject to military duty.

Sec. 12. RCW 38.44.040 and 1989 c 19 s 58 are each amended to read as follows:

If any officer or person, who becomes charged under (~~RCW 38.20.040 and 38.44.020 through 38.44.060~~) this chapter with any duty relating to an enrollment of persons subject to military duty, refuses or neglects to perform the same within the time and substantially in the manner required by law, or if he or she shall knowingly make any false certificate, or if, when acting as county or assistant enrolling officer, he or she shall knowingly or

willfully omit from the roll any person required by (~~RCW 38.20.040 and 38.44.020 through 38.44.060~~) this chapter to be enrolled he or she shall thereby forfeit not less than one hundred nor more than five hundred dollars, to be sued for in the name of the state of Washington by the prosecuting attorney of the county in which such offense shall occur, the amount of the penalty to be determined by the court, and, when recovered, to be paid into the (~~military~~) general fund of the state.

Sec. 13. RCW 38.44.050 and 1989 c 19 s 59 are each amended to read as follows:

Each county enrolling officer shall be allowed the sum of five cents per name enrolled and served with notice of enrollment by the enrolling officer or assistants, to be audited and paid as other military bills out of any moneys in the (~~military~~) general fund (~~(not otherwise)~~) appropriated to the military department, and from such allowance the enrolling officer must pay the assistant or assistants.

Sec. 14. RCW 38.44.060 and 1989 c 19 s 60 are each amended to read as follows:

All civil officers in each county, city and town shall allow persons authorized under (~~RCW 38.20.040 and 38.44.020 through 38.44.060~~) this chapter to make enrollments, at all proper times, to examine their records and take copies thereof or information therefrom. It shall be the duty of every person, under the penalties provided in RCW 38.44.040, upon application of any person legally authorized to make an enrollment, truthfully to state all of the facts within his or her knowledge concerning any individual of whom the enroller shall make inquiry. In event of a violation of this section the enroller shall report the facts to the prosecuting attorney, who shall at once proceed to enforce the penalty.

Passed the Senate March 13, 1991.

Passed the House April 10, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 44

[Substitute Senate Bill 5577]

BOARD OF MEDICAL EXAMINERS

Effective Date: 7/28/91

AN ACT Relating to the board of medical examiners; amending RCW 18.71.015; and adding a new section to chapter 18.71 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.71.015 and 1990 c 196 s 11 are each amended to read as follows:

There is hereby created a board of medical examiners consisting of six individuals licensed to practice medicine in the state of Washington, one individual who is licensed as a physician assistant under chapter 18.71A RCW, and two individuals who are not physicians, to be known as the Washington state board of medical examiners.

The board shall be appointed by the governor. On expiration of the term of any member, the governor shall appoint for a period of five years an individual of similar qualifications to take the place of such member. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been appointed and shall have qualified.

Each member of the board shall be a citizen of the United States, must be an actual resident of this state, and, if a physician, must have been licensed to practice medicine in this state for at least five years.

The board shall meet as soon as practicable after appointment and elect a chair and a vice-chair from its members. Meetings shall be held at least four times a year and at such place as the board shall determine and at such other times and places as the board deems necessary. A majority of the board members serving shall constitute a quorum for the transaction of board business.

It shall require the affirmative vote of a majority of a quorum of the board to carry any motion or resolution, to adopt any rule, or to pass any measure~~((, or to authorize or deny the issuance of any certificate))~~. A majority of the members appointed to a panel of the board shall constitute a quorum for the panel to transact business delegated to it by the board.

Each member of the board shall be compensated in accordance with RCW 43.03.240 and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060. Any such expenses shall be paid from funds appropriated to the department.

Any member of the board may be removed by the governor for neglect of duty, misconduct, or malfeasance or misfeasance in office.

Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor.

NEW SECTION. Sec. 2. A new section is added to chapter 18.71 RCW to read as follows:

The board may adopt rules pursuant to this section authorizing an inactive license status.

(1) An individual licensed pursuant to chapter 18.71 RCW may place his or her license on inactive status. The holder of an inactive license shall not practice medicine and surgery in this state without first activating the license.

(2) The inactive renewal fee shall be established by the secretary pursuant to RCW 43.70.250. Failure to renew an inactive license shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with rules established by the board.

(4) Provisions relating to disciplinary action against a person with a license shall be applicable to a person with an inactive license, except that when disciplinary proceedings against a person with an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed.

Passed the Senate March 13, 1991.

Passed the House April 11, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 45

[Engrossed Senate Bill 5311]

BARE-BOAT CHARTER BOATS

Effective Date: 7/28/91

AN ACT Relating to bare-boat charter boats; and amending RCW 88.04.015 and 88.04.075.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 88.04.015 and 1989 c 295 s 2 are each amended to read as follows:

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

(1) "Department" means the department of labor and industries.

(2) "Carrying passengers or cargo" means the transporting of any person or persons or cargo on a vessel for a fee or other consideration.

(3) "Charter boat" means a vessel or barge operating on inland navigable waters of the state of Washington which is not inspected or licensed by the United States coast guard and over which the United States coast guard does not exercise jurisdiction and which is rented, leased, or chartered to carry more than six persons or cargo.

(4) "Equipment" means a system, part, or component of a vessel as originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or improvement of a system, part, or component of a vessel; an accessory or equipment for, or appurtenance to a vessel; or a marine safety article, accessory, or equipment, including radio equipment, intended for use by a person on board a vessel.

(5) "Inland navigable waters" means all waters within the territorial limits of the state of Washington, shoreward of the navigational demarcation lines dividing the high seas from harbors, rivers, lakes, and other inland waters of the state.

(6) "Operate" means to start or operate any engine which propels a vessel, or to physically control the motion, direction, or speed of a vessel.

(7) "Owner" means a person who claims lawful possession of a vessel by virtue of legal title or an equitable interest in a vessel which entitles that person to possession of the vessel; but does not include charterers and lessees.

(8) "Passenger" means a person carried on board a charter boat except:

- (a) The owner of the vessel or the owner's agent; or
- (b) The captain and members of the vessel's crew.

(9) "Operator's license" means a vessel operator's license issued by the United States coast guard or department for the specified tonnage and route of the vessel.

(10) "Vessel" means every description of motorized watercraft, other than a bare-boat charter boat, seaplane, or sailboat, used or capable of being used to transport more than six passengers or cargo on water for rent, lease, or hire.

(11) "Bare-boat charter" means the unconditional lease, rental, or charter of a boat by the owner, or his or her agent, to a person who by written agreement, or contract, assumes all responsibility and liability for the operation, navigation, and provisioning of the boat during the term of the agreement or contract, except when a captain or crew is required or provided by the owner or owner's agents to be hired by the charterer to operate the vessel.

Sec. 2. RCW 88.04.075 and 1989 c 295 s 11 are each amended to read as follows:

The provisions of this chapter shall not apply to:

(1) A vessel that is a charter boat but is being used by the documented or registered owner of the charter boat exclusively for the owner's own non-commercial or personal pleasure purposes;

(2) A vessel owned by a person or corporate entity which is donated and used by a person or nonprofit organization to transport passengers for charitable or noncommercial purposes, regardless of whether consideration is directly or indirectly paid to the owner;

(3) A vessel that is rented, leased, or hired by an operator to transport passengers for noncommercial or personal pleasure purposes; ((or))

(4) A vessel used exclusively for, or incidental to, an educational purpose; or

(5) A bare-boat charter boat.

Passed the Senate March 7, 1991.

Passed the House April 9, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 46

[Senate Bill 5220]

RAILROAD CROSSING INSPECTION FEES

Effective Date: 7/28/91

AN ACT Relating to railroad crossing inspection fees; and amending RCW 81.54.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 81.54.030 and 1961 c 14 s 81.54.030 are each amended to read as follows:

Every person operating any logging railroad or industrial railway shall, prior to July 1st of each year, file with the commission a statement showing the number of, and location, by name of highway, quarter section, section, township, and range of all crossings on his line and pay with the filing a fee ((not to exceed ten dollars)) for each crossing so reported. The commission shall, by order, fix the exact fee based on the cost of rendering such inspection service. All fees collected shall be deposited in the state treasury to the credit of the public service revolving fund. Intersections having one or more tracks shall be treated as a single crossing. Tracks separated a distance in excess of one hundred feet from the nearest track or group of tracks shall constitute an additional crossing. Where two or more independently operated railroads cross each other or the same highway intersection, each independent track shall constitute a separate crossing.

Every person failing to make the report and pay the fees required, shall be guilty of a misdemeanor and in addition be subject to a penalty of twenty-five dollars for each day that the fee remains unpaid after it becomes due.

Passed the Senate March 6, 1991.

Passed the House April 10, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 47

[Substitute Senate Bill 5381]

VETERINARIANS—AUTHORITY TO DISPENSE LEGEND DRUGS PRESCRIBED BY ANOTHER VETERINARIAN

Effective Date: 7/28/91

AN ACT Relating to veterinary medicine; and adding a new section to chapter 18.92 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 18.92 RCW to read as follows:

A veterinarian licensed under this chapter may dispense veterinary legend drugs prescribed by other veterinarians licensed under this chapter, so long as, during any year, the total drugs so dispensed do not constitute more than five percent of the total dosage units of legend drugs the veterinarian dispenses and the veterinarian maintains records of his or her dispensing activities consistent with the requirements of chapters 18.64, 69.04, 69.41, and 69.50 RCW. For purposes of this section, a "veterinary legend drug" is a legend drug, as defined in chapter 69.41 RCW, which is either: (1) Restricted to use by licensed veterinarians by any law or regulation of the federal government, or (2) designated by rule by the state board of pharmacy as being a legend drug that one licensed veterinarian may dispense for another licensed veterinarian under this section.

Passed the Senate March 13, 1991.

Passed the House April 10, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 48

[Senate Bill 5391]

UTILITIES AND TRANSPORTATION COMMISSION—EMERGENCY ADJUDICATIONS—DESIGNATION OF PERSON TO PRESIDE

Effective Date: 7/28/91

AN ACT Relating to emergency adjudications of the utilities and transportation commission; and amending RCW 80.01.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 80.01.060 and 1981 c 67 s 35 are each amended to read as follows:

The commission shall have the power to request the appointment of administrative law judges under chapter 34.12 RCW when it deems such action necessary for its general administration. Such administrative law judges shall have power to administer oaths, to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony, to examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules (~~and regulations~~) as the commission may adopt. The commission may designate persons by rule to preside and enter final orders in emergency adjudications under RCW 34.05.479.

Passed the Senate March 13, 1991.

Passed the House April 11, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 49

[Senate Bill 5434]

RAILROADS—REPEAL OF STATE REGULATIONS

Effective Date: 7/28/91

AN ACT Relating to state and federal regulation of railroads; repealing RCW 81.34.010, 81.34.020, 81.34.030, 81.34.040, 81.34.050, 81.34.060, 81.34.070, 81.34.080, 81.34.090, 81.34.100, and 81.34.110; and decodifying RCW 81.34.900.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The following acts or parts of acts are each repealed:

- (1) RCW 81.34.010 and 1984 c 143 s 10;
- (2) RCW 81.34.020 and 1984 c 143 s 11;
- (3) RCW 81.34.030 and 1984 c 143 s 12;
- (4) RCW 81.34.040 and 1984 c 143 s 13;
- (5) RCW 81.34.050 and 1984 c 143 s 14;
- (6) RCW 81.34.060 and 1984 c 143 s 15;
- (7) RCW 81.34.070 and 1984 c 143 s 16;
- (8) RCW 81.34.080 and 1984 c 143 s 17;
- (9) RCW 81.34.090 and 1984 c 143 s 18;
- (10) RCW 81.34.100 and 1984 c 143 s 19; and
- (11) RCW 81.34.110 and 1984 c 143 s 20.

NEW SECTION. Sec. 2. RCW 81.34.900 is decodified.

Passed the Senate March 13, 1991.

Passed the House April 11, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 50

[Senate Bill 5630]

LICENSES AND PERMITS ISSUED BY WILDLIFE AND FISHERIES DEPARTMENTS AND BY PARKS AND RECREATION COMMISSION ARE NOT FEES

Effective Date: 7/28/91

AN ACT Relating to permits or licenses issued by the department of wildlife, department of fisheries, or the state parks and recreation commission; and amending RCW 4.24.210.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.210 and 1980 c 111 s 1 are each amended to read as follows:

(1) Any public or private landowners or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and

lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users: PROVIDED, That any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to ten dollars for the cutting, gathering, and removing of firewood from the land: PROVIDED FURTHER, That nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted: PROVIDED FURTHER, That nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance: AND PROVIDED FURTHER, That the usage by members of the public is permissive and does not support any claim of adverse possession.

(2) For purposes of this section, a license or permit issued for state-wide use under authority of chapter 43.51 RCW, Title 75, or Title 77 RCW is not a fee.

Passed the Senate March 13, 1991.

Passed the House April 10, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 51

[Substitute House Bill 2187]

BUSINESS AND OCCUPATION TAX AND SALES TAX EXEMPTIONS FOR AUCTIONS CONDUCTED BY NONPROFIT ORGANIZATIONS

Effective Date: 4/26/91

AN ACT Relating to auctions conducted by nonprofit organizations; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 82.04 RCW to read as follows:

(1) This chapter does not apply to amounts received by a public benefit nonprofit organization from sales at an auction that the organization conducts or participates in, if:

(a) The organization does not conduct or participate in more than one auction per year; and

(b) The auction does not extend over a period of more than two days.

(2) As used in this section, "public benefit nonprofit organization" means an organization exempt from tax under section 501(c)(3) of the federal internal revenue code, as in effect on January 1, 1991, or a subsequent date provided by the director by rule consistent with the purpose of this section.

NEW SECTION. Sec. 2. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales made by a public benefit nonprofit organization at an auction that the organization conducts or participates in, if:

(a) The organization does not conduct or participate in more than one auction per year; and

(b) The auction does not extend over a period of more than two days.

(2) As used in this section, "public benefit nonprofit organization" means an organization exempt from tax under section 501(c)(3) of the federal internal revenue code, as in effect on January 1, 1991, or a subsequent date provided by the director by rule consistent with the purpose of this section.

NEW SECTION. Sec. 3. 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 shall take effect immediately.

Passed the House April 17, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor April 26, 1991.

Filed in Office of Secretary of State April 26, 1991.

CHAPTER 52

[Substitute Senate Bill 5928]

**PROPERTY TAX—INTEREST AND PENALTIES NOT TO BE CHARGED ON
DELINQUENT 1991 TAXES OF OPERATION DESERT SHIELD AND DESERT
STORM PERSONNEL**

Effective Date: 4/26/91

AN ACT Relating to interest and penalties on delinquent 1991 taxes on personal residences owned by military personnel; amending RCW 84.56.020; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.56.020 and 1988 c 222 s 30 are each amended to read as follows:

(1) The county treasurer shall be the receiver and collector of all taxes extended upon the tax rolls of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his or her county. All taxes upon real and personal property made payable by the provisions of this title shall be due and payable to the treasurer as aforesaid on or before the thirtieth day of April and shall be delinquent after that date: PROVIDED, That each tax statement shall include a notice that checks for payment of taxes may be made payable to "Treasurer of County" or other appropriate office, but tax statements shall not include any suggestion that checks may be made payable to the name of the individual holding the office of treasurer nor any other individual: PROVIDED FURTHER, That when the total amount of tax on personal property or on any lot, block or tract of real property payable by one person is thirty dollars or more, and if one-half of such tax be paid on or before the said thirtieth day of April, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date: PROVIDED FURTHER, That when the total amount of tax on any lot, block or tract of real property payable by one person is thirty dollars or more, and if one-half of such tax be paid after the thirtieth day of April but before the thirty-first day of October, together with the applicable interest and penalty on the full amount of such tax, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

(2) Delinquent taxes under this section are subject to interest at the rate of twelve percent per annum computed on a monthly basis from the date of delinquency until paid. Interest shall be calculated at the rate in effect at the time of payment of the tax, regardless of when the taxes were first delinquent. In addition, delinquent taxes under this section are subject to penalties as follows:

~~((1))~~ (a) A penalty of three percent shall be assessed on the amount of tax delinquent on May 31st of the year in which the tax is due.

~~((2))~~ (b) An additional penalty of eight percent shall be assessed on the total amount of tax delinquent on November 30th of the year in which the tax is due.

~~((3))~~ (c) Penalties under this section shall not be assessed on taxes that were first delinquent prior to 1982.

(3) Subsection (2) of this section notwithstanding, no interest or penalties may be assessed for the period April 30, 1991, through December 31, 1991, on delinquent 1991 taxes which are imposed on personal residences owned by military personnel who participated in the situation known as "Operation Desert Shield," "Operation Desert Storm," or any following operation from August 2, 1990, to a date specified by an agency of the federal government as the end of such operations.

(4) For purposes of this chapter, "interest" means both interest and penalties.

(5) All collections of interest on delinquent taxes shall be credited to the county current expense fund; but the cost of foreclosure and sale of real property, and the fees and costs of distraint and sale of personal property, for delinquent taxes, shall, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and shall be used by the county treasurer as a revolving fund to defray the cost of further foreclosure, distraint and sale for delinquent taxes without regard to budget limitations.

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 shall take effect immediately.

Passed the Senate March 15, 1991.

Passed the House April 15, 1991.

Approved by the Governor April 26, 1991.

Filed in Office of Secretary of State April 26, 1991.

CHAPTER 53

[Senate Bill 5042]

COMMISSION ON EFFICIENCY AND ACCOUNTABILITY IN GOVERNMENT EXTENDED

Effective Date: 7/28/91

AN ACT Relating to the commission on efficiency and accountability; and amending 1987 c 480 s 6 (uncodified).

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 1987 c 480 s 6 (uncodified) are each [is] amended to read as follows:

This act shall expire December 31, (~~(+1991)~~) 1995.

Passed the Senate March 18, 1991.

Passed the House April 19, 1991.

Approved by the Governor April 29, 1991.

Filed in Office of Secretary of State April 29, 1991.

CHAPTER 54

[Engrossed Substitute House Bill 1938]
STATE-WIDE 911 ENHANCED SERVICE
Effective Date: Subject to Referendum

AN ACT Relating to state-wide implementation of enhanced 911; amending RCW 38-.52.030, 9.73.070, 82.14B.010, 82.14B.020, 82.14B.030, 82.14B.040, 82.14B.090, and 82.14B-.100; adding new sections to chapter 38.52 RCW; repealing RCW 80.36.550, 80.36.5501, and 82.14B.080; and providing for submission of this act to a vote of the people.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that a state-wide emergency communications network of enhanced 911 telephone service, which allows an immediate display of a caller's identification and location, would serve to further the safety, health, and welfare of the state's citizens, and would save lives. The legislature, after reviewing the study outlined in section 1, chapter 260, Laws of 1990, further finds that state-wide implementation of enhanced 911 telephone service is feasible and should be accomplished as soon as practicable.

Sec. 2. RCW 38.52.030 and 1986 c 266 s 25 are each amended to read as follows:

(1) The director may employ such personnel and may make such expenditures within the appropriation therefor, or from other funds made available for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.

(2) The director, subject to the direction and control of the governor, shall be responsible to the governor for carrying out the program for emergency management of this state. The director shall coordinate the activities of all organizations for emergency management within the state, and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter, as may be prescribed by the governor.

(3) The director shall develop and maintain a comprehensive, all-hazard emergency plan for the state which shall include an analysis of the natural and man-caused hazards which could affect the state of Washington, and shall include the procedures to be used during emergencies for coordinating local resources, as necessary, and the resources of all state agencies, departments, commissions, and boards. The comprehensive, all-hazard emergency plan authorized under this subsection may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack. This plan shall be known as the comprehensive emergency management plan.

(4) In accordance with the comprehensive emergency management plans and the programs for the emergency management of this state, the director shall procure supplies and equipment, institute training programs and public information programs, and shall take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(5) The director shall make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the capabilities of the state for emergency management, and shall plan for the most efficient emergency use thereof.

(6) The director may appoint a communications coordinating committee consisting of six to eight persons with the director, or his or her designee, as chairman thereof. Three of the members shall be appointed from qualified, trained and experienced telephone communications administrators or engineers actively engaged in such work within the state of Washington at the time of appointment, and three of the members shall be appointed from qualified, trained and experienced radio communication administrators or engineers actively engaged in such work within the state of Washington at the time of appointment. This committee shall advise the director on all aspects of the communications and warning systems and facilities operated or controlled under the provisions of this chapter.

(7) The director, through the state enhanced 911 coordinator, shall coordinate and facilitate implementation and operation of a state-wide enhanced 911 emergency communications network.

(8) The director shall appoint a state coordinator of search and rescue operations to coordinate those state resources, services and facilities (other than those for which the state director of aeronautics is directly responsible) requested by political subdivisions in support of search and rescue operations, and on request to maintain liaison with and coordinate the resources, services, and facilities of political subdivisions when more than one political subdivision is engaged in joint search and rescue operations.

~~((8))~~ (9) The director, subject to the direction and control of the governor, shall prepare and administer a state program for emergency assistance to individuals within the state who are victims of a natural or man-made disaster, as defined by RCW 38.52.010(6). Such program may be integrated into and coordinated with disaster assistance plans and programs of the federal government which provide to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of assistance to individuals affected by a disaster. Further, such program may include, but shall not be limited to, grants, loans, or gifts of services, equipment, supplies, materials, or funds of the state, or any political subdivision thereof, to individuals who,

as a result of a disaster, are in need of assistance and who meet standards of eligibility for disaster assistance established by the department of social and health services: PROVIDED, HOWEVER, That nothing herein shall be construed in any manner inconsistent with the provisions of Article VIII, section 5 or section 7 of the Washington state Constitution.

~~((9))~~ (10) The director shall appoint a state coordinator for radioactive and hazardous waste emergency response programs. The coordinator shall consult with the state radiation control officer in matters relating to radioactive materials. The duties of the state coordinator for radioactive and hazardous waste emergency response programs shall include:

(a) Assessing the current needs and capabilities of state and local radioactive and hazardous waste emergency response teams on an ongoing basis;

(b) Coordinating training programs for state and local officials for the purpose of updating skills relating to emergency response;

(c) Utilizing appropriate training programs such as those offered by the federal emergency management agency, the department of transportation and the environmental protection agency; and

(d) Undertaking other duties in this area that are deemed appropriate by the director.

NEW SECTION. Sec. 3. By December 31, 1998, each county, singly or in combination with adjacent counties, shall implement district-wide, county-wide, or multicounty-wide enhanced 911 emergency communications systems so that enhanced 911 is available throughout the state. The county shall provide funding for the enhanced 911 communication system in the county or district in an amount equal to the amount the maximum tax under RCW 82.14B.030(1) would generate in the county or district or the amount necessary to provide full funding of the system in the county or district, whichever is less. The state enhanced 911 coordination office established by section 4 of this act shall assist and facilitate enhanced 911 implementation throughout the state.

NEW SECTION. Sec. 4. A state enhanced 911 coordination office, headed by the state enhanced 911 coordinator, is established in the emergency management division of the department. Duties of the office shall include:

(1) Coordinating and facilitating the implementation and operation of enhanced 911 emergency communications systems throughout the state;

(2) Seeking advice and assistance from, and providing staff support for, the enhanced 911 advisory committee; and

(3) Recommending to the utilities and transportation commission by August 31st of each year the level of the state enhanced 911 excise tax for the following year.

NEW SECTION. Sec. 5. The enhanced 911 advisory committee is created to advise and assist the state enhanced 911 coordinator in coordinating and facilitating the implementation and operation of enhanced 911 throughout the state. The director shall appoint members of the committee who represent diverse geographical areas of the state and include state residents who are members of the national emergency number association, the associated public communications officers northwest, the Washington state fire chiefs association, the Washington association of sheriffs and police chiefs, the Washington state council of fire fighters, the Washington state council of police officers, the Washington ambulance association, the state fire policy board, the Washington fire commissioners association, the Washington state patrol, the association of Washington cities, the Washington state association of counties, the utilities and transportation commission or commission staff, and representatives of large and small local exchange telephone companies. This section shall expire December 31, 2000.

NEW SECTION. Sec. 6. The enhanced 911 account is created in the state treasury. All receipts from the state enhanced 911 excise tax imposed by RCW 82.14B.030 shall be deposited into the account. Moneys in the account shall be used only to help implement and operate enhanced 911 state-wide. The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, shall specify by rule the purposes for which moneys may be expended from this account.

NOTE: Sections 7 & 8 were not included in the referendum. They have been delivered to the Governor and are not a part of this chapter.

Sec. 9. RCW 82.14B.010 and 1981 c 160 s 1 are each amended to read as follows:

The legislature finds that the state and counties should be provided with an additional revenue source to fund enhanced 911 emergency ((service)) communication systems throughout the state on a multicounty, county-wide, or district-wide basis. The legislature further finds that the most efficient and appropriate method of deriving additional revenue for this purpose is to ~~((vest the legislative authorities of the counties, subject to voter approval, with the power to))~~ impose an excise tax on the use of ~~((telephone))~~ switched access lines.

Sec. 10. RCW 82.14B.020 and 1981 c 160 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Emergency services communication system" means a multicounty, county-wide, or district-wide radio or landline communications network, including an enhanced 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(2) "~~((Telephone))~~ Enhanced 911 telephone system" means a public telephone system consisting of a network, data base, and on-premises equipment that is accessed by dialing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 calls to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 calls at the appropriate public safety answering point.

(3) "Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the ~~((telephone))~~ local exchange company's switching office.

~~((3))~~ (4) "~~((Telephone))~~ Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

Sec. 11. RCW 82.14B.030 and 1981 c 160 s 3 are each amended to read as follows:

(1) The legislative authority of a county may impose ~~((an))~~ a county enhanced 911 excise tax on the use of ~~((telephone))~~ switched access lines in an amount not exceeding fifty cents per month for each ~~((telephone))~~ switched access line. The amount of tax shall be uniform for each ~~((telephone))~~ switched access line. ~~((This tax must be approved by a favorable vote of at least three-fifths of the electors thereof voting on the proposition, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in the county at the last preceding general election when the number of electors voting on the proposition does not exceed forty per centum of the total votes cast in the county in the last preceding general election; or by a majority of at least three-fifths of the electors thereof voting on the proposition when the number of electors voting on the proposition exceeds forty per centum of the total votes cast in the county in the last preceding general election. This tax may be imposed for six years without subsequent voter approval. At any election held under this section, the ballot title of the proposition shall state the maximum monthly rate of the proposed tax which may be imposed by the county legislative authority. The actual rate of tax to be imposed shall be set by ordinance, which rate shall not exceed the maximum monthly rate approved by the electors.~~

~~No tax may be imposed under this section for more than one year before the expected implementation date of an emergency services communication system. The power granted under this section is in addition to any other authority which counties have to fund emergency services communication systems:))~~ Each county shall provide notice of such tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due.

(2) Beginning January 1, 1992, a state enhanced 911 excise tax is imposed on all switched access lines in the state. For 1992, the tax shall be set at a rate of twenty cents per month for each switched access line. Until December 31, 1998, the amount of tax shall not exceed twenty cents per month for each switched access line and thereafter shall not exceed ten cents per month for each switched access line. The tax shall be uniform for each switched access line. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in section 6 of this act.

(3) By August 31st of each year the state enhanced 911 coordinator shall recommend the level for the next year of the state enhanced 911 excise tax to the utilities and transportation commission. The commission shall by the following October 31st determine the level of the state enhanced 911 excise tax for the following year.

Sec. 12. RCW 82.14B.040 and 1981 c 160 s 4 are each amended to read as follows:

((A county imposing a)) The state enhanced 911 tax and the county enhanced 911 tax ((under)) created in this chapter shall ((require collection of the tax)) be collected from the user by the ((telephone)) local exchange company providing the switched access line. The ((telephone)) local exchange company shall state the amount of the ((tax)) taxes separately on the billing statement which is sent to the user.

Sec. 13. RCW 82.14B.090 and 1987 c 17 s 3 are each amended to read as follows:

An emergency service communication district is authorized to finance and provide an emergency service communication system and ~~((, if authorized by the voters,))~~ to finance the system by imposing the excise tax authorized in RCW 82.14B.030.

Sec. 14. RCW 82.14B.100 and 1987 c 17 s 4 are each amended to read as follows:

RCW 82.14B.040 through 82.14B.060 apply to any emergency service communication district established under RCW 82.14B.070 ~~((through))~~ and 82.14B.090. ~~((A ballot proposition to authorize the excise tax authorized under RCW 82.14B.040 through 82.14B.060 may be submitted to the voters of a proposed emergency service communication district at the same election the ballot proposition creating the district is submitted. The authority to impose the tax shall only exist if both of these ballot propositions are approved.))~~

NEW SECTION. Sec. 15. The following acts or parts of acts are each repealed:

- (1) RCW 80.36.550 and 1990 c 260 s 3;
- (2) RCW 80.36.5501 and 1990 c 260 s 2; and
- (3) RCW 82.14B.080 and 1987 c 17 s 2.

NEW SECTION. Sec. 16. Sections 1 and 3 through 7 of this act are each added to chapter 38.52 RCW.

NEW SECTION. Sec. 17. Sections 1 through 6 and 9 through 16 of this act shall be submitted to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof. The ballot title for this act shall be: "Shall enhanced 911 emergency telephone dialing be provided throughout the state and be funded by a tax on telephone lines?"

Passed the House April 28, 1991.

Passed the Senate April 28, 1991.

Filed in Office of Secretary of State May 1, 1991.

CHAPTER 55

[Engrossed Substitute House Bill 2095]

VETERANS—COUNSELING SERVICES FOR VETERANS AND THEIR DEPENDENTS

Effective Date: 5/3/91

AN ACT Relating to counseling veterans and their dependents; adding new sections to chapter 43.60A RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The department of veterans affairs, to the extent funds are made available, shall: (1) Contract with professional counseling specialists to provide a range of direct treatment services to war-affected state veterans and to those national guard and reservists who served in the Middle East, and their family members; (2) provide additional treatment services to Washington state Vietnam veterans for post traumatic stress disorder, particularly for those veterans whose post traumatic stress disorder has intensified or initially emerged due to the war in the Middle East; (3) provide an educational program designed to train primary care professionals, such as mental health professionals, about the effects of war-related stress and trauma; (4) provide informational and counseling services for the purpose of establishing and fostering peer-support networks throughout the state for families of deployed members of the reserves and the Washington national guard; (5) provide for veterans' families, a referral network of community mental health providers who are skilled in treating deployment stress, combat stress, and post traumatic stress.

NEW SECTION. Sec. 2. The department shall coordinate the programs contained in section 1 of this act with the services offered by the department of social and health services, local mental health organizations, and the federal department of veterans affairs to minimize duplication.

NEW SECTION. Sec. 3. The department of veterans affairs shall give priority in its counseling and instructional programs to treating state veterans located in rural areas of the state, especially those who are members of traditionally underserved minority groups, and women veterans.

NEW SECTION. Sec. 4. The department of veterans affairs shall design its post traumatic stress disorder and combat stress programs and related activities to provide veterans with as much privacy and confidentiality as possible and yet consistent with sound program management.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act are each added to chapter 43.60A RCW.

NEW SECTION. Sec. 6. 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 shall take effect immediately.

Passed the House March 20, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 56

[Substitute Senate Bill 5288]

AMERICAN VETERANS MEMORIAL HIGHWAY

Effective Date: 7/28/91

AN ACT Relating to renaming state route number 90 the American Veterans Memorial Highway; amending RCW 47.17.140; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. In order to create a great memorial and tribute to American veterans, it is proposed that the Washington state portion of Interstate 90 be renamed in their honor, to become the westernmost portion of a memorial highway reaching across the United States.

Sec. 2. RCW 47.17.140 and 1971 ex.s. c 73 s 2 are each amended to read as follows:

A state highway to be known as state route number 90 and designated as the American Veterans Memorial Highway is established as follows:

Beginning at a junction with state route number 5, thence, via the west approach to the Lake Washington bridge in Seattle, in an easterly direction

by way of Mercer Island, North Bend, Snoqualmie pass, Ellensburg, Vantage, Moses Lake, Ritzville, Sprague and Spokane to the Washington-Idaho boundary line.

Passed the Senate March 12, 1991.

Passed the House April 15, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 57

[Senate Bill 5678]

NATIONAL GUARD DAY

Effective Date: 7/28/91

AN ACT Relating to a day of commemoration for the national guard; amending RCW 1.16.050; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the Washington army and air national guard comprise almost nine thousand dedicated men and women who serve the state and nation on a voluntary basis. The legislature also finds that the state of Washington benefits from that dedication by immediate access to well-prepared resources in time of natural disasters and public emergency. The national guard has consistently and frequently responded to state and local emergencies with people and equipment to provide enforcement assistance, medical services, and overall support to emergency management services.

The legislature further declares that an annual day of commemoration should be observed in honor of the achievements, sacrifices, and dedication of the men and women of the Washington army and air national guard.

Sec. 2. RCW 1.16.050 and 1989 c 128 s 1 are each amended to read as follows:

The following are legal holidays: Sunday; the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday of February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the day immediately following Thanksgiving Day; and the twenty-fifth day of December, commonly called Christmas Day.

Employees of the state and its political subdivisions, except employees of school districts and except those nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, shall be entitled to one paid holiday per calendar year in addition to those specified in this section. Each employee of the state or its political subdivisions may select the day on which the employee desires to take the additional holiday provided for herein after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

If any of the above specified state legal holidays are also federal legal holidays but observed on different dates, only the state legal holidays shall be recognized as a paid legal holiday for employees of the state and its political subdivisions except that for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state legal holiday, but in no case both, may be recognized as a paid legal holiday for employees.

Whenever any legal holiday, other than Sunday, falls upon a Sunday, the following Monday shall be the legal holiday.

Whenever any legal holiday falls upon a Saturday, the preceding Friday shall be the legal holiday.

Nothing in this section shall be construed to have the effect of adding or deleting the number of paid holidays provided for in an agreement between employees and employers of political subdivisions of the state or as established by ordinance or resolution of the local government legislative authority.

The legislature declares that the twelfth day of October shall be recognized as Columbus Day but shall not be considered a legal holiday for any purposes.

The legislature declares that the ninth day of April shall be recognized as former prisoner of war recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the twenty-sixth day of January shall be recognized as Washington army and air national guard day but shall not be considered a legal holiday for any purposes.

Passed the Senate April 22, 1991.

Passed the House April 15, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 58

[House Bill 1143]

HONORARY DEGREES—AUTHORIZING COLLEGES AND UNIVERSITIES TO GRANT

Effective Date: 7/28/91

AN ACT Relating to higher education; and amending RCW 28B.50.140, 28B.35.205, and 28B.40.206.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28B.50.140 and 1990 c 135 s 1 are each amended to read as follows:

Each community college board of trustees:

(1) Shall operate all existing community colleges and vocational-technical institutes in its district;

(2) Shall create comprehensive programs of community college education and training and maintain an open-door policy in accordance with the provisions of RCW 28B.50.090(3);

(3) Shall employ for a period to be fixed by the board a college president for each community college, a director for each vocational-technical institute or school operated by a community college, a district president, if deemed necessary by the board, in the event there is more than one college and/or separated institute or school located in the district, members of the faculty and such other administrative officers and other employees as may be necessary or appropriate and fix their salaries and duties. Salary increases shall not exceed the amount or percentage established in the state appropriations act by the legislature as allocated to the board of trustees by the state board for community college education;

(4) May establish, under the approval and direction of the college board, new facilities as community needs and interests demand. However, the authority of community college boards of trustees to purchase or lease major off-campus facilities shall be subject to the approval of the higher education coordinating board pursuant to RCW 28B.80.340(5);

(5) May establish or lease, operate, equip and maintain dormitories, food service facilities, bookstores and other self-supporting facilities connected with the operation of the community college;

(6) May, with the approval of the college board, borrow money and issue and sell revenue bonds or other evidences of indebtedness for the construction, reconstruction, erection, equipping with permanent fixtures, demolition and major alteration of buildings or other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances, for dormitories, food service facilities, and other self-supporting facilities connected with the operation of the community college in accordance

with the provisions of RCW 28B.10.300 through 28B.10.330 where applicable;

(7) May establish fees and charges for the facilities authorized hereunder, including reasonable rules and regulations for the government thereof, not inconsistent with the rules and regulations of the college board; each board of trustees operating a community college may enter into agreements, subject to rules and regulations of the college board, with owners of facilities to be used for housing regarding the management, operation, and government of such facilities, and any board entering into such an agreement may:

(a) Make rules and regulations for the government, management and operation of such housing facilities deemed necessary or advisable; and

(b) Employ necessary employees to govern, manage and operate the same;

(8) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community college programs as specified by law and the regulations of the state college board; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(9) May establish and maintain night schools whenever in the discretion of the board of trustees it is deemed advisable, and authorize classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for community college purposes;

(10) May make rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the community college district;

(11) Shall prescribe, with the assistance of the faculty, the course of study in the various departments of the community college or colleges under its control, and publish such catalogues and bulletins as may become necessary;

(12) May grant to every student, upon graduation or completion of a course of study, a suitable diploma, nonbaccalaureate degree or certificate. The board, upon recommendation of the faculty, may also confer honorary associate of arts degrees upon persons other than graduates of the community college, in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property;

(13) Shall enforce the rules and regulations prescribed by the state board for community college education for the government of community

colleges, students and teachers, and promulgate such rules and regulations and perform all other acts not inconsistent with law or rules and regulations of the state board for community college education as the board of trustees may in its discretion deem necessary or appropriate to the administration of community college districts: **PROVIDED**, That such rules and regulations shall include, but not be limited to, rules and regulations relating to housing, scholarships, conduct at the various community college facilities, and discipline: **PROVIDED, FURTHER**, That the board of trustees may suspend or expel from community colleges students who refuse to obey any of the duly promulgated rules and regulations;

(14) May, by written order filed in its office, delegate to the president or district president any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised in the name of the district board;

(15) May perform such other activities consistent with this chapter and not in conflict with the directives of the college board;

(16) Notwithstanding any other provision of law, may offer educational services on a contractual basis other than the tuition and fee basis set forth in chapter 28B.15 RCW for a special fee to private or governmental entities, consistent with rules and regulations adopted by the state board for community college education: **PROVIDED**, That the whole of such special fee shall go to the college district and be not less than the full instructional costs of such services including any salary increases authorized by the legislature for community college employees during the term of the agreement: **PROVIDED FURTHER**, That enrollments generated hereunder shall not be counted toward the official enrollment level of the college district for state funding purposes;

(17) Notwithstanding any other provision of law, may offer educational services on a contractual basis, charging tuition and fees as set forth in chapter 28B.15 RCW, counting such enrollments for state funding purposes, and may additionally charge a special supplemental fee when necessary to cover the full instructional costs of such services: **PROVIDED**, That such contracts shall be subject to review by the state board for community college education and to such rules as the state board may adopt for that purpose in order to assure that the sum of the supplemental fee and the normal state funding shall not exceed the projected total cost of offering the educational service: **PROVIDED FURTHER**, That enrollments generated by courses offered on the basis of contracts requiring payment of a share of the normal costs of the course will be discounted to the percentage provided by the college;

(18) Shall be authorized to pay dues to any association of trustees that may be formed by the various boards of trustees; such association may expend any or all of such funds to submit biennially, or more often if necessary, to the governor and to the legislature, the recommendations of the

association regarding changes which would affect the efficiency of such association;

(19) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.80.340(4), may participate in higher education centers and consortia that involve any four-year public or independent college or university; and

(20) Shall perform any other duties and responsibilities imposed by law or rule and regulation of the state board.

Sec. 2. RCW 28B.35.205 and 1985 c 370 s 84 are each amended to read as follows:

In addition to all other powers and duties given to them by law, Central Washington University, Eastern Washington University, and Western Washington University are hereby authorized to grant any degree through the master's degree to any student who has completed a program of study and/or research in those areas which are determined by the faculty and board of trustees of the college to be appropriate for the granting of such degree: PROVIDED, That before any degree is authorized under this section it shall be subject to the review and approval of the higher education coordinating board.

The board of trustees, upon recommendation of the faculty, may also confer honorary bachelor's or master's degrees upon persons other than graduates of the institution, in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property.

Sec. 3. RCW 28B.40.206 and 1985 c 370 s 85 are each amended to read as follows:

In addition to all other powers and duties given to them by law, the board of trustees of The Evergreen State College is hereby authorized to grant any degree through the master's degree to any student who has completed a program of study and/or research in those areas which are determined by the faculty and board of trustees of the college to be appropriate for the granting of such degree: PROVIDED, That any degree authorized under this section shall be subject to the review and approval of the higher education coordinating board.

The board of trustees, upon recommendation of the faculty, may also confer honorary bachelor's or master's degrees upon persons other than graduates of the institution, in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property.

Passed the House March 15, 1991.

Passed the Senate April 16, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 59

[Senate Bill 5004]

OUT-OF-STATE PUBLIC RECORDS AS EVIDENCE

Effective Date: 7/28/91

AN ACT Relating to public records as evidence; and amending RCW 5.44.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 5.44.040 and 1891 c 19 s 16 are each amended to read as follows:

Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state or any other state or territory of the United States, when duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, shall be admitted in evidence in the courts of this state.

Passed the Senate February 18, 1991.

Passed the House April 15, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 60

[House Bill 1176]

SCHOOL BOARD DIRECTORS—VACANCIES

Effective Date: 7/28/91

AN ACT Relating to school districts' boards of directors; and amending RCW 28A.315.530.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.315.530 and 1975 1st ex.s. c 275 s 100 are each amended to read as follows:

(1) In case of a vacancy from any cause on the board of directors of a school district other than a reconstituted board resulting from reorganized school districts, a majority of the legally established number of board members shall fill such vacancy by appointment: PROVIDED, That should there exist fewer board members on the board of directors of a school district than constitutes a majority of the legally established number of board members, the educational service district board members of the district in which the school district is located by the vote of a majority of its legally established number of board members shall appoint a sufficient number of board members to constitute a legal majority on the board of directors of such school district; and the remaining vacancies on such board of directors shall be filled by such board of directors in accordance with the provisions

of this section: PROVIDED FURTHER, That should any board of directors for whatever reason fail to fill a vacancy within ninety days from the creation of such vacancy, the members of the educational service district board of the district in which the school district is located by majority vote shall fill such vacancy.

(2) Appointees to fill vacancies on boards of directors of school districts shall meet the requirements provided by law for school directors and shall serve until the next regular school district election, at which time a successor shall be elected for the unexpired term.

(3) If a vacancy will be created by a board member who has submitted a resignation, that board member may not vote on the selection of his or her replacement.

Passed the House February 15, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 61

[Engrossed House Bill 1177]

SCHOOL BOARD DIRECTORS—DUTY TO ADOPT POLICIES

Effective Date: 7/28/91

AN ACT Relating to school district boards of directors; and amending RCW 28A.150.230.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.150.230 and 1990 c 33 s 106 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(~~(, acting through its respective administrative staff,))~~ to adopt policies to:

(a) Establish performance criteria and an evaluation process for its certificated personnel, including administrative staff, and for all programs constituting a part of such district's curriculum;

(b) Determine the final assignment of staff, certificated or classified, according to board enumerated classroom and program needs;

(c) 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 and regulations of the state board of education;

(d) Determine the allocation of staff time, whether certificated or classified;

(e) Establish final curriculum standards consistent with law and rules and regulations of the state board of education, 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) 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.

(3) In keeping with the accountability purpose expressed in this section and to insure that the local community and electorate have access to information on the educational programs in the school districts, each school district's board of directors shall annually publish a descriptive guide to the district's common schools. This guide shall be made available at each school in the district for examination by the public. The guide shall include, but not be limited to, the following:

(a) Criteria used for written evaluations of staff members pursuant to RCW 28A.405.100;

(b) A summary of program objectives pursuant to RCW 28A.320.210;

(c) Results of comparable testing for all schools within the district; and

(d) Budget information which will include the following:

(i) Student enrollment;

(ii) Number of full time equivalent personnel per school in the district itemized according to classroom teachers, instructional support, and building administration and support services, including itemization of such personnel by program;

(iii) Number of full time equivalent personnel assigned in the district to central administrative offices, itemized according to instructional support, building and central administration, and support services, including itemization of such personnel by program;

(iv) Total number of full time equivalent personnel itemized by classroom teachers, instructional support, building and central administration, and support services, including itemization of such personnel by program; and

(v) Special levy budget request presented by program and expenditure for purposes over and above those requirements identified in RCW 28A.150.220.

Passed the House March 11, 1991.
Passed the Senate April 10, 1991.
Approved by the Governor May 3, 1991.
Filed in Office of Secretary of State May 3, 1991.

CHAPTER 62

[Senate Bill 5047]

STATE TARTAN

Effective Date: 7/28/91

AN ACT Relating to a state tartan; and adding a new section to chapter 1.20 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 1.20 RCW to read as follows:

The Washington state tartan is hereby designated. The tartan shall have a pattern of colors, called a sett, that is made up of a green background with stripes of blue, white, yellow, red, and black. The secretary of state shall register the tartan with the Scottish Tartan Society, Comrie, Perthshire, Scotland.

Passed the Senate February 8, 1991.
Passed the House April 8, 1991.
Approved by the Governor May 3, 1991.
Filed in Office of Secretary of State May 3, 1991.

CHAPTER 63

[House Bill 1057]

LIEUTENANT-GOVERNOR—SECURITY AND PROTECTION FOR

Effective Date: 7/28/91

AN ACT Relating to security and protection of the lieutenant governor; and amending RCW 43.43.035.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.43.035 and 1965 ex.s. c 96 s 1 are each amended to read as follows:

The chief of the Washington state patrol is directed to provide security and protection for the governor (~~and~~), the governor's family, and the lieutenant governor to the extent and in the manner the governor and the chief of the Washington state patrol deem adequate and appropriate.

In the same manner the chief of the Washington state patrol is directed to provide security and protection for the governor-elect from the time of the November election.

Passed the House February 20, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 64

[Senate Bill 5722]

NATURAL RESOURCES DEPARTMENT—INTEREST RATES

Effective Date: 7/28/91

AN ACT Relating to interest rates for the department of natural resources; amending RCW 79.90.520, 79.90.535, and 76.04.620; and reenacting and amending RCW 76.04.630.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 79.90.520 and 1984 c 221 s 15 are each amended to read as follows:

The manager shall, by rule, provide for an administrative review of any aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board of natural resources. For leases managed under RCW 79.90.475, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be ~~((the average rate of return for the prior calendar year on conventional real property mortgages as reported by the federal home loan bank board))~~ fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies ~~((including those under chapter 34-05 RCW))~~. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district.

Sec. 2. RCW 79.90.535 and 1984 c 221 s 18 are each amended to read as follows:

~~((The lessee shall pay interest at the rate of one percent per month on rent or other sums owing to the department commencing thirty days after the date each rent or other sum is due and payable, unless there is review~~

pending under RCW 79.90.520)) The interest rate and all interest rate guidelines shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum.

***Sec. 3. RCW 76.04.620 and 1986 c 100 s 36 are each amended to read as follows:**

Biennial general fund appropriations to the department of natural resources normally provide funds for the purpose of paying the emergency fire costs and expenses incurred and/or approved by the department in forest fire suppression or in reacting to any potential forest fire situation. When a determination is made that the fire started in the course of or as a result of a landowner operation, moneys expended from such appropriations in the suppression of the fire shall be recovered from the landowner contingency forest fire suppression account. The department shall transmit to the state treasurer for deposit in the general fund any such moneys which are later recovered. Moneys recovered during the biennium in which they are expended may be spent for purposes set forth in this section during the same biennium, without reappropriation. Loans between the general fund and the landowner contingency forest fire suppression account are authorized for emergency fire suppression. The loans shall not exceed the amount appropriated for emergency forest fire suppression costs and shall bear interest at the ~~((then current rate of interest as determined by the state treasurer))~~ rate determined for inter-fund loans under RCW 79.64.030.

***Sec. 3 was vetoed, see message at end of chapter.**

***Sec. 4. RCW 76.04.630 and 1989 c 362 s 2 and 1989 c 175 s 162 are each reenacted and amended to read as follows:**

There is created a landowner contingency forest fire suppression account which shall be a separate account in the state treasury. Moneys in the account may be spent only as provided in this section. Disbursements from the account shall be on authorization of the commissioner of public lands or the commissioner's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

The department may expend from this account such amounts as may be available and as it considers appropriate for the payment of emergency fire costs resulting from a participating landowner fire. The department may, when moneys are available from the landowner contingency forest fire suppression account, expend moneys for summarily abating, isolating, or reducing an extreme fire hazard under RCW 76.04.660. All moneys recovered as a result of the department's actions, from the owner or person responsible, under RCW 76.04.660 shall be deposited in the landowner contingency forest fire suppression account.

When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from such general fund appropriations as may

be available for emergency fire suppression costs. The department shall deposit in the landowner contingency forest fire suppression account any moneys paid out of the account which are later recovered, less reasonable costs of recovery.

This account shall be established and renewed by a special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department, but not to exceed fifteen cents per acre per year for such period of years as may be necessary to establish and thereafter reestablish a balance in the account of three million dollars. The department may establish a minimum assessment for ownership parcels identified in RCW 76.04.610 as paying the minimum assessment. The maximum assessment for these parcels shall not exceed the fees levied on a thirty-acre parcel. There shall be no assessment on each parcel of privately owned lands of less than two acres. The assessments may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner operations. Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made and may be collected as directed by the department in the same manner as forest protection assessments. This account shall be held by the state treasurer, who is authorized to invest so much of the account as is not necessary to meet current needs. Any interest earned on moneys from the account shall be deposited in and remain a part of the account and shall be computed as part of same in determining the balance thereof. Interfund loans to and from this account are authorized at the ~~((current rate of interest as determined by the state treasurer))~~ rate determined for interfund loans under RCW 79.64.030, provided that the effect of the loan is considered for purposes of determining the assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, it shall notify the forest fire advisory board of the determination. The determination shall be final, unless, within ninety days of the notification, the forest fire advisory board or any interested party serves a request for a hearing before the department. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, and any appeal shall be in accordance with RCW 34.05.510 through 34.05.598.

**Sec. 4 was vetoed, see message at end of chapter.*

Passed the Senate March 13, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 3, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 3, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 3 and 4, Senate Bill No. 5722 entitled:

"AN ACT Relating to interest rates for the department of natural resources."

Developing a uniform interest rate policy for the Department of Natural Resources is an important goal which will improve agency administration and accounting. Sections 3 and 4 of this bill, however, amend existing law so that the Board of Natural Resources rather than the State Treasurer will determine the appropriate interest rate for loans between the landowner contingency forest fire suppression account and the general fund. While the Board of Natural Resources should have the ability to set interest rates for trustland management funds, this power should not be extended to situations which affect the General Fund. For this reason, I have vetoed sections 3 and 4 of the bill.

With the exception of sections 3 and 4, Senate Bill No. 5722 is approved."

CHAPTER 65

[Senate Bill 5779]

SCHOOLS FOR THE DEAF AND THE BLIND—APPROPRIATIONS TO BE MADE DIRECTLY TO

Effective Date: 7/1/91

AN ACT Relating to the school for the deaf and the school for the blind; adding a new section to chapter 72.40 RCW; repealing RCW 72.40.115; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 72.40 RCW to read as follows:

Any appropriation for the school for the deaf or the school for the blind shall be made directly to the school for the deaf or the school for the blind.

NEW SECTION. Sec. 2. RCW 72.40.115 and 1985 c 378 s 26 are each repealed.

NEW SECTION. Sec. 3. 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 shall take effect July 1, 1991.

Passed the Senate March 14, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 66

[Senate Bill 5190]

SCHOOL DIRECTORS' ASSOCIATION—COMPENSATION FOR BOARD MEMBERS

Effective Date: 7/28/91

AN ACT Relating to the Washington state school directors' association; and amending RCW 28A.345.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.345.030 and 1990 c 33 s 372 are each amended to read as follows:

The school directors' association shall have the power:

(1) To prepare and adopt, amend and repeal a constitution and rules and regulations, and bylaws for its own organization including county or regional units and for its government and guidance: PROVIDED, That action taken with respect thereto is consistent with the provisions of this chapter or with other provisions of law;

(2) To arrange for and call such meetings of the association or of the officers and committees thereof as are deemed essential to the performance of its duties;

(3) To provide for the compensation of members of the board of directors in accordance with RCW 43.03.240, and for payment of travel and subsistence expenses incurred by members and/or officers of the association and association staff while engaged in the performance of duties under direction of the association in the manner provided by RCW 28A.320.050;

(4) To employ an executive ((secretary)) director and other staff and pay such employees out of the funds of the association;

(5) To conduct studies and disseminate information therefrom relative to increased efficiency in local school board administration;

(6) To buy, lease, sell, or exchange such personal and real property as necessary for the efficient operation of the association and to borrow money, issue deeds of trust or other evidence of indebtedness, or enter into contracts for the purchase, lease, remodeling, or equipping of office facilities or the acquisition of sites for such facilities;

(7) To purchase liability insurance for school directors, which insurance may indemnify said directors against any or all liabilities for personal or bodily injuries and property damage arising from their acts or omissions while performing or while in good faith purporting to perform their official duties as school directors;

(8) To provide advice and assistance to local boards to promote their primary duty of representing the public interest;

(9) Upon request by a local school district board(s) of directors, to make available on a cost reimbursable contract basis (a) specialized services, (b) research information, and (c) consultants to advise and assist district board(s) in particular problem areas: PROVIDED, That such services, information, and consultants are not already available from other state agencies, educational service districts, or from the information and research services authorized by RCW 28A.320.110.

Passed the Senate March 12, 1991.

Passed the House April 8, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 67

[Substitute Senate Bill 5626]

HARDWOOD COMMISSION—REVISED PROVISIONS RELATING TO

Effective Date: 5/3/91

AN ACT Relating to the hardwood commission; amending RCW 15.74.030 and 15.74.060; adding a new section to chapter 15.74 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.74.030 and 1990 c 142 s 4 are each amended to read as follows:

The commission shall have the power to elect a chair and such officers as the commission deems necessary and advisable. The commission shall elect a treasurer who shall be responsible for all receipts and disbursements by the commission. The treasurer's faithful discharge of duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its governance, which shall provide for the holding of an annual meeting for the election of officers and the transaction of other business and for such other meetings as the commission may direct. The commission shall do all things reasonably necessary to effect the purposes of this chapter. The commission shall have no legislative power. The commission may employ and discharge managers, secretaries, agents, attorneys, and other employees or staff, and may engage the services of independent contractors, prescribe their duties, and fix their compensation. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 2. A new section is added to chapter 15.74 RCW to read as follows:

Any due and payable assessment levied under this chapter in such specified amount as may be determined by the commission shall constitute a personal debt of every person so assessed or who otherwise owes the same,

and the same shall be due and payable to the commission when payment is called for by the commission. In the event any person fails to pay the commission the full amount of such assessment or such other sum on or before the date due, the commission may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

Sec. 3. RCW 15.74.060 and 1990 c 142 s 7 are each amended to read as follows:

To provide for permanent funding of the Washington hardwoods commission, agricultural commodity assessments shall be levied by the commission on processors of hardwoods. ~~((The commission shall determine by December 31, 1990, a method and rate of assessment on processors as well as a work plan for the commission. The commission shall report to the natural resource and revenues committees of each house of the legislature at that time:))~~

An assessment is hereby levied on hardwood processors operating within the state of Washington. The assessment categories shall be based on the hardwood processor's production per calendar quarter. The assessment shall be levied based upon the following schedule:

| <u>CATEGORY</u> | <u>QUARTERLY PRODUCTION (THOUSAND TONS)</u> | <u>QUARTERLY ASSESSMENT</u> |
|-----------------|---|-----------------------------|
| <u>1</u> | <u>5 to 7.5</u> | <u>\$ 150</u> |
| <u>2</u> | <u>7.5 to 15</u> | <u>\$ 300</u> |
| <u>3</u> | <u>15 to 25</u> | <u>\$ 600</u> |
| <u>4</u> | <u>25 to 35</u> | <u>\$ 900</u> |
| <u>5</u> | <u>35 to 45</u> | <u>\$ 1,200</u> |
| <u>6</u> | <u>45 to 62.5</u> | <u>\$ 1,500</u> |
| <u>7</u> | <u>62.5 to 82.5</u> | <u>\$ 2,250</u> |
| <u>8</u> | <u>82.5 to 125</u> | <u>\$ 3,000</u> |
| <u>9</u> | <u>125 to 175</u> | <u>\$ 4,500</u> |
| <u>10</u> | <u>175 to 250</u> | <u>\$ 6,000</u> |
| <u>11</u> | <u>250 to 350</u> | <u>\$ 9,000</u> |
| <u>12</u> | <u>350 to 450</u> | <u>\$12,000</u> |
| <u>13</u> | <u>450 to 625</u> | <u>\$15,000</u> |
| <u>14</u> | <u>625 to 875</u> | <u>\$22,500</u> |

| <u>CATEGORY</u> | <u>QUARTERLY PRODUCTION (THOUSAND TONS)</u> | <u>QUARTERLY ASSESSMENT</u> |
|-----------------|---|-----------------------------|
| <u>15</u> | <u>875 to 1125</u> | <u>\$30,000</u> |
| <u>16</u> | <u>Over 1125</u> | <u>\$35,000</u> |

The commission may develop by rule formulas for converting other units of measure to thousands of tons of production for determining the appropriate production category. The assessment shall be calculated based upon calendar quarters with the first assessment period beginning July 1, 1991.

NEW SECTION, Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 12, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 68

[Substitute House Bill 1008]

OVER-THE-COUNTER MEDICATIONS LABEL INFORMATION

Effective Date: 7/28/91

AN ACT Relating to label information for over-the-counter medications; adding a new section to chapter 69.60 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION, Sec. 1. The legislature finds that printed material on labels and notices packaged with nonprescription drugs may be difficult to read. This difficulty presents a potential danger to the health and safety of customers, therefore, every effort should be made to print these materials in a manner that makes them more comprehensible.

NEW SECTION, Sec. 2. A new section is added to chapter 69.60 RCW to read as follows:

(1) Manufacturers of nonprescription drugs that are sold in this state shall evaluate and may modify the labeling of nonprescription drugs to maximize the readability and clarity of label information, in both the cognitive and visual sense. The nonprescription drug manufacturers association is requested to report on a quarterly basis to, and seek advise [advice] from, the board of pharmacy, which may appoint an advisory committee to assist the board, regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information.

(2) The board of pharmacy shall report to the legislature by December 1, 1993, regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information.

(3) This section shall expire on March 31, 1994.

Passed the House March 19, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 69

[Senate Bill 5015]

VOLUNTEER COOPERATIVE PROJECTS—IMMUNITY FOR LANDOWNERS ALLOWING USE OF LAND FOR PROJECTS

Effective Date: 7/28/91

AN ACT Relating to volunteer cooperative projects; and amending RCW 4.24.210.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.210 and 1980 c 111 s 1 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, any public or private landowners or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users~~((~~PROVIDED, That~~))~~.

(2) Except as otherwise provided in subsection (3) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to ten dollars for the cutting, gathering, and removing of firewood from the land~~((~~PROVIDED FURTHER, That~~))~~. Nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for

injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted(~~(: PROVIDED FURTHER, That)~~). Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance(~~(: AND PROVIDED FURTHER, That the)~~). Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

Passed the Senate February 22, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 70

[Senate Bill 5023]

FRIVOLOUS LAWSUITS—RECOVERY OF DEFENSE EXPENSES

Effective Date: 7/28/91

AN ACT Relating to the expense of defending against frivolous court actions; and amending RCW 4.84.185.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.84.185 and 1987 c 212 s 201 are each amended to read as follows:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after ~~((an))~~ a voluntary or involuntary order of dismissal, order on summary judgment, ((or)) final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order. ~~((The judge shall consider the action, counterclaim, cross-claim, third party claim, or defense as a whole:))~~

The provisions of this section apply unless otherwise specifically provided by statute.

Passed the Senate February 13, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 71

[Substitute Senate Bill 5027]

SMALL CLAIMS COURT—JURISDICTION AND APPEARANCES

Effective Date: 7/28/91

AN ACT Relating to jurisdiction of small claims departments; and amending RCW 12.40.010 and 12.40.080.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 12.40.010 and 1988 c 85 s 1 are each amended to read as follows:

In every district court there shall be created and organized by the court a department to be known as the "small claims department of the district court". The small claims department shall have jurisdiction, but not exclusive, in cases for the recovery of money only if the amount claimed does not exceed two thousand five hundred dollars.

Sec. 2. RCW 12.40.080 and 1984 c 258 s 65 are each amended to read as follows:

No attorney at law, legal paraprofessional, nor any person other than the plaintiff and defendant, shall concern himself or herself or in any manner interfere with the prosecution or defense of litigation in the small claims department without the consent of the judge of the district court. ~~((f))~~ A corporation plaintiff ~~((is))~~ may not be represented by an attorney at law, or legal paraprofessional ~~((; the judge shall at the request of the defendant transfer the case to the regular civil docket))~~. In the small claims department it shall not be necessary to summon witnesses, but the plaintiff and defendant in any claim shall have the privilege of offering evidence in their behalf by witnesses appearing at such hearing, and the judge may informally consult witnesses or otherwise investigate the controversy between the parties, and give judgment or make such orders as the judge may deem to be right, just and equitable for the disposition of the controversy.

Passed the Senate February 11, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 72

[Senate Bill 5107]

CORPORATIONS—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to corporations; amending RCW 11.36.021, 18.08.420, 18.100.050, 18.100.116, 18.100.130, 18.100.133, 18.100.134, 19.02.100, 23.78.020, 23.78.030, 23.78.050,

23.78.060, 23.78.080, 23.78.100, 23.86.070, 23.86.145, 23.86.200, 23.86.210, 23.86.220, 23.86-.230, 23.86.330, 23.86.340, 23.86.360, 23B.01.200, 23B.01.210, 23B.01.220, 23B.01.280, 23B-.01.400, 23B.01.410, 23B.01.570, 23B.02.050, 23B.04.010, 23B.07.040, 23B.07.060, 23B.08.240, 23B.10.070, 23B.14.200, 23B.15.040, 23B.15.300, 23B.16.010, 23B.16.220, 24.03-.035, 24.03.070, 24.06.905, 24.36.050, 24.36.090, 25.10.020, 25.10.600, 31.24.030, 31.24.150, 33.48.025, 33.48.030, 43.07.120, 43.07.130, 43.07.140, 43.07.190, 50.04.165, and 61.24.010; and repealing RCW 23A.32.050.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 11.36.021 and 1985 c 30 s 6 are each amended to read as follows:

(1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys; and

(e) Any other entity so authorized under the laws of the state of Washington.

(2) The following are disqualified to serve as trustees:

(a) Minors, persons of unsound mind, or persons who have been convicted of any felony or a misdemeanor involving moral turpitude; and

(b) A corporation organized under Title ((~~23A~~)) 23B RCW that is not authorized under the laws of the state of Washington to act as a fiduciary.

Sec. 2. RCW 18.08.420 and 1985 c 37 s 13 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 ((~~23A~~)) 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 ((~~23A~~)) 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 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.

(2) 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 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, the director shall refuse to issue or may suspend or revoke 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 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) Any corporation authorized to practice architecture under this chapter, together with its directors and officers for their own individual acts, are 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) Any corporation that has been certified under this chapter and has engaged in the practice of architecture shall have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board finds that the corporation has committed misconduct or malpractice under RCW 18.08.440. In such a case, any individual architect registered under this chapter who is involved in such misconduct is also subject to disciplinary measures provided in this chapter.

(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) 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. 3. RCW 18.100.050 and 1986 c 261 s 1 are each amended to read as follows:

An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Title ~~((23A))~~ 23B RCW for the purpose of rendering professional service: PROVIDED, That one or more of such legally authorized individuals shall be the incorporators of

such professional corporation: PROVIDED FURTHER, That notwithstanding any other provision of this chapter, registered architects and registered engineers may own stock in and render their individual professional services through one professional service corporation: PROVIDED FURTHER, That licensed health care professionals, providing services to enrolled participants either directly or through arrangements with a health maintenance organization registered under chapter 48.46 RCW or federally qualified health maintenance organization, may own stock in and render their individual professional services through one professional service corporation: AND PROVIDED FURTHER, That professionals may organize a nonprofit nonstock corporation under this chapter and chapter 24.03 RCW to provide professional services, and the provisions of this chapter relating to stock and referring to Title ((23A)) 23B RCW shall not apply to any such corporation.

Sec. 4. RCW 18.100.116 and 1983 c 51 s 10 are each amended to read as follows:

If a shareholder of a professional corporation dies, or if shares of a professional corporation are transferred by operation of law or court decree to an ineligible person, and if the shares held by the deceased shareholder or by such ineligible person are less than all of the outstanding shares of the corporation:

(1) The shares held by the deceased shareholder or by the ineligible person may be transferred to remaining shareholders of the corporation or may be redeemed by the corporation pursuant to terms stated in the articles of incorporation or by laws of the corporation, or in a private agreement. In the absence of any such terms, such shares may be transferred to any individual eligible to be a shareholder of the corporation.

(2) If such a redemption or transfer of the shares held by a deceased shareholder or an ineligible person is not completed within twelve months after the death of the deceased shareholder or the transfer, as the case may be, such shares shall be deemed to be shares with respect to which the holder has elected to exercise the right of dissent described in chapter 23B.13 RCW ((23A.24.040)) and has made written demand on the corporation for payment of the fair value of such shares. The corporation shall forthwith cancel the shares on its books and the deceased shareholder or ineligible person shall have no further interest in the corporation other than the right to payment for the shares as is provided in RCW ((23A.24.040)) 23B.13.250. For purposes of the application of RCW ((23A.24.040)) 23B.13.250, the date of the corporate action and the date of the shareholder's written demand shall be deemed to be one day after the date on which the twelve-month period from the death of the deceased shareholder, or from the transfer, expires.

Sec. 5. RCW 18.100.130 and 1986 c 261 s 2 are each amended to read as follows:

(1) For a professional service corporation organized for pecuniary profit under this chapter, the provisions of Title ((23A)) 23B RCW shall be applicable except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized pursuant to the provisions of this chapter.

(2) For a professional service corporation organized under this chapter and chapter 24.03 RCW as a nonprofit nonstock corporation, the provisions of chapter 24.03 RCW shall be applicable except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized under the provisions of this chapter.

Sec. 6. RCW 18.100.133 and 1986 c 261 s 5 are each amended to read as follows:

A business corporation formed under the provisions of Title ((23A)) 23B RCW may amend its articles of incorporation to change its stated purpose to the rendering of professional services and to conform to the requirements of this chapter. Upon the effective date of such amendment, the corporation shall be subject to the provisions of this chapter and shall continue in existence as a professional corporation under this chapter.

Sec. 7. RCW 18.100.134 and 1986 c 261 s 3 are each amended to read as follows:

A professional corporation may amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of Title ((23A)) 23B RCW, or to the requirements of chapter 24.03 RCW if organized pursuant to RCW 18.100.050 as a nonprofit nonstock corporation. Upon the effective date of such amendment, the corporation shall no longer be subject to the provisions of this chapter and shall continue in existence as a corporation under Title ((23A)) 23B RCW or chapter 24.03 RCW.

Sec. 8. RCW 19.02.100 and 1982 c 182 s 10 are each amended to read as follows:

(1) The department shall not issue or renew a master license to any person if:

(a) The person does not have a valid tax registration, if required;

(b) The person is a corporation delinquent in fees or penalties owing to the secretary of state or is not validly registered under Title ((23A)) 23B RCW, chapter 18.100 RCW, Title 24 RCW, and any other statute now or hereafter adopted which gives corporate or business licensing responsibilities to the secretary of state; or

(c) The person has not submitted the sum of all fees and deposits required for the requested individual license endorsements, any outstanding

master license delinquency fee, or other fees and penalties to be collected through the system.

(2) Nothing in this section shall prevent registration by the state of an employer for the purpose of paying an employee of that employer industrial insurance or unemployment insurance benefits.

Sec. 9. RCW 23.78.020 and 1987 c 457 s 3 are each amended to read as follows:

Any corporation organized under the laws of this state may elect to be governed as an employee cooperative under the provisions of this chapter, by so stating in its articles of incorporation, or articles of amendment filed in accordance with Title ~~((23A))~~ 23B RCW.

A corporation so electing shall be governed by all provisions of Title ~~((23A))~~ 23B RCW, except RCW 23B.07.050, 23B.13.020, and chapter ((23A.20)) 23B.11 RCW, and except as otherwise provided in this chapter.

Sec. 10. RCW 23.78.030 and 1987 c 457 s 4 are each amended to read as follows:

An employee cooperative may revoke its election under this chapter by a vote of two-thirds of the members and through articles of amendment filed with the secretary of state in accordance with ~~((chapter 23A.16))~~ RCW 23B.01.200 and 23B.10.060.

Sec. 11. RCW 23.78.050 and 1987 c 457 s 6 are each amended to read as follows:

(1) The articles of incorporation or the bylaws shall establish qualifications and the method of acceptance and termination of members. No person may be accepted as a member unless employed by the employee cooperative on a full-time or part-time basis.

(2) An employee cooperative shall issue a class of voting stock designated as "membership shares." Each member shall own only one membership share, and only members may own these shares.

(3) Membership shares shall be issued for a fee as determined from time to time by the directors. RCW ((23A.08.140 and 23A.08.200)) 23B.06.040 and 23B.06.200 do not apply to such membership shares.

Members of an employee cooperative shall have all the rights and responsibilities of stockholders of a corporation organized under Title ~~((23A))~~ 23B RCW, except as otherwise provided in this chapter.

Sec. 12. RCW 23.78.060 and 1987 c 457 s 7 are each amended to read as follows:

(1) No capital stock other than membership shares shall be given voting power in an employee cooperative, except as otherwise provided in this chapter, or in the articles of incorporation.

(2) The power to amend or repeal bylaws of an employee cooperative shall be in the members only.

(3) Except as otherwise permitted by RCW (~~(23A.16.030)~~) 23B.10-.040, no capital stock other than membership shares shall be permitted to vote on any amendment to the articles of incorporation.

Sec. 13. RCW 23.78.080 and 1987 c 457 s 9 are each amended to read as follows:

(1) Any employee cooperative may establish through its articles of incorporation or bylaws a system of internal capital accounts to reflect the book value and to determine the redemption price of membership shares, capital stock, and written notices of allocation.

(2) The articles of incorporation or bylaws of an employee cooperative may permit the periodic redemption of written notices of allocation and capital stock, and must provide for recall and redemption of the membership share upon termination of membership in the cooperative. No redemption shall be made if redemption would result in a violation of RCW (~~(23A.08.020)~~) 23B.06.400.

(3) The articles of incorporation or bylaws may provide for the employee cooperative to pay or credit interest on the balance in each member's internal capital account.

(4) The articles of incorporation or bylaws may authorize assignment of a portion of retained net earnings and net losses to a collective reserve account. Earnings assigned to the collective reserve account may be used for any and all corporate purposes as determined by the board of directors.

Sec. 14. RCW 23.78.100 and 1987 c 457 s 11 are each amended to read as follows:

(1) When any employee cooperative revokes its election in accordance with RCW 23.78.030, the articles of amendment shall provide for conversion of membership shares and internal capital accounts or their conversion to securities or other property in a manner consistent with Title (~~(23A)~~) 23B RCW.

(2) An employee cooperative that has not revoked its election under this chapter may not (~~(consolidate or)~~) merge with another corporation other than an employee cooperative. Two or more employee cooperatives may (~~(consolidate or)~~) merge in accordance with RCW 23B.01.200, 23B-.07.050, and chapter (~~(23A.20)~~) 23B.11 RCW.

Sec. 15. RCW 23.86.070 and 1989 c 307 s 9 are each amended to read as follows:

For filing articles of incorporation of an association organized under this chapter or filing application for a certificate of authority by a foreign corporation, there shall be paid to the secretary of state the sum of twenty-five dollars and for filing of an amendment the sum of twenty dollars. Fees for filing other documents with the secretary of state and issuing certificates shall be as prescribed in RCW (~~(23A.40.020)~~) 23B.01.220. Associations

subject to this chapter shall not be subject to any corporation license fees excepting the fees hereinabove enumerated.

Sec. 16. RCW 23.86.145 and 1989 c 307 s 31 are each amended to read as follows:

(1) Except as provided otherwise under subsection (2) of this section, the rights and procedures set forth in (~~RCW 23A.24.040~~) chapter 23B.13 RCW shall apply to a member who elects to exercise the right of dissent.

(2) The articles of incorporation of an association subject to this chapter may provide that a dissenting member shall be limited to a return of less than the fair value of the member's equity interest in the association, but a dissenting member may not be limited to a return of less than the consideration paid to or retained by the association for the equity interest unless the fair value is less than the consideration paid to or retained by the association.

Sec. 17. RCW 23.86.200 and 1971 ex.s. c 221 s 1 are each amended to read as follows:

For the purposes of RCW 23.86.200 through 23.86.230 a "domestic" cooperative association or "domestic" corporation is one formed under the laws of this state, and an "ordinary business" corporation is one formed or which could be formed under Title (~~23A~~) 23B RCW.

Sec. 18. RCW 23.86.210 and 1989 c 307 s 27 are each amended to read as follows:

(1) A cooperative association may be converted to a domestic ordinary business corporation pursuant to the following procedures:

(a) The board of directors of the association shall, by affirmative vote of not less than two-thirds of all such directors, adopt a plan for such conversion setting forth:

(i) The reasons why such conversion is desirable and in the interests of the members of the association;

(ii) The proposed contents of articles of conversion with respect to items (ii) through (ix) of subparagraph (c) below; and

(iii) Such other information and matters as the board of directors may deem to be pertinent to the proposed plan.

(b) After adoption by the board of directors, the plan for conversion shall be submitted for approval or rejection to the members of the association at any regular meetings or at any special meetings called for that purpose, after notice of the proposed conversion has been given to all members entitled to vote thereon, in the manner provided by the bylaws. The notice of the meeting shall be accompanied by a full copy of the proposed plan for conversion or by a summary of its provisions. At the meeting members may vote upon the proposed conversion in person, or by written proxy, or by mailed ballot. The affirmative vote of two-thirds of the members voting thereon shall be required for approval of the plan of conversion. If the total

vote upon the proposed conversion shall be less than twenty-five percent of the total membership of the association, the conversion shall not be approved.

(c) Upon approval by the members of the association, the articles of conversion shall be executed in duplicate by the association by one of its officers and shall set forth:

(i) The dates and vote by which the plan for conversion was adopted by the board of directors and members respectively;

(ii) The corporate name of the converted organization. The name shall comply with requirements for names of business corporations formed under Title ((23A)) 23B RCW, and shall not contain the term "cooperative";

(iii) The purpose or purposes for which the converted corporation is to exist;

(iv) The duration of the converted corporation, which may be perpetual or for a stated term of years;

(v) The capitalization of the converted corporation and the class or classes of shares of stock into which divided, together with the par value, if any, of such shares, in accordance with statutory requirements applicable to ordinary business corporations, and the basis upon which outstanding shares of the association are converted into shares of the converted corporation;

(vi) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the converted corporation;

(vii) The address of the converted corporation's initial registered office and its initial registered agent at such address;

(viii) The names and addresses of the persons who are to serve as directors of the converted corporation until the first annual meeting of shareholders of the converted corporation or until their successors are elected and qualify;

(ix) Any additional provisions, not inconsistent with law, provided for by the plan for conversion for the regulation of the internal affairs of the converted corporation, including any provision restricting the transfer of shares or which under Title ((23A)) 23B RCW is required or permitted to be set forth in bylaws.

(d) The executed duplicate originals of the articles of conversion shall be delivered to the secretary of state. If the secretary of state finds that the articles of conversion conform to law, the secretary of state shall, when all the fees have been paid as in this section prescribed:

(i) Endorse on each of such originals the word "Filed", and the effective date of such filing;

(ii) File one of such originals; and

(iii) Issue a certificate of conversion to which one of such originals shall be affixed.

(e) The certificate of conversion, together with the original of the articles of conversion affixed thereto by the secretary of state, shall be returned

to the converted corporation or its representative. The original affixed to the certificate of conversion shall be retained by the converted corporation.

(f) Upon filing the articles of conversion the converted corporation shall pay, and the secretary of state shall collect, the same filing and license fees as for filing articles of incorporation of a newly formed business corporation similarly capitalized.

(2) Upon filing by the secretary of state of the articles of conversion, the conversion of the cooperative association to an ordinary business corporation shall become effective; the articles of conversion shall thereafter constitute and be treated in like manner as articles of incorporation; and the converted corporation shall be subject to all laws applicable to corporations formed under Title ((23A)) 23B RCW, and shall not thereafter be subject to laws applying only to cooperative associations. The converted corporation shall constitute and be deemed to constitute a continuation of the corporate substance of the cooperative association and the conversion shall in no way derogate from the rights of creditors of the former association.

Sec. 19. RCW 23.86.220 and 1989 c 307 s 28 are each amended to read as follows:

(1) A cooperative association may merge with one or more domestic cooperative associations, or with one or more domestic ordinary business corporations, in accordance with the procedures and subject to the conditions set forth or referred to in this section.

(2) If the merger is into another domestic cooperative association, the board of directors of each of the associations shall approve by vote of not less than two-thirds of all the directors, a plan of merger setting forth:

(a) The names of the associations proposing to merge;

(b) The name of the association which is to be the surviving association in the merger;

(c) The terms and conditions of the proposed merger;

(d) The manner and basis of converting the shares of each merging association into shares or other securities or obligations of the surviving association;

(e) A statement of any changes in the articles of incorporation of the surviving association to be effected by such merger; and

(f) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(3) Following approval by the boards of directors, the plan of merger shall be submitted to a vote of the members of each of the associations at any regular meeting or at any special meetings called for that purpose, after notice of the proposed merger has been given to all members entitled to vote thereon, in the manner provided in the bylaws. The notice of the meeting shall be in writing stating the purpose or purposes of the meeting and include or be accompanied by a copy or summary of the plan of merger. At the meeting members may vote upon the proposed merger in person, or by

written proxy, or by mailed ballot. The affirmative vote of two-thirds of the members voting thereon, by each association, shall be required for approval of the plan of merger. If the total vote of either association upon the proposed merger shall be less than twenty-five percent of the total membership of such association, the merger shall not be approved.

(4) Upon approval by the members of the associations proposing to merge, articles of merger shall be executed in duplicate by each association by an officer of each association, and shall set forth:

(a) The plan of merger;

(b) As to each association, the number of members and, if there is capital stock, the number of shares outstanding; and

(c) As to each association, the number of members who voted for and against such plan, respectively.

(5) Duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, the secretary of state shall, when all fees have been paid as in this section prescribed:

(a) Endorse on each of such originals the word "Filed", and the effective date of such filing;

(b) File one of such originals; and

(c) Issue a certificate of merger to which one of such originals shall be affixed.

(6) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state shall be returned to the surviving association or its representative.

(7) For filing articles of merger hereunder the secretary of state shall charge and collect the same fees as apply to filing of articles of merger of ordinary business corporations.

(8) If the plan of merger is for merger of the cooperative association into a domestic ordinary business corporation, the association shall follow the same procedures as hereinabove provided for merger of domestic cooperative associations and the ordinary business corporation shall follow the applicable procedures set forth in RCW 23B.07.050 and chapter ((23A-20)) 23B.11 RCW.

(9) At any time prior to filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger.

Sec. 20. RCW 23.86.230 and 1989 c 307 s 29 are each amended to read as follows:

(1) Upon issuance of the certificate of merger by the secretary of state, the merger of the cooperative association into another cooperative association or ordinary business corporation, as the case may be, shall be effected.

(2) When merger has been effected:

(a) The several parties to the plan of merger shall be a single cooperative association or corporation, as the case may be, which shall be that cooperative association or corporation designated in the plan of merger as the survivor.

(b) The separate existence of all parties to the plan of merger, except that of the surviving cooperative association or corporation, shall cease.

(c) If the surviving entity is a cooperative association, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative association organized under chapter 23.86 RCW. If the surviving entity is an ordinary business corporation, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized or existing under Title ~~((23A))~~ 23B RCW.

(d) Such surviving cooperative association or corporation, as the case may be, shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, both public and private of each of the merging organizations, to the extent that such rights, privileges, immunities, and franchises are not inconsistent with the corporate nature of the surviving organization; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the organizations so merged shall be taken and deemed to be transferred to and vested in such surviving cooperative association or corporation, as the case may be, without further act or deed; and the title to any real estate, or any interest therein, vested in any such merged cooperative association shall not revert or be in any way impaired by reason of such merger.

(3) The surviving cooperative association or corporation, as the case may be, shall, after the merger is effected, be responsible and liable for all the liabilities and obligations of each of the organizations so merged; and any claim existing or action or proceeding pending by or against any of such organizations may be prosecuted as if the merger had not taken place and the surviving cooperative association or corporation may be substituted in its place. Neither the right of creditors nor any liens upon the property of any cooperative association or corporation party to the merger shall be impaired by the merger.

(4) The articles of incorporation of the surviving cooperative association or of the surviving ordinary business corporation, as the case may be, shall be deemed to be amended to the extent, if any, that changes in such articles are stated in the plan of merger.

Sec. 21. RCW 23.86.330 and 1989 c 307 s 17 are each amended to read as follows:

The provisions of RCW ~~((23A.28.125))~~ 23B.14.200 and 23B.14.210 shall apply to every association subject to this chapter formed on or after July 23, 1989.

Sec. 22. RCW 23.86.340 and 1989 c 307 s 18 are each amended to read as follows:

The provisions of RCW (~~(23A.28.127)~~) 23B.14.220 shall apply to every association subject to this chapter. An association may apply for reinstatement within three years after the effective date of dissolution.

Sec. 23. RCW 23.86.360 and 1989 c 307 s 32 are each amended to read as follows:

The provisions of Title (~~(23A)~~) 23B RCW shall apply to the associations subject to this chapter, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter. The terms "shareholder" or "shareholders" as used in Title (~~(23A)~~) 23B RCW, or in chapter 24.06 RCW as incorporated by reference herein, shall be deemed to refer to "member" or "members" as defined in this chapter. When the terms "share" or "shares" are used with reference to voting rights in Title (~~(23A)~~) 23B RCW, or in chapter 24.06 RCW as incorporated by reference herein, such terms shall be deemed to refer to the vote or votes entitled to be cast by a member or members.

Sec. 24. RCW 23B.01.200 and 1989 c 165 s 3 are each amended to read as follows:

(1) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

(2) This title must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by this title. It may contain other information as well.

(4) The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) (~~The~~) Unless otherwise indicated in this title, all documents submitted for filing must be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and the capacity in which

the person signs. The document may but need not contain: (a) The corporate seal; (b) an attestation by the secretary or an assistant secretary; or (c) an acknowledgment, verification, or proof.

(8) If the secretary of state has prescribed a mandatory form for the document under RCW 23B.01.210, the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing and must be accompanied by one exact or conformed copy, the correct filing fee or charge, including license fee, penalty and service fee, and any attachments which are required for the filing.

Sec. 25. RCW 23B.01.210 and 1989 c 165 s 4 are each amended to read as follows:

The secretary of state may prescribe and furnish on request, forms for: (1) An application for a certificate of existence; (2) a foreign corporation's application for a certificate of authority to transact business in this state; (3) a foreign corporation's application for a certificate of withdrawal; (4) ~~((the))~~ an initial report; (5) an annual report; and ~~((5))~~ (6) such other forms not in conflict with this title as may be prescribed by the secretary of state. If the secretary of state so requires, use of these forms is mandatory.

Sec. 26. RCW 23B.01.220 and 1990 c 178 s 1 are each amended to read as follows:

(1) The secretary of state shall collect in accordance with the provisions of this title:

- (a) Fees for filing documents and issuing certificates;
- (b) Miscellaneous charges;
- (c) License fees as provided in RCW 23B.01.500 through 23B.01.550;
- (d) Penalty fees; and
- (e) Other fees as the secretary of state may establish by rule adopted under chapter 34.05 RCW.

(2) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

(a) One hundred seventy-five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:

- (i) Articles of incorporation; and
- (ii) Application for certificate of authority;
- (b) Fifty dollars for an application for reinstatement;
- (c) Twenty-five dollars for:

- (i) Articles of correction;
- (ii) Amendment of articles of incorporation;
- (iii) Restatement of articles of incorporation, with or without amendment;

- (iv) Articles of merger or share exchange;
- (v) Articles of revocation of dissolution; and
- (vi) Application for amended certificate of authority;

(d) Twenty dollars for an application for reservation, registration, or assignment of reserved name;

(e) Ten dollars for:

(i) Corporation's statement of change of registered agent or registered office, or both, except where this information is provided in conjunction with and on an initial report or an annual report form filed under RCW 23B.01-.530, 23B.01.550, 23B.02.050, or 23B.16.220;

(ii) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;

(iii) Initial report or annual report; and

(iv) Any document not listed in this subsection that is required or permitted to be filed under this title;

(f) No fee for:

(i) Agent's consent to act as agent;

(ii) Agent's resignation, if appointed without consent;

(iii) Articles of dissolution;

(iv) Certificate of judicial dissolution; and

(v) Application for certificate of withdrawal.

(3) The secretary of state shall collect a fee of twenty-five dollars per defendant served, upon being served process under this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

(4) The secretary of state shall collect from every person or organization:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, ten dollars for the certificate, plus twenty cents for each page copied;

(b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate, ten dollars; and

(c) For furnishing copies of any document, instrument, or paper relating to a corporation, other than of an initial report or an annual report, one dollar for the first page and twenty cents for each page copied thereafter. The fee for furnishing a copy of the most recent annual report of a corporation (or of the initial report if no annual report has been filed) is one dollar, and the fee for furnishing a copy of any other annual report of a corporation is five dollars.

(5) For annual license fees for domestic and foreign corporations, see RCW 23B.01.500, 23B.01.510, 23B.01.530, and 23B.01.550. For penalties for nonpayment of annual license fees and failure to complete annual report, see RCW 23B.01.570.

Sec. 27. RCW 23B.01.280 and 1989 c 165 s 11 are each amended to read as follows:

(1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization means that as of the date of its issuance:

(a) The domestic corporation is duly incorporated under the laws of this state, or that the foreign corporation is authorized to transact business in this state;

(b) All fees and penalties owed to this state under this title have been paid, if (i) payment is reflected in the records of the secretary of state, and (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(c) The corporation's initial report or its most recent annual report required by RCW 23B.16.220 has been delivered to the secretary of state; and

(d) Articles of dissolution or an application for withdrawal have not been filed by the secretary of state.

(3) A person may apply to the secretary of state to issue a certificate covering any fact of record.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in the corporate form in this state.

Sec. 28. RCW 23B.01.400 and 1989 c 165 s 14 are each amended to read as follows:

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

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(5) "Deliver" includes (a) mailing and (b) for purposes of delivering a demand, consent, or waiver to the corporation or one of its officers, transmission by facsimile equipment.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrance of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its

shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Effective date of notice" has the meaning provided in RCW 23B.01.410.

(8) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(9) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest, and the state, United States, and a foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Governmental subdivision" includes authority, county, district, and municipality.

(12) "Includes" denotes a partial definition.

(13) "Individual" includes the estate of an incompetent or deceased individual.

(14) "Means" denotes an exhaustive definition.

(15) "Notice" has the meaning provided in RCW 23B.01.410.

(16) "Person" includes an individual and an entity.

(17) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(18) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(19) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute, and that has more than three hundred holders of record of its shares.

(20) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(21) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(22) "Shares" means the units into which the proprietary interests in a corporation are divided.

(23) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(24) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(25) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(26) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(27) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

Sec. 29. RCW 23B.01.410 and 1990 c 178 s 2 are each amended to read as follows:

(1) Notice under this title must be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

(2) Written notice may be transmitted by: Mail, private carrier or personal delivery; telegraph or teletype; or telephone, wire or wireless equipment which transmits a facsimile of the notice. If these forms of written notice are impracticable, written notice may be transmitted by an advertisement in a newspaper of general circulation in the area where published. Oral notice may be communicated in person or by telephone, wire or wireless equipment which does not transmit a facsimile of the notice. If these forms of oral notice are impracticable, oral notice may be communicated by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) ~~((Except as provided in subsection (3) of this section;))~~ Written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) If expressly authorized by the articles of incorporation or bylaws, and if notice is sent to the person's address, telephone number, or other number appearing on the records of the corporation, when dispatched by telegraph, teletype, or facsimile equipment;

(b) When received;

(c) Except as provided in subsection (3) of this section, five days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; or

(d) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) If this title prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this title, those requirements govern.

Sec. 30. RCW 23B.01.570 and 1989 c 165 s 23 are each amended to read as follows:

In the event any corporation, foreign or domestic, ~~((shall do))~~ fails to file a full and complete initial report under RCW 23B.02.050(4) and 23B.16.220(3) or does business in this state without having paid its annual corporate license fee ~~((or substantially completed its))~~ and without having filed a substantially complete annual report under RCW 23B.16.220(1) when either is due, there shall become due and owing the state of Washington a penalty of twenty-five dollars.

A corporation organized under this title may at any time prior to its dissolution as provided in RCW 23B.14.200, and a foreign corporation qualified to do business in this state may at any time prior to the revocation of its certificate of authority as provided in RCW 23B.15.300, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty specified in this section.

Sec. 31. RCW 23B.02.050 and 1989 c 165 s 30 are each amended to read as follows:

(1) ~~((Within ninety days))~~ After ~~((the date on which the corporation's articles of))~~ incorporation ~~((were filed))~~:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

(4) ~~((Within thirty days after the date of its organizational meeting, the corporation shall file an initial report with the secretary of state containing the information described in RCW 23B.16.220(1).))~~ A corporation's initial report containing the information described in RCW 23B.16.220(1) must be delivered to the secretary of state within one hundred twenty days of the date on which the corporation's articles of incorporation were filed.

Sec. 32. RCW 23B.04.010 and 1989 c 165 s 37 are each amended to read as follows:

(1) A corporate name:

(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.;"

(b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Must not contain any of the following words or phrases:

"Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more ~~((of the))~~ of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

(iii) The fictitious name adopted pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; and

(v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.08 or 25.10 RCW.

(2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(a) Has merged with the other corporation; or

(b) Has been formed by reorganization of the other corporation.

(4) This title does not control the use of assumed business names or "trade names."

(5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

Sec. 33. RCW 23B.07.040 and 1989 c 165 s 63 are each amended to read as follows:

(1) Action required or permitted by this title to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1) of this section.

(3) A shareholder may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time ~~((that))~~ when all consents ~~((are in possession of))~~ have been delivered to the corporation.

(4) Action taken under this section is effective when all consents ~~((are in possession of))~~ have been delivered to the corporation, unless the consent specifies a later effective date.

(5) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(6) If this title requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this title, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to such shareholders for action.

Sec. 34. RCW 23B.07.060 and 1989 c 165 s 65 are each amended to read as follows:

(1) A shareholder may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice, or in the case of notice required by RCW 23B.07.040(6), before or after the action to be taken by written consent is effective. Except as provided by subsections (2) and (3) of this section, the waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(3) A shareholder waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Sec. 35. RCW 23B.08.240 and 1989 c 165 s 95 are each amended to read as follows:

(1) Unless the articles of incorporation or bylaws require a greater or lesser number, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) ~~((The articles of incorporation or bylaws may authorize))~~ Notwithstanding subsection (1) of this section, a quorum of a board of directors ((to consist of)) may in no ((fewer)) event be less than one-third of the ((fixed or specified)) number of directors ((determined under subsection (1) of this section)) specified in or fixed in accordance with the articles of incorporation or bylaws.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors when action is taken is deemed to have assented to the action taken unless:

- (a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting;
- (b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or
- (c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation within a reasonable time after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Sec. 36. RCW 23B.10.070 and 1989 c 165 s 126 are each amended to read as follows:

(1) Any officer of the corporation may restate its articles of incorporation at any time.

(2) A restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment not requiring shareholder approval, it must be adopted by the board of directors. If the restatement includes an amendment requiring shareholder approval, it must be adopted in accordance with RCW 23B.10.030.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) If the restatement does not include an amendment to the articles of incorporation, a statement to that effect;

(b) If the restatement contains an amendment to the articles of incorporation not requiring shareholder approval, a statement that the board of directors adopted the restatement and the date of such adoption; ((or))

(c) If the restatement contains an amendment to the articles of incorporation requiring shareholder approval, the information required by RCW 23B.10.060; and

(d) Both the articles of restatement and the certificate must be executed.

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section.

Sec. 37. RCW 23B.14.200 and 1990 c 178 s 5 are each amended to read as follows:

The secretary of state may administratively dissolve a corporation under RCW 23B.14.210 if:

(1) The corporation does not pay any license fees or penalties, imposed by this title, when they become due;

(2) The corporation does not deliver its completed initial report or annual report to the secretary of state when it is due;

(3) The corporation is without a registered agent or registered office in this state;

(4) The corporation does not notify the secretary of state that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) The corporation's period of duration stated in its articles of incorporation expired after July 1, 1990; or

(6) The corporation's period of duration stated in its articles of incorporation expired prior to July 1, 1990, but the corporation has timely paid all license fees imposed by this title, has timely filed annual reports with the secretary of state, has never been without a registered agent or registered office in this state for sixty days or more, and has never failed to notify the secretary of state of changes in a registered agent or registered office within sixty days of such change.

Sec. 38. RCW 23B.15.040 and 1989 c 165 s 172 are each amended to read as follows:

(1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

(a) Its corporate name; or

(b) The period of its duration.

(2) (~~The requirements of RCW 23B.15.030 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section:))~~

A foreign corporation may apply for an amended certificate of authority by delivering an application to the secretary of state for filing that sets forth:

(a) The name of the foreign corporation and the name in which the corporation is authorized to transact business in Washington, if different;

(b) The name of the state or country under whose law it is incorporated;

(c) The date it was authorized to transact business in this state;

(d) A statement of the change or changes being made;

(e) In the event the change or changes include a name change to a name that does not meet the requirements of RCW 23B.15.060, a fictitious name for use in Washington, and a copy of the resolution of the board of directors, certified by the corporation's secretary, adopting the fictitious name; and

(f) A copy of the document filed in the state or country of incorporation showing that jurisdiction's "filed" stamp.

Sec. 39. RCW 23B.15.300 and 1990 c 178 s 9 are each amended to read as follows:

The secretary of state may revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its completed initial report or annual report to the secretary of state when it is due;

(2) The foreign corporation does not pay any license fees or penalties, imposed by this title, when they become due;

(3) The foreign corporation is without a registered agent or registered office in this state;

(4) The foreign corporation does not inform the secretary of state under RCW 23B.15.080 or 23B.15.090 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Sec. 40. RCW 23B.16.010 and 1989 c 165 s 182 are each amended to read as follows:

(1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions

taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors exercising the authority of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;

(d) The financial statements described in RCW 23B.16.200(1), for the past three years;

(e) All written communications to shareholders generally within the past three years;

(f) A list of the names and business addresses of its current directors and officers; and

(g) Its initial report or most recent annual report delivered to the secretary of state under RCW 23B.16.220.

Sec. 41. RCW 23B.16.220 and 1989 c 165 s 187 are each amended to read as follows:

(1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing ~~((an))~~ initial and annual reports that set~~((s))~~ forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The street address of its registered office and the name of its registered agent at that office in this state;

(c) In the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;

(d) The address of the principal place of business of the corporation in this state;

(e) The names and addresses of its directors, if the corporation has dispensed with or limited the authority of its board of directors pursuant to RCW 23B.08.010 or analogous authority, the names and addresses of persons who will perform some or all of the duties of the board of directors;

(f) A brief description of the nature of its business; and

(g) The names and addresses of its chairperson of the board of directors, if any, president, secretary, and treasurer, or of individuals, however designated, performing the functions of such officers.

(2) Information in ~~((the))~~ an initial report or an annual report must be current as of the date the ~~((annual))~~ report is executed on behalf of the corporation.

(3) A corporation's ~~((first annual))~~ initial report must be delivered to the secretary of state within one hundred twenty days of the date on which the articles of incorporation for a domestic corporation were filed, or on which a foreign corporation's certificate of authority was filed. Subsequent annual reports must be delivered to the secretary of state on, or prior to, the date on which the domestic or foreign corporation is required to pay its annual corporate license fee, and at such additional times as the corporation elects.

Sec. 42. RCW 24.03.035 and 1986 c 240 s 5 are each amended to read as follows:

Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money or credit to its employees other than its officers and directors.

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(13) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.

(14) To indemnify any director or officer or former director or officer or other person in the manner and to the extent provided in RCW (~~23A-08-025~~) 23B.08.500 through 23B.08.600, as now existing or hereafter amended.

(15) To make guarantees respecting the contracts, securities, or obligations of any person (including, but not limited to, any member, any affiliated or unaffiliated individual, domestic or foreign, profit or not for profit, corporation, partnership, association, joint venture or trust) if such guarantee may reasonably be expected to benefit, directly or indirectly, the guarantor corporation. As to the enforceability of the guarantee, the decision of the board of directors that the guarantee may be reasonably expected to benefit, directly or indirectly, the guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation.

(16) To pay pensions and establish pension plans, pension trusts, and other benefit plans for any or all of its directors, officers, and employees.

(17) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise.

(18) To be a trustee of a charitable trust, to administer a charitable trust and to act as executor in relation to any charitable bequest or devise to the corporation. This subsection shall not be construed as conferring authority to engage in the general business of trusts nor in the business of trust banking.

(19) To cease its corporate activities and surrender its corporate franchise.

(20) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

Sec. 43. RCW 24.03.070 and 1986 c 240 s 13 are each amended to read as follows:

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation. The board may adopt emergency bylaws in the manner provided by RCW ((~~23A.08.240~~) 23B.02.070).

Sec. 44. RCW 24.06.905 and 1969 ex.s. c 120 s 105 are each amended to read as follows:

The enactment of this chapter shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this chapter becomes effective; and any corporation existing under any prior law which expires on or before the date when this chapter takes effect shall continue its corporate existence: PROVIDED, That this chapter shall apply prospectively to all existing corporations which do not otherwise qualify under the provisions of Titles ((~~23A~~) 23B) and 24 RCW, to the extent permitted by the Constitution of this state and of the United States.

Sec. 45. RCW 24.36.050 and 1959 c 312 s 5 are each amended to read as follows:

The provisions of Title ((~~23~~) 23B) RCW and all powers and rights thereunder, apply to associations, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter.

Sec. 46. RCW 24.36.090 and 1983 c 3 s 28 are each amended to read as follows:

Any two or more associations may be merged into one such constituent association or consolidated into a new association. Such merger or consolidation shall be made in the manner prescribed by RCW 23B.07.050 and chapter ((~~23A.20~~) 23B.11) RCW for domestic corporations.

Sec. 47. RCW 25.10.020 and 1987 c 55 s 2 are each amended to read as follows:

The name of each limited partnership formed pursuant to this chapter as set forth in its certificate of limited partnership:

(1) Shall contain the words "limited partnership" or the abbreviation "L.P.";

(2) May not contain the name of a limited partner unless (a) it is also the name of a general partner, or the corporate name of a corporate general partner, or (b) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) May not be the same as, or deceptively similar to the name of any domestic corporation or limited partnership existing under the laws of this

state or any foreign corporation or limited partnership authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this title, or under the provisions of RCW ((23A.08.060)) 23B.04.020, or the name of a corporation or limited partnership which has in effect a registration of its corporate or limited partnership name as provided in this title or under the provisions of Title ((23A)) 23B RCW, unless:

(a) The written consent of such other domestic or foreign corporation or limited partnership or holder of a reserved or registered name to use the same or deceptively similar name has been filed with the certificate and one or more words or numerals are added or deleted to make the name distinguishable from the other name as determined by the secretary of state; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the limited partnership to use the name in this state is filed with the certificate;

(4) May not contain the following words or phrases: "Bank", "banking", "banker", "trust", "cooperative"; or any combination of the words "industrial" and "loan"; or any combination of any two or more words "building", "savings", "loan", "home", "association"; or any other words or phrases prohibited by any statute of this state.

Sec. 48. RCW 25.10.600 and 1987 c 55 s 35 are each amended to read as follows:

The secretary of state shall adopt rules establishing fees which shall be charged and collected for:

(1) Filing of a certificate of limited partnership for a domestic or foreign limited partnership;

(2) Filing of a certificate of cancellation or a certificate of dissolution for a domestic or foreign limited partnership;

(3) Filing of a certificate of amendment or restatement for a domestic or foreign limited partnership;

(4) Filing an application to reserve or transfer a limited partnership name;

(5) Filing any other statement or report authorized or permitted to be filed;

(6) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

In the establishment of a fee schedule, the secretary of state shall, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations registering pursuant to Title ((23A)) 23B RCW. Fees for copies, certified copies, certificates of record, and service of process filings shall be as provided for in RCW ((23A.40.030)) 23B.01.220.

All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law.

Sec. 49. RCW 31.24.030 and 1985 c 466 s 42 are each amended to read as follows:

In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the provisions of Title ((23A)) 23B RCW, the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(1) To elect, appoint and employ officers, agents and employees; to make contracts and incur liabilities for any of the purposes of the corporation: PROVIDED, That the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint stock company, association or trust, or in any other manner.

(2) To borrow money from its members and the small business administration and any other similar federal agency, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidence of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval: PROVIDED, That no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(3) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith: PROVIDED, That the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

(4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(5) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial

plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(7) To mortgage, pledge, or otherwise encumber any property, right or things of value, acquired pursuant to the powers contained in subsections (4), (5), or (6) of this section, as security for the payment of any part of the purchase price thereof.

(8) To cooperate with and avail itself of the facilities of the United States department of commerce, the department of trade and economic development, and any other similar state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.

(9) To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

Sec. 50. RCW 31.24.150 and 1983 c 3 s 52 are each amended to read as follows:

The corporation may upon the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the member shall be entitled dissolve said corporation as provided by Title ~~((23A))~~ 23B RCW, insofar as Title ~~((23A))~~ 23B RCW is not in conflict with the provisions of this chapter. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the stockholders until all sums due the members of the corporation as creditors thereof have been paid in full.

Sec. 51. RCW 33.48.025 and 1982 c 3 s 91 are each amended to read as follows:

Except to the extent provided otherwise in this title, stock associations are subject to ~~((those provisions in chapter 23A.08 RCW, as now or hereafter amended, relating to issuance, sale, and repurchase of shares))~~ the provisions of chapter 23B.06 RCW.

Sec. 52. RCW 33.48.030 and 1982 c 3 s 92 are each amended to read as follows:

Stock associations shall have permanent stock which may be issued with or without par value but with a statement of value of nonpar stock in accordance with Title ~~((23A))~~ 23B RCW. The minimum amount of such

stock shall be twenty-five thousand dollars in the case of associations outside of incorporated cities, or in cities of less than twenty-five thousand population. Associations located in cities of greater population shall have as a minimum, fifty thousand dollars of such stock. The board of such association is authorized and directed to issue and maintain the stock in the following percentages: Three percent upon the first five million dollars; two percent upon the next three million dollars, and one percent upon all additional withdrawable savings: PROVIDED, That associations whose savings are insured by the Federal Savings and Loan Insurance Corporation shall not be required to maintain stock in excess of three hundred thousand dollars. A stock association may issue preferred or special classes of shares as provided in chapter (~~23A.08~~) 23B.06 RCW.

Sec. 53. RCW 43.07.120 and 1989 c 307 s 39 are each amended to read as follows:

(1) The secretary of state shall collect the fees herein prescribed for the secretary of state's official services:

(a) For a copy of any law, resolution, record, or other document or paper on file in the secretary's office for which no other fee is provided, fifty cents per page for the first ten pages and twenty-five cents per page for each additional page;

(b) For any certificate under seal, five dollars;

(c) For filing and recording trademark, fifty dollars;

(d) For each deed or patent of land issued by the governor, if for one hundred and sixty acres of land, or less, one dollar, and for each additional one hundred and sixty acres, or fraction thereof, one dollar;

(e) For recording miscellaneous records, papers, or other documents, five dollars for filing each case.

(2) The secretary of state may adopt rules under chapter 34.05 RCW establishing reasonable fees for the following services rendered under Title (~~23A~~) 23B RCW, chapter 18.100, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, or 25.10 RCW:

(a) Any service rendered in-person at the secretary of state's office;

(b) Any expedited service;

(c) The electronic transmittal of documents;

(d) The providing of information by microfiche or other reduced-format compilation;

(e) The handling of checks or drafts for which sufficient funds are not on deposit;

(f) The resubmission of documents previously submitted to the secretary of state where the documents have been returned to the submittor to make such documents conform to the requirements of the applicable statute;

(g) The handling of telephone requests for information; and

(h) Special search charges.

(3) To facilitate the collection of fees, the secretary of state may establish accounts for deposits by persons who may frequently be assessed such fees to pay the fees as they are assessed. The secretary of state may make whatever arrangements with those persons as may be necessary to carry out this section.

(4) No member of the legislature, state officer, justice of the supreme court, judge of the court of appeals, or judge of the superior court shall be charged for any search relative to matters pertaining to the duties of his or her office; nor may such official be charged for a certified copy of any law or resolution passed by the legislature relative to his or her official duties, if such law has not been published as a state law.

Sec. 54. RCW 43.07.130 and 1989 c 307 s 40 are each amended to read as follows:

There is created within the state treasury a revolving fund, to be known as the "secretary of state's revolving fund," which shall be used by the office of the secretary of state to defray the costs of printing, reprinting, or distributing printed matter authorized by law to be issued by the office of the secretary of state, and any other cost of carrying out the functions of the secretary of state under Title ~~((23A))~~ 23B RCW, or chapters 18.100, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, or 25.10 RCW.

The secretary of state is hereby authorized to charge a fee for such publications in an amount which will compensate for the costs of printing, reprinting, and distributing such printed matter. Fees recovered by the secretary of state under RCW 43.07.120(2), ~~((23A.36.050, 23A.49.030))~~ 23B.01.220(1)(e), (3), and (4), 23B.18.050, 24.03.410, 24.06.455, or 46.64.040, and such other moneys as are expressly designated for deposit in the secretary of state's revolving fund shall be placed in the secretary of state's revolving fund.

Sec. 55. RCW 43.07.140 and 1982 c 35 s 189 are each amended to read as follows:

The secretary of state is hereby specifically authorized to print, reprint, and distribute the following materials:

- (1) Lists of active corporations;
- (2) The provisions of Title 23 RCW;
- (3) The provisions of Title ~~((23A))~~ 23B RCW;
- (4) The provisions of Title 24 RCW;
- (5) The provisions of chapter 25.10 RCW;
- (6) The provisions of Title 29 RCW;
- (7) ~~((The provisions of Title 62A RCW;~~
- ~~(8)))~~ The provisions of chapter 18.100 RCW;
- ~~((9))~~ (8) The provisions of chapter 19.77 RCW;
- ~~((10))~~ (9) The provisions of chapter 43.07 RCW;
- ~~((11))~~ (10) The provisions of the Washington state Constitution;

~~((12))~~ The provisions of chapter 42.17 RCW and rules adopted by the public disclosure commission;

~~((13))~~ (11) The provisions of chapters 40.14, 40.16, and 40.20 RCW, and any statutes, rules, schedules, indexes, guides, descriptions, or other materials related to the public records of state or local government or to the state archives; and

~~((14))~~ (12) Rules and informational publications related to the statutory provisions set forth above.

Sec. 56. RCW 43.07.190 and 1989 c 307 s 41 are each amended to read as follows:

Where the secretary of state determines that a summary face sheet or cover sheet would expedite review of any documents made under Title ~~((23A))~~ 23B RCW, or chapter 18.100, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.36, or 25.10 RCW, the secretary of state may require the use of a summary face sheet or cover sheet that accurately reflects the contents of the attached document. The secretary of state may, by rule adopted under chapter 34.05 RCW, specify the required contents of any summary face sheet and the type of document or documents in which the summary face sheet will be required, in addition to any other filing requirements which may be applicable.

Sec. 57. RCW 50.04.165 and 1986 c 110 s 1 are each amended to read as follows:

(1) Services performed by corporate officers as defined in ~~((RCW 23A.08.470))~~ subsection (2) of this section, covered by chapter 50.44 RCW, shall not be considered services in employment. However, a corporation may elect to cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. If the employer fails to notify any corporate officer, then that person shall not be considered to be a corporate officer for the purposes of this section.

(2) The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer.

Sec. 58. RCW 61.24.010 and 1987 c 352 s 1 are each amended to read as follows:

(1) The terms "record" and "recorded" as used in this chapter, shall include the appropriate registration proceedings, in the instance of registered land.

(2) The trustee of a deed of trust under this chapter shall be:

(a) Any domestic corporation incorporated under Title ~~((23A))~~ 23B, 30, 31, 32, or 33 RCW; or

(b) Any title insurance company authorized to insure title to real property under the laws of this state, or its agents; or

(c) Any attorney who is an active member of the Washington state bar association at the time he is named trustee; or

(d) Any professional corporation incorporated under chapter 18.100 RCW, all of whose shareholders are licensed attorneys; or

(e) Any agency or instrumentality of the United States government; or

(f) Any national bank, savings bank, or savings and loan association chartered under the laws of the United States.

(3) The trustee shall resign at the request of the beneficiary and may resign at its own election. Upon the resignation, incapacity, disability, or death of the trustee, the beneficiary shall nominate in writing a successor trustee. Upon recording in the mortgage records of the county or counties in which the trust deed is recorded, of the appointment of a successor trustee, the successor trustee shall be vested with all powers of the original trustee.

NEW SECTION. Sec. 59. RCW 23A.32.050 and 1989 c 307 s 42 are each repealed.

Passed the Senate February 25, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 73

[Senate Bill 5290]

DRIVERS' LICENSES—RESIDENCY AND APPLICATION REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to a valid driver's license; and amending RCW 46.20.021 and 46.25.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.20.021 and 1990 c 250 s 33 are each amended to read as follows:

(1) No person, except as expressly exempted by this chapter, may drive any motor vehicle upon a highway in this state unless the person has a valid driver's license issued to Washington residents under the provisions of this chapter. A violation of this subsection is a misdemeanor and is a lesser included offense within the offenses described in RCW 46.20.342(1), 46.20.420, and 46.65.090.

(2) For the purposes of obtaining a valid driver's license, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

(a) Becoming a registered voter in this state; or

(b) Receiving benefits under one of the Washington public assistance programs; or

(c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

(3) The term "Washington public assistance programs" referred to in subsection (2)(b) of this section includes only public assistance programs for which more than fifty percent of the combined costs of benefits and administration are paid from state funds. Programs which are not included within the term "Washington public assistance programs" pursuant to the above criteria include, but are not limited to the food stamp program under the federal food stamp act of 1964; programs under the child nutrition act of 1966, 42 U.S.C. Secs. 1771 through 1788; and aid to families with dependent children, 42 U.S.C. Secs. 601 through 606.

(4) No person shall receive a driver's license unless and until he or she surrenders to the department all valid driver's licenses in his or her possession issued to him or her by any other jurisdiction. The department shall establish a procedure to invalidate the surrendered photograph license and return it to the person. The invalidated license, along with the valid temporary Washington driver's license provided for in RCW 46.20.055(3), shall be accepted as proper identification. The department shall notify the issuing department that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid driver's license at any time.

((3)) (5) New Washington residents are allowed thirty days from the date they become residents as defined in this section to procure a valid Washington driver's license.

(6) Any person licensed as a driver under this chapter may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipal or local board, or body having authority to adopt local police regulations.

Sec. 2. RCW 46.25.070 and 1989 c 178 s 9 are each amended to read as follows:

(1) The application for a commercial driver's license or commercial driver's instruction permit must include the following:

(a) The full name and current mailing and residential address of the person;

(b) A physical description of the person, including sex, height, weight, and eye color;

(c) Date of birth;

(d) The applicant's Social Security number;

(e) The person's signature;

(f) Certifications including those required by 49 C.F.R. part 383.71(a);

(g) Proof of certification of physical examination or waiver, as required by 49 C.F.R. 391.41 through 391.49;

(h) Any other information required by the department; and

(i) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

(3) (~~A driver of a commercial motor vehicle shall immediately apply for a driver's license upon becoming a resident of this state.~~) No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

Passed the Senate March 14, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 74

[Senate Bill 5767]

PUBLIC UTILITY DISTRICTS—BORROWING AND CREDIT LINE AUTHORITY

Effective Date: 7/28/91

AN ACT Relating to public utility districts borrowing or establishing lines of credit with any financial institution; and amending RCW 54.16.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 54.16.070 and 1984 c 186 s 44 are each amended to read as follows:

(1) A district may contract indebtedness or borrow money for any corporate purpose on its credit or on the revenues of its public utilities, and to evidence such indebtedness may issue general obligation bonds or revenue obligations; may issue and sell local utility district bonds of districts created by the commission, and may purchase with surplus funds such local utility district bonds, and may create a guaranty fund to insure prompt payment of all local utility district bonds. The general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. A district is authorized to establish lines of credit or make other prearranged agreements, or both, to borrow money with any financial institution.

(2) Notwithstanding subsection (1) of this section, such revenue obligations and local utility district bonds may be issued and sold in accordance with chapter 39.46 RCW.

Passed the Senate March 13, 1991.

Passed the House April 15, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 75

[Substitute Senate Bill 5835]

SKI AREAS—SIGN REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to conveyances for recreational purposes at ski areas; and amending RCW 70.117.010, 70.88.080, and 70.88.090.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.117.010 and 1989 c 81 s 2 are each amended to read as follows:

(1) The operator of any ski area shall maintain a sign system based on international or national standards and as may be required by the state parks and recreation commission.

All signs for instruction of the public shall be bold in design with wording short, simple, and to the point. All such signs shall be prominently placed.

Entrances to all machinery, operators', and attendants' rooms shall be posted to the effect that unauthorized persons are not permitted therein.

The sign "Working on Lift" or a similar warning sign shall be hung on the main disconnect switch and at control points for starting the auxiliary or prime mover when a person is working on the passenger tramway.

~~((2) The interior of each reversible aerial tramway and gondola lift shall be prominently posted to show:~~

~~(a) The maximum capacity of each reversible aerial tramway and gondola lift in pounds and number of passengers (which shall also be posted at each loading area); and~~

~~(b) Instructions for procedure in emergencies;~~

~~(3) The following signs shall be posted at all aerial lifts except gondola lifts:~~

~~(a) "Prepare to Unload" (not less than fifty feet ahead of unloading area);~~

~~(b) "Keep Ski Tips Up" (ahead of any point where skis may come in contact with a platform or the snow surface);~~

~~(c) "Unload Here";~~

~~(d) "Safety Gate" (if applicable);~~

~~(e) "Remove Pole Straps from Wrists" (at loading area); and~~

~~(f) Sign visible at all points of downhill loading, listing downhill capacity of lift:~~

~~(4) The following signs shall be posted at all surface lifts:~~

~~(a) "Prepare to Unload" (not less than fifty feet ahead of unloading area);~~

~~(b) "Stay in Track";~~

~~(c) "Unload Here";~~

~~(d) "Safety Gate"; and~~

~~(e) "Remove Pole Straps from Wrists" (at loading area);~~

~~(5) The following signs shall be posted at all tows:~~

~~(a) "No Loose Scarves~~

~~No Loose Clothing~~

~~No Long Hair Exposed"~~

~~(at loading area);~~

~~(b) "Stay in Track";~~

~~(c) "Unload Here"; and~~

~~(d) "Safety Gate".~~

~~(6)) (2) All signs required for normal daytime operation shall be in place, and those pertaining to the tramway, lift, or tow operations shall be adequately lighted for night skiing.~~

~~((7)) (3) If a particular trail or run has been closed to the public by an operator, the operator shall place a notice thereof at the top of the trail or run involved, and no person shall ski on a run or trail which has been designated "Closed".~~

~~((8)) (4) An operator shall place a notice at the embarking terminal or terminals of a lift or tow which has been closed that the lift or tow has been closed and that a person embarking on such a lift or tow shall be considered to be a trespasser.~~

~~((9)) (5) Any snow making machines or equipment shall be clearly visible and clearly marked. Snow grooming equipment or any other vehicles shall be equipped with a yellow flashing light at any time the vehicle is moving on or in the vicinity of a ski run; however, low profile vehicles, such as snowmobiles, may be identified in the alternative with a flag on a mast of not less than six feet in height.~~

~~((10)) (6) The operator of any ski area shall maintain a readily visible sign on each rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device, advising the users of the device that:~~

~~(a) Any person not familiar with the operation of the lift shall ask the operator thereof for assistance and/or instruction; and~~

~~(b) The skiing-ability level recommended for users of the lift and the runs served by the device shall be classified "easiest", "more difficult", and "most difficult".~~

Sec. 2. RCW 70.88.080 and 1990 c 136 s 3 are each amended to read as follows:

Inspections, rules, and orders of the state parks and recreation commission resulting from the exercise of the provisions of this chapter(~~(, as well as under RCW 70.88.020;))~~ and chapter 70.117 RCW shall not in any manner be deemed to impose liability upon the state for any injury or damage resulting from the operation or signing of the facilities regulated by this chapter, and all actions of the state parks and recreation commission and its personnel shall be deemed to be an exercise of the police power of the state.

Sec. 3. RCW 70.88.090 and 1959 c 327 s 9 are each amended to read as follows:

The state parks and recreation commission is empowered to adopt reasonable rules(~~(, regulations;))~~ and codes relating to public safety in the construction, operation, signing, and maintenance of the recreational devices provided for in this chapter. The rules(~~(, regulations;))~~ and codes authorized hereunder shall be in accordance with established standards, if any, and shall not be discriminatory in their application.

Passed the Senate March 13, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

CHAPTER 76

[Engrossed House Bill 1277]

GEOHERMAL ACCOUNT EXTENSION

Effective Date: 7/28/91

AN ACT Relating to the geothermal account; amending RCW 43.140.900 and 28A.515.320; and adding a new section to chapter 79.12 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.140.900 and 1981 c 158 s 8 are each amended to read as follows:

This chapter shall terminate on June 30, (~~(1991))~~ 2001.

Sec. 2. RCW 28A.515.320 and 1981 c 158 s 6 are each amended to read as follows:

The common school construction fund is to be used exclusively for the purpose of financing the construction of facilities for the common schools. The sources of said fund shall be: (1) Those proceeds derived from sale or appropriation of timber and other crops from school and state land subsequent to June 30, 1965, other than those granted for specific purposes; (2) the interest accruing on the permanent common school fund from and after July 2, 1967, together with all rentals and other revenue derived therefrom and from land and other property devoted to the permanent common school fund from and after July 1, 1967; (3) all moneys received by the state from the United States under the provisions of section 191, Title 30, United State

Code, Annotated, and under section 810, chapter 12, Title 16, (Conservation), United States Code, Annotated, except moneys received before June 30, ((1991)) 2001, and when thirty megawatts of geothermal power is certified as commercially available by the receiving utilities and the state energy office, eighty percent of such moneys, under the Geothermal Steam Act of 1970 pursuant to RCW 43.140.030; and (4) such other sources as the legislature may direct. That portion of the common school construction fund derived from interest on the permanent common school fund may be used to retire such bonds as may be authorized by law for the purpose of financing the construction of facilities for the common schools.

The interest accruing on the permanent common school fund together with all rentals and other revenues accruing thereto pursuant to subsection (2) of this section prior to July 1, 1967, shall be exclusively applied to the current use of the common schools.

To the extent that the moneys in the common school construction fund are in excess of the amount necessary to allow fulfillment of the purpose of said fund, the excess shall be available for deposit to the credit of the permanent common school fund or available for the current use of the common schools, as the legislature may direct. Any money from the common school construction fund which is made available for the current use of the common schools shall be restored to the fund by appropriation, including interest income foregone, before the end of the next fiscal biennium following such use.

NEW SECTION. Sec. 3. A new section is added to chapter 79.12 RCW to read as follows:

In an effort to increase potential revenue to the geothermal account, the department of natural resources shall, by December 1, 1991, adopt rules providing guidelines and procedures for leasing state-owned land for the development of geothermal resources.

Passed the House March 11, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 77

[House Bill 1372]

INTERSTATE PAROLE AND PROBATION HEARING PROCEDURES REPEAL

Effective Date: 7/28/91

AN ACT Relating to interstate parole and probation hearing procedures; and repealing RCW 9.95B.010, 9.95B.020, 9.95B.030, 9.95B.040, and 9.95B.900.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The following acts or parts of acts are each repealed:

- (1) RCW 9.95B.010 and 1973 c 21 s 2;
- (2) RCW 9.95B.020 and 1973 c 21 s 3;
- (3) RCW 9.95B.030 and 1973 c 21 s 4;
- (4) RCW 9.95B.040 and 1973 c 21 s 5; and
- (5) RCW 9.95B.900 and 1973 c 21 s 6.

Passed the House March 14, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 78

[House Bill 1946]

ERWIN O. RIEGER MEMORIAL HIGHWAY

Effective Date: 7/28/91

AN ACT Relating to the Erwin O. Rieger Memorial Highway; and amending RCW 47.17.640.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 47.17.640 and 1984 c 7 s 136 are each amended to read as follows:

A state highway to be known as state route number 501 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence northerly by way of ((the)) Lower River Road and an extension thereof to Ridgefield, thence easterly to a junction with state route number 5 in the vicinity south of La Center. That portion of state route number 501 from the northerly junction of N.W. Lower River Road to the Ridgefield city limits is designated "the Erwin O. Rieger Memorial Highway." The department may enter into an agreement with the Port of Vancouver, ((and/or)) Clark county ((and/or)), or the United States Army Engineers, or any combination thereof, to obtain material dredged from the Columbia river and have it stockpiled at no expense to the state.

Passed the House March 19, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 79

[Substitute House Bill 1082]

STATE HEALTH CARE AUTHORITY AND STATE EMPLOYEES BENEFIT
BOARD—INFORMATION EXEMPT FROM PUBLIC DISCLOSURE

Effective Date: 7/28/91

AN ACT Relating to disclosure of information by the health care authority and state employees benefit board; and amending RCW 41.05.026.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.05.026 and 1990 c 222 s 6 are each amended to read as follows:

(1) When soliciting proposals for the purpose of awarding contracts for goods or services, the administrator shall, upon written request by the bidder, exempt from public inspection and copying such proprietary data, trade secrets, or other information contained in the bidder's proposal that relate to the bidder's unique methods of conducting business or of determining prices or premium rates to be charged for services under terms of the proposal.

(2) Actuarial formulas, statistics, cost and utilization data, or other proprietary information submitted upon request of the administrator or board by a contracting insurer, health care service contractor, health maintenance organization, or vendor may be withheld at any time from public inspection when necessary to preserve trade secrets or prevent unfair competition.

(3) The board may hold an executive session during any regular or special meeting to discuss information submitted in accordance with subsection (1) or (2) of this section.

Passed the House February 27, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 80

[Engrossed Substitute House Bill 2137]

CARBONATED BEVERAGE TAX—REVISED PROVISIONS

Effective Date: 6/1/91

AN ACT Relating to excise taxes on carbonated beverages and syrups; amending RCW 82.64.010, 82.64.020, 82.64.030, and 82.64.040; adding new sections to chapter 82.64 RCW; creating new sections; prescribing penalties; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.64.010 and 1989 c 271 s 505 are each amended to read as follows:

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

(1) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide, whether carbonation is obtained by natural or artificial means.

~~(2) ("Possession" means the control of a carbonated beverage or syrup located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a carbonated beverage or syrup or to authorize the sale or use by another.~~

~~(3))~~ "Previously taxed carbonated beverage or syrup" means a carbonated beverage or syrup in respect to which a tax has been paid under this chapter. A "previously taxed carbonated beverage" includes carbonated beverages in respect to which a tax has been paid under this chapter on the carbonated beverage or on the syrup in the carbonated beverage.

~~((4))~~ (3) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

~~((5))~~ (4) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

Sec. 2. RCW 82.64.020 and 1989 c 271 s 506 are each amended to read as follows:

(1) A tax is imposed on ~~((the privilege of possession))~~ each sale at wholesale of a carbonated beverage or syrup in this state. The rate of the tax shall be equal to eighty-four one-thousandths of a cent per ounce for carbonated beverages and seventy-five cents per gallon for syrups. Fractional amounts shall be taxed proportionally.

(2) A tax is imposed on each sale at retail of a carbonated beverage or syrup in this state. The rate of the tax shall be equal to the rate imposed under subsection (1) of this section.

(3) Moneys collected under this chapter shall be deposited in the drug enforcement and education account under RCW 69.50.520.

~~((3))~~ (4) Chapter 82.32 RCW applies to the ~~((tax))~~ taxes imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the ~~((tax))~~ taxes imposed in this chapter.

Sec. 3. RCW 82.64.030 and 1989 c 271 s 507 are each amended to read as follows:

The following are exempt from the ~~((tax))~~ taxes imposed in this chapter:

(1) Any successive ~~((possession))~~ sale of a previously taxed carbonated beverage or syrup. ~~((if tax due under this chapter has not been paid with~~

~~respect to a carbonated beverage or syrup, the department may collect the tax from any person who has had possession of the carbonated beverage or syrup. If the tax is paid by any person other than the first person having taxable possession of a carbonated beverage or syrup, the amount of tax paid constitutes a debt owed by the first person having taxable possession to the person who paid the tax.)~~

(2) Any carbonated beverage or syrup that is transferred to a point outside the state for use outside the state. The department shall provide by rule appropriate procedures and exemption certificates for the administration of this exemption.

(3) ~~((Any possession of a carbonated beverage or syrup where the first possession occurred before July 1, 1989))~~ Any sale at wholesale of a trademarked carbonated beverage or syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked carbonated beverage or syrup within a specified geographic territory.

(4) Any sale of carbonated beverage or syrup in respect to which a tax on the privilege of possession was paid under this chapter before the effective date of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 82.64 RCW to read as follows:

(1) The tax imposed in RCW 82.64.020(1) shall be paid by the buyer to the wholesaler and each wholesaler shall collect from the buyer the full amount of the tax payable in respect to each taxable sale, unless the wholesaler is prohibited from collecting the tax from the buyer under the Constitution of this state or the Constitution or laws of the United States. Regardless of the obligation to collect the tax from the buyer, the wholesaler is liable to the state for the amount of the tax. The tax imposed in RCW 82.64.020(2) shall be paid by the retailer. The buyer is not obligated to pay or report to the department the taxes imposed in RCW 82.64.020.

(2) The tax required to be collected by the wholesaler shall be stated separately from the selling price in any sales invoice or other instrument of sale.

(3) Any wholesaler who fails or refuses to collect tax under this section, with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, is guilty of a misdemeanor.

(4) The amount of tax required to be collected under this section shall constitute a debt from the buyer to the wholesaler until paid by the buyer to the wholesaler.

NEW SECTION. Sec. 5. A new section is added to chapter 82.64 RCW to read as follows:

(1) Each retailer at a retail store with a sales and storage area totaling more than four thousand square feet may:

(a) Include in all print advertising of carbonated beverages a notice with the statement specified in subsection (2) of this section.

(b) Post shelf notices with the statement specified in subsection (2) of this section. Shelf notices shall be provided by the wholesaler, and shall be posted by the wholesaler or the retailer next to each price label on the carbonated beverage shelves of the retail store.

(2) Each notice under this section shall state: "Price includes (amount) Washington Drug Fund Tax." In the notice, "(amount)" shall be replaced with the specific amount of the tax imposed under this chapter upon the quantity of carbonated beverage for which the price is stated.

(3) This section does not apply to the sale, advertising, or shelf display of:

(a) Syrups;

(b) Carbonated beverages sold through vending machines;

(c) Carbonated beverages dispensed into open containers;

(d) Carbonated beverages sold by a wholesaler who is prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business.

NEW SECTION. Sec. 6. The taxes imposed in this act are intended to raise revenue for the enforcement of the drug laws of the state. It is the policy of the state to actively combat the problem of drug abuse by aggressive enforcement of the state's drug laws and by extensive promotion of public education programs designed to increase public and consumer awareness of the state's drug problem and its enforcement measures.

Sec. 7. RCW 82.64.040 and 1989 c 271 s 508 are each amended to read as follows:

(1) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any carbonated beverage or syrup tax paid to another state with respect to the same carbonated beverage or syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that carbonated beverage or syrup.

(2) For the purpose of this section:

(a) "Carbonated beverage or syrup tax" means a tax:

(i) That is imposed on the ~~((act or privilege of possessing))~~ sale at wholesale of carbonated beverages or syrup and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the volume of the carbonated beverage or syrup.

(b) "State" means (i) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof.

NEW SECTION. Sec. 8. The amendatory sections of this act shall not be construed as affecting any existing right acquired or liability or obligation incurred under those sections as they existed before this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections.

NEW SECTION. Sec. 9. 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 shall take effect June 1, 1991.

Passed the House March 19, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 81

[House Bill 1072]

ELECTION LAWS—REVISED PROVISIONS

Effective Date: 7/1/92

AN ACT Relating to elections; amending RCW 29.85.010, 29.85.020, 29.85.040, 29.85.060, 29.85.070, 29.85.090, 29.85.100, 29.85.110, 29.85.170, 29.85.190, 29.85.200, 29.85.210, 29.85.220, 29.85.225, 29.85.230, 29.85.240, 29.85.260, 29.85.275, 29.51.020, 29.07.130, 29.07.220, 29.10.020, 29.10.040, 29.10.110, 29.10.150, 29.10.170, 29.36.010, 29.36.013, 29.36.060, 29.36.097, 29.36.160, 29.36.170, 29.64.020, 29.64.030, 29.64.070, and 35A.42.040; reenacting and amending RCW 29.36.030; adding a new section to chapter 29.85 RCW; adding a new section to chapter 29.10 RCW; recodifying RCW 29.85.190 and 29.85.200; repealing RCW 29.07.151, 29.10.030, 29.10.050, 29.10.120, 29.10.160, 29.30.105, 29.85.030, 29.85.050, 29.85.080, 29.85.105, 29.85.120, 29.85.130, 29.85.140, 29.85.160, and 29.85.180; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29.85.010 and 1965 c 9 s 29.85.010 are each amended to read as follows:

~~Any person ((other than the officer charged by law with the care of ballots, or a person entrusted by any such officer with the care of the same for the purposes required by law, who has in his possession outside of the voting room any official ballot or any person who makes or has in his possession any counterfeit of any official ballot, shall be)) who, without lawful authority, removes a ballot from a polling place is guilty of a gross misdemeanor ((and shall upon conviction thereof be sentenced to pay a fine of not exceeding one thousand dollars nor less than five hundred dollars, or to undergo imprisonment in the county jail for a term not less than six months nor more than one year, or both, at the discretion of the court)) punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.~~

Sec. 2. RCW 29.85.020 and 1965 c 9 s 29.85.020 are each amended to read as follows:

~~((Any judge, inspector, clerk, or any other officer of an election who opens or marks, by folding or otherwise, any ballot presented by a voter at any election, or attempts to find out the names thereon, or suffers the same to be done by any other person, before the ballot is deposited in the ballot box, shall be guilty of a gross misdemeanor.))~~

(1) It is a gross misdemeanor for a person to examine, or assist another to examine, any voter record, ballot, or any other state or local government official election material if the person, without lawful authority, conducts the examination:

(a) For the purpose of identifying the name of a voter and how the voter voted; or

(b) For the purpose of determining how a voter, whose name is known to the person, voted; or

(c) For the purpose of identifying the name of the voter who voted in a manner known to the person.

(2) Any person who reveals to another information which the person ascertained in violation of subsection (1) of this section is guilty of a gross misdemeanor.

(3) A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 3. RCW 29.85.040 and 1965 c 9 s 29.85.040 are each amended to read as follows:

Any ((printer, business manager, or publisher)) person who is retained or employed by any officer authorized by the laws of this state to procure the printing of any official ballot or ((any person)) who is engaged in printing official ballots ((who)) is guilty of a gross misdemeanor if the person knowingly:

(1) Appropriates any official ballot to himself or herself or;

(2) Gives or delivers any official ballot to or ((knowingly)) permits any official ballot to be taken ((any official ballot)) by any ((other)) person other than the officer authorized by law to receive it((;)); or ((who wilfully))

(3) Prints or causes to be printed any official ballot: (a) In any other form than that prescribed by law or as directed by the officer authorized to procure the printing thereof; or (b) with any other names thereon or with the names spelled otherwise than as directed by such officer, or the names or printing thereon arranged in any other way than that authorized and directed by law((, shall be guilty of)).

A gross misdemeanor ((and upon conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars, nor less than five hundred dollars, or imprisonment in the county jail for a term not exceeding one year nor less than six months, or both, at the discretion of the court)) under

this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

NEW SECTION. Sec. 4. A new section is added to chapter 29.85 RCW to read as follows:

A person is guilty of a gross misdemeanor who knowingly:

(1) Deceives any voter in recording his or her vote by providing incorrect or misleading recording information or by providing faulty election equipment or records; or

(2) Records the vote of any voter in a manner other than as designated by the voter.

Such a gross misdemeanor is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 5. RCW 29.85.060 and 1965 c 9 s 29.85.060 are each amended to read as follows:

Any person who uses menace, force, threat, or ~~((corrupt))~~ any unlawful means ~~((at or previous to any election held pursuant to the laws of the state))~~ towards any ~~((elector))~~ voter to hinder or deter such ~~((elector))~~ a voter from voting ~~((at such election))~~, or directly or indirectly offers any bribe ~~((or))~~, reward ~~((of))~~, or any ~~((kind to induce an elector to))~~ thing of value to a voter in exchange for the voter's vote for or against any person or ~~((proposition))~~ ballot measure, or authorizes any person to do so, ~~((shall be))~~ is guilty of a class C felony punishable under RCW 9A.20.021.

~~((Any inspector, judge, or clerk of election who attempts to induce, by persuasion, menace, or reward, or promise thereof, any elector to vote for any person shall be guilty of a gross misdemeanor.))~~

Sec. 6. RCW 29.85.070 and 1965 c 9 s 29.85.070 are each amended to read as follows:

Any person who in any way, directly or indirectly, by menace or ~~((other corrupt))~~ unlawful means ~~((or device))~~, attempts to influence any person in ~~((giving or))~~ refusing to give his or her vote in any primary or special or general election ~~((, or deters or dissuades any person from giving his vote therein, or disturbs, hinders, persuades, threatens, or intimidates any person from giving his vote therein; or who at any such election, knowingly and wilfully makes any false assertion or propagates any false report concerning any person who is candidate thereat, which shall have a tendency to prevent his election, or with a view thereto, shall be))~~ is guilty of a gross misdemeanor ~~((and, on conviction, shall be punished by a fine of not to exceed two hundred fifty dollars or by imprisonment for the term of six months, or by both))~~ punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 7. RCW 29.85.090 and 1965 c 9 s 29.85.090 are each amended to read as follows:

Any person who solicits, requests, or demands, directly or indirectly, any ~~((money, intoxicating liquor, or anything))~~ reward or thing of value or the promise thereof ~~((either to influence))~~ in exchange for his or her vote or in exchange for the ~~((purpose or pretended purpose of influencing the))~~ vote of any other person ~~((at the polls or other place prior to or on the day of any primary election;))~~ for or against any candidate ~~((for office))~~ or for or against any ballot measure to be voted upon at a primary or special or general election ~~((, shall be))~~ is guilty of a gross misdemeanor ~~((, upon conviction thereof, he shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment))~~ punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 8. RCW 29.85.100 and 1965 c 9 s 29.85.100 are each amended to read as follows:

Every person ~~((shall be guilty of a felony and punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years;))~~ who:

(1) Knowingly and falsely ((makes)) issues a certificate of nomination or election; or

~~(2) ((Falsely makes an oath to a certificate of nomination; or~~

~~(3) Fraudulently defaces or destroys a certificate of nomination or any part thereof; or~~

~~(4) Files or receives for filing a certificate of nomination, knowing that it or any part of it has been falsely made; or~~

~~(5) Suppresses a certificate of nomination which has been filed, or any part thereof; or~~

~~(6) Forges or falsely makes the official endorsement on any ballot))~~

Knowingly provides false information on a certificate which must be filed with an elections officer under chapter 29.24 RCW; or

(3) Knowingly provides false information on his or her declaration of candidacy or petition of nomination; or

(4) Conceals or fraudulently defaces or destroys a certificate which has been filed with an elections officer under chapter 29.24 RCW or a declaration of candidacy or petition of nomination which has been filed with an elections officer, or any part of such a certificate, declaration, or petition, is guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 9. RCW 29.85.110 and 1965 c 9 s 29.85.110 are each amended to read as follows:

Any person who ~~((on election day))~~ willfully defaces, removes, or destroys any of the supplies or ~~((other conveniences placed in the voting booths for the purpose of))~~ materials which the person knows are intended both for use in a polling place and for enabling ((the)) a voter to prepare his or her ballot ~~((, or who, prior to or on election day, wilfully defaces or~~

~~destroys any posted list of candidates, or during an election tears down or defaces cards of instruction for voters shall be)) is guilty of a ((misdemeanor and shall be punished by a fine not exceeding one hundred dollars)) class C felony punishable under RCW 9A.20.021.~~

Sec. 10. RCW 29.85.170 and 1965 c 9 s 29.85.170 are each amended to read as follows:

Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, including primaries, or the provisions of any charter or ordinance of any city or town of this state relating to elections who willfully neglects or refuses to perform such duty, or who, in the performance of such duty, or in his or her official capacity, knowingly or fraudulently violates any of the provisions of law relating to such duty, ((shall be)) is guilty of a class C felony punishable under RCW 9A.20.021 and shall forfeit his or her office.

Sec. 11. RCW 29.85.190 and 1965 c 9 s 29.85.190 are each amended to read as follows:

If any ~~((officer))~~ registrar or deputy registrar:

(1) Willfully neglects or refuses to perform any duty required by law in connection with the registration of voters; or

(2) Willfully neglects or refuses to perform such duty in the manner required by voter registration law; or

(3) Enters or causes or permits to be entered on the voter registration records ((of any precinct)) the name of any person in any other manner or at any other time than as prescribed by voter registration law or enters or causes or permits to be entered on such records the name of any person not entitled to be thereon; or

(4) Destroys, mutilates, ~~((secretes))~~ conceals, changes, or alters any registration record in connection therewith except as authorized by voter registration law, he((shall be)) or she is guilty of a gross misdemeanor ((and in addition to any other penalty otherwise provided by law, shall forfeit any office he holds)) punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 12. RCW 29.85.200 and 1990 c 143 s 12 are each amended to read as follows:

Any person who:

(1) Knowingly provides false information on an application for voter registration under any provision of this title;

(2) Knowingly makes or attests to a false declaration as to his or her qualifications as a voter;

(3) Knowingly causes or permits himself or herself to be registered using the name of another person;

(4) Knowingly causes himself or herself to be registered under two or more different names; or

(5) Knowingly causes any person to be registered or causes any registration to be transferred or canceled except as authorized under this title, ~~((shall be))~~ is guilty of a class C felony punishable under RCW ((9A.72-030)) 9A.20.021.

Sec. 13. RCW 29.85.210 and 1965 c 9 s 29.85.210 are each amended to read as follows:

Any person who votes or attempts to vote more than once at any primary or general or special election ~~(, or who knowingly hands in two or more ballots together, or, having voted in one township, precinct, ward, or county, afterward, on the same day, votes or attempts to vote, in another township, precinct, ward, or county, shall be))~~ is guilty of a gross misdemeanor, ((and shall be incapable of voting at any election or holding any office for two years thereafter)) punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 14. RCW 29.85.220 and 1965 c 9 s 29.85.220 are each amended to read as follows:

Any ~~((inspector or judge of any election))~~ precinct election officer who knowingly permits any ~~((elector))~~ voter to cast a second vote at any primary or general or special election, or knowingly permits any person not a qualified ~~((elector))~~ voter to vote at any primary or general or special election, ~~((shall be))~~ is guilty of a class C felony ((and shall be incapable of holding any office in this state for five years thereafter)) punishable under RCW 9A.20.021.

Sec. 15. RCW 29.85.225 and 1990 c 59 s 55 are each amended to read as follows:

(1) In ~~((precincts using paper))~~ any location in which ballots ((and in counting centers)) are counted, no person authorized by law to be present while votes are being counted may divulge any results of the count of the ballots at any time prior to the closing of the polls for that primary or special or general election.

(2) A violation of this section is a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under ((chapter 9A-20)) RCW 9A.20.021.

Sec. 16. RCW 29.85.230 and 1965 c 9 s 29.85.230 are each amended to read as follows:

It shall be a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, for any person to remove or deface the posted copy of the result of votes cast at their precinct or to delay delivery of or change the copy of primary or special or general election returns to be delivered to the proper election officer.

Sec. 17. RCW 29.85.240 and 1965 c 9 s 29.85.240 are each amended to read as follows:

Any person (~~(knowing)~~) who knows that he or she does not possess the legal qualifications of a voter and who votes at any primary or special or general election authorized by law to be held in this state for any office whatever(;) shall be guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 18. RCW 29.85.260 and 1965 c 9 s 29.85.260 are each amended to read as follows:

Any person who tampers with or (~~(injures)~~) damages or attempts to (~~(injure)~~) damage any voting machine or device to be used or being used in (~~(an)~~) a primary or special or general election, or who prevents or attempts to prevent the correct operation of such machine or device, or any unauthorized person who makes or has in his or her possession a key to a voting machine or device to be used or being used in (~~(an)~~) a primary or special or general election, shall be guilty of a class C felony (~~(and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the state penitentiary for not less than one year nor more than five years, or by both such fine and imprisonment)~~) punishable under RCW 9A.20.021.

Sec. 19. RCW 29.85.275 and 1984 c 216 s 5 are each amended to read as follows:

A person who removes or defaces lawfully placed political advertising including yard signs or billboards without authorization is guilty of a misdemeanor punishable to the same extent as a misdemeanor that is punishable under ((chapter 9A.20)) RCW 9A.20.021. The defacement or removal of each item constitutes a separate violation.

Sec. 20. RCW 29.51.020 and 1990 c 59 s 75 are each amended to read as follows:

(1) On the day of any primary(;) or general or special election, no person may, within a polling place, or in any public area within three hundred feet of any entrance to such polling place:

(a) (~~(Do any electioneering)~~) Suggest or persuade or attempt to suggest or persuade any voter to vote for or against any candidate or ballot measure;

(b) Circulate cards or handbills of any kind;

(c) Solicit signatures to any kind of petition; or

(d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place(~~(or~~

~~(c) Conduct any exit poll or public opinion poll with voters).~~

(2) No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place. Any sheriff, deputy sheriff, or municipal law enforcement officer shall

prevent such obstruction, and may arrest any person creating such obstruction.

(3) No person may:

(a) Except as provided in RCW 29.54.037, remove any ballot from the polling place before the closing of the polls; or

(b) Solicit any voter to show his or her ballot.

(4) No person other than an inspector or judge of election may receive from any voter a voted ballot or deliver a blank ballot to such elector.

(5) Any violation of this section is a gross misdemeanor ((under RCW 9A.20.010, and shall be punished under RCW 9A.20.020(3))), punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, and the person convicted may be ordered to pay the costs of prosecution.

Sec. 21. RCW 29.07.130 and 1971 ex.s. c 202 s 17 are each amended to read as follows:

(1) The cards required by RCW 29.07.090 shall be kept on file in the office of the secretary of state in such manner as will be most convenient for, and for the sole purpose of, checking initiative and referendum petitions ((and mailing pamphlets required for constitutional amendments and by the initiative and referendum procedure. They shall not be open to public inspection or be used for any other purpose)). The secretary may maintain an automated file of voter registration information for any county or counties in lieu of filing or maintaining these voter registration cards if the automated file includes all of the information from the cards including, but not limited to, a retrievable facsimile of the signature of each voter of that county or counties. Such an automated file may be used only for the purpose authorized for the use of the cards.

(2) The county auditor shall have custody of the voter registration records for each county. The original voter registration form, as established by RCW 29.07.070, shall be filed alphabetically without regard to precinct. An automated file of all registered voters shall be maintained pursuant to RCW 29.07.220. An auditor may maintain the automated file in lieu of filing or maintaining the original voter registration forms if the automated file includes all of the information from the original voter registration forms including, but not limited to, a retrievable facsimile of each voter's signature.

(3) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying: The voter's name, gender, voting record, date of registration, and registration number. The address of a registered voter or addresses of a group of voters are available for public inspection and copying except to the extent that the address of a particular voter is not so available under RCW 42.17.310(1)(bb). The political jurisdictions within which a voter or group of voters reside are also available for public inspection and copying except that the political jurisdictions within which a particular voter resides are not

available for such inspection and copying if the address of the voter is not so available under RCW 42.17.310(1)(bb). No other information from voter registration records or files is available for public inspection or copying.

Sec. 22. RCW 29.07.220 and 1974 ex.s. c 127 s 12 are each amended to read as follows:

Each county auditor shall ~~((establish, on or before July 1, 1975, and))~~ maintain a computer file on magnetic tape or disk, punched cards, or other form of data storage containing the records of all registered voters within the county ~~((:PROVIDED, That an auditor in a county with more than one hundred fifty thousand registered voters may decline to comply with the provisions of all or none of RCW 29.04.055, 29.07.160, 29.07.220, 29.07.230, and 29.07.240)).~~ Where it is necessary or advisable, the auditor may provide for the establishment and maintenance of such files by private contract or through interlocal agreement as provided by chapter 39.34 RCW, as it now exists or is hereafter amended. The computer file shall include, but not be limited to, each voter's name, residence address, sex, date of registration, applicable taxing district and precinct codes and the last date on which the individual voted. The county auditor shall subsequently record each consecutive date upon which the individual has voted and retain at least the last five such consecutive dates: PROVIDED, That if the voter has not voted at least five times since establishing his or her current registration record, only the available dates shall be included.

Sec. 23. RCW 29.10.020 and 1975 1st ex.s. c 184 s 2 are each amended to read as follows:

~~((Any))~~ A registered voter who changes his or her residence from one address to another within the same county(;) shall ((have his registration transferred)), to maintain a valid voter registration, transfer his or her registration to ((his)) the new address ((by)) in one of the following ways: (1) Sending to the county auditor a signed request stating ((his)) the voter's present address and precinct(;) and the address and precinct from which ((he)) the voter was last registered((, or by)); (2) appearing in person before ((him to have his registration transferred;)) the auditor and signing such a request((, or)); (3) transferring the registration in the manner provided by RCW ((29.10.160, as now or hereafter amended)) 29.10.170; or (4) telephoning the county auditor to transfer the registration. The telephone call transferring a registration by telephone must be received by the auditor before the precinct registration files are closed to new registrations for the next primary or special or general election in which the voter participates.

The secretary of state shall adopt rules facilitating the transfer of a registration by telephone authorized by this section. The rules shall include, but need not be limited to, those establishing the form which must be signed by a voter subsequent to transferring a registration by telephone.

Sec. 24. RCW 29.10.040 and 1977 ex.s. c 361 s 26 are each amended to read as follows:

Except as provided in RCW 29.10.170, a registered voter who changes his or her residence from one county to another county, shall be required to register anew. Before registering anew, the voter shall sign an authorization to cancel his or her present registration ((in substantially the following)). The authorization shall be on a form((: "I hereby authorize the cancellation of my registration in precinct of county." Such)) prescribed by the secretary of state by rule. The authorization shall be forwarded promptly to the county auditor of the county in which the voter was previously registered. ((Upon the receipt of such authorization,)) The county auditor of the county where the previous registration was made((: shall cause the signature on the authorization to be compared with the signature on the registration record of such voter, and)) shall cancel the registration of the voter if it appears that the signatures in the registration record and on the cancellation authorization form were made by the same person((: the former registration record shall be canceled forthwith)).

NEW SECTION. Sec. 25. A new section is added to chapter 29.10 RCW to read as follows:

To maintain a valid voter registration, a person who changes his or her name shall notify the county auditor regarding the name change in one of the following ways: (1) By sending the auditor a notice clearly identifying the name under which he or she is registered to vote, the voter's new name, and the voter's residence. Such a notice must be signed by the voter using both this former name and the voter's new name; (2) by appearing in person before the auditor or a deputy registrar and signing such a change-of-name notice; or (3) by signing such a change-of-name notice at the voter's precinct polling place on the day of a primary or special or general election.

A properly registered voter who files a change-of-name notice at the voter's precinct polling place during a primary or election and who desires to vote at that primary or election shall sign the poll book using the voter's former and new names in the same manner as is required for the change-of-name notice.

The secretary of state may adopt rules facilitating the implementation of this section.

Sec. 26. RCW 29.10.110 and 1971 ex.s. c 202 s 32 are each amended to read as follows:

Every county auditor shall carefully preserve in a separate file or list((: to be kept in his office for that purpose, all original and duplicate)) the registration records of persons whose voter registrations have been canceled as authorized under this title. The files or lists ((for the preservation of canceled registration records)) shall be ((arranged and)) kept in ((alphabetical order irrespective of the precincts from which the canceled records were taken. The signed statement or an index reference to file of such signed

~~statements used as the authority for cancellation as provided in RCW 29-10.090, 29.10.110, 29.10.130 through 29.10.160, 29.04.100 and 29.51.060 shall be firmly affixed to the canceled registration record~~) the manner prescribed by rule by the secretary of state. Information from such canceled registration records is available for public inspection and copying to the same extent established by RCW 29.07.130 for other voter registration information.

The county auditor may destroy ~~((all original))~~ the voter registration ((forms after they have)) information and records of any person whose voter registration has been canceled for a period of two years or more.

Sec. 27. RCW 29.10.150 and 1971 ex.s. c 202 s 35 are each amended to read as follows:

The secretary of state as chief elections officer shall cause appropriate forms to be designed to carry out the provisions of RCW ~~((29.04.100, 29-10.110;))~~ 29.10.130 through 29.10.160 ~~((and 29.51.060))~~. The county auditors and registrars shall have such forms available. Further, a reasonable supply of such forms shall be at each polling place on the day of a primary or election, general or special.

Sec. 28. RCW 29.10.170 and 1979 c 96 s 1 are each amended to read as follows:

(1) A person who is registered ((voter)) to vote in this state may ((file a)) transfer ((of)) his or her voter registration on the day of ((an)) a special or general election or primary under the following procedures ((set forth in this section:)):

~~((At each))~~ (a) The voter may complete, at the polling place, ((the precinct election officials shall have at their table a supply of forms for transfer of registration;)) a registration transfer form designed by the secretary of state and supplied by the county auditor((s. Accompanying such forms there shall be a sign stating "If you do not still reside at the address at which you are presently registered, please complete this form.")); or

(b) The voter may write in his or her new residential address in the precinct list of registered voters.

The county auditor shall determine which of these two procedures are to be used in the county or may determine that both procedures are to be available to voters for use in the county.

(2) A voter ((completing the)) who transfers ((form)) his or her registration in the manner authorized by this section shall vote in the precinct in which he or she was previously registered. ((Upon transmittal of the ballots, ballot cards, or voting machine count to the county auditor the precinct election officers shall also deliver the transfer forms to))

(3) The auditor((, who)) shall, within ninety days, mail to each voter ((requesting a transfer of registration;)) who has transferred a registration under this section a notice of his or her current precinct and polling place.

Sec. 29. RCW 29.36.010 and 1987 c 346 s 9 are each amended to read as follows:

Any registered voter of the state or any out-of-state voter, overseas voter, or service voter may vote by absentee ballot in any general election, special election, or primary in the manner provided in this chapter. Out-of-state voters, overseas voters, and service voters are authorized to cast the same ballots, including those for special elections, as a registered voter of the state would receive under this chapter.

(1) Except as provided in subsections (2) and (3) of this section, in RCW 29.36.013, and in RCW 29.36.170, a registered voter or elector desiring to cast an absentee ballot must ~~((apply in writing to))~~ request the absentee ballot from his or her county auditor no earlier than forty-five days nor later than the day before any election or primary. Except as provided in subsection (3) of this section and in RCW 29.36.170, the request may be made orally in person, by telephone, or in writing. An application or request for an absentee ballot made under the authority of any federal statute or regulation shall be considered and given the same effect as ((an application)) a request for an absentee ballot under this chapter.

(2) For any registered voter, ~~((an application))~~ a request for an absentee ballot for a primary shall be honored as ~~((an application))~~ a request for an absentee ballot for the following general election if the voter so indicates ~~((on))~~ in his or her ~~((application))~~ request. For any out-of-state voter, overseas voter, or service voter, ~~((an application))~~ a request for an absentee ballot for a primary election shall also be honored as ~~((an application))~~ a request for an absentee ballot for the following general election.

(3) A voter admitted to a hospital no earlier than five days before a primary or election and confined to the hospital on election day may apply by messenger for an absentee ballot on the day of the primary or election if a signed statement from the hospital administrator, or designee, verifying the voter's date of admission and status as a patient in the hospital on the day of the primary or election is attached to the ~~((absentee ballot))~~ voter's written application for an absentee ballot.

(4) ~~((An application for an absentee ballot must be signed by the registered voter or elector. An application for an absentee ballot by a registered voter is not valid unless the voter's signature on the application is substantially the same as that voter's signature on his or her registration record:~~

~~((An application))~~ In a voter's request for an absentee ballot, the voter shall state the address to which the absentee ballot should be sent. ((An application)) A request for an absentee ballot from an out-of-state voter, overseas voter, or service voter shall state the address of that elector's last residence for voting purposes in the state of Washington and either ((the)) a written application or the oath on the return envelope shall include a declaration of the other qualifications of the applicant as an elector of this state. ((An application)) A request for an absentee ballot from any other voter

shall state the address at which that voter is currently registered to vote in the state of Washington or the county auditor shall verify such information from the voter registration records of the county.

(5) ~~((An application for an absentee ballot shall be mailed or delivered to the county auditor of the county in which the voter is registered or resides. An))~~ A request for an absentee ballot ((application)) from a registered voter who is within this state shall be ((sent)) made directly to the auditor of the county in which the voter is registered. An absentee ballot ~~((application))~~ request from a registered voter who is temporarily outside this state or from an out-of-state voter, overseas voter, or service voter may be ~~((sent))~~ made either to the appropriate county auditor or to the secretary of state, who shall promptly forward the ~~((application))~~ request to the appropriate county auditor. No person, organization, or association may distribute absentee ballot applications within this state that contain any return address other than that of the appropriate county auditor.

(6) A person may request an absentee ballot for use by the person as a registered voter and may request an absentee ballot on behalf of any member of that person's immediate family who is a registered voter for use by the family member. As a means of ensuring that a person who requests an absentee ballot is requesting the ballot for only that person or a member of the person's immediate family, the secretary of state shall adopt rules prescribing the circumstances under which an auditor: May require a person who requests an absentee ballot to identify the date of birth of the voter for whom the ballot is requested; and may deny a request which is not accompanied by this information.

Sec. 30. RCW 29.36.013 and 1987 c 346 s 10 are each amended to read as follows:

Any disabled voter or any voter over the age of sixty-five may apply, in writing, for status as an ongoing absentee voter. Each such voter shall be granted that status by his or her county auditor and shall automatically receive an absentee ballot for each ensuing election for which he or she is entitled to vote and need not submit a separate ~~((application))~~ request for each election. Ballots received from ongoing absentee voters shall be validated, processed, and tabulated in the same manner as other absentee ballots.

Status as an ongoing absentee voter shall be terminated upon any of the following events:

- (1) The written request of the voter;
- (2) The death or disqualification of the voter;
- (3) The cancellation of the voter's registration record;
- (4) The return of an ongoing absentee ballot as undeliverable; or
- (5) January 1st of each odd-numbered year.

Sec. 31. RCW 29.36.030 and 1987 c 346 s 11 and 1987 c 295 s 9 are each reenacted and amended to read as follows:

~~((Upon receipt of a signed application for an absentee ballot from a registered voter, the county auditor shall verify the applicant's signature:))~~
If the ~~((application))~~ information contained in a request for an absentee ballot received by the county auditor is complete and correct and the applicant is qualified to vote under federal or state law, the county auditor shall issue an absentee ballot for the primary or election for which the absentee ballot was requested. Otherwise, the county auditor shall notify the applicant of the reason or reasons why the ~~((application))~~ request cannot be accepted.

At each general election in an even-numbered year, each absentee voter shall also be given a separate ballot containing the names of the candidates that have filed for the office of precinct committee officer unless fewer than two candidates have filed for the same political party in the absentee voter's precinct. The ballot shall provide space for writing in the name of additional candidates.

When mailing an absentee ballot to a registered voter temporarily outside the state or to an out-of-state voter, overseas voter, or service voter, the county auditor shall send a copy of the state voters' and candidates' pamphlet with the absentee ballot. The county auditor shall mail all absentee ballots and related material to voters outside the territorial limits of the United States and the District of Columbia under 39 U.S.C. 3406.

Sec. 32. RCW 29.36.060 and 1987 c 346 s 14 are each amended to read as follows:

The opening and subsequent processing of return envelopes for any primary or election may begin on or after the tenth day prior to such primary or election. The opening of the security envelopes and tabulation of absentee ballots shall not commence until after 8:00 o'clock p.m. on the day of the primary or election.

After opening the return envelopes, the county canvassing board shall place all of the ballot envelopes in containers that can be secured with numbered seals. These sealed containers shall be stored in a secure location until after 8:00 o'clock p.m. of the day of the primary or election. Absentee ballots that are to be tabulated on an electronic vote tallying system may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation before sealing the containers.

The canvassing board shall examine the postmark, statement, and signature on each return envelope containing the security envelope and absentee ballot. They shall verify that the voter's signature is the same as that ~~((on))~~ in the ((original application by)) registration files for that voter. For absentee voters other than out-of-state voters, overseas voters, and service voters, if the postmark is illegible, the date on the return envelope to which the voter attests shall determine the validity, as to the time of voting, of that

absentee ballot under this chapter. For ~~((out-of-state voters, overseas voters, and service))~~ any absentee voter((s)), a variation between the signature of the voter on the return envelope and that ~~((on))~~ in the ~~((application))~~ registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

Sec. 33. RCW 29.36.097 and 1987 c 346 s 17 are each amended to read as follows:

Each county auditor shall maintain in his or her office, open for public inspection, a record of the ~~((applications))~~ requests he or she has received for absentee ballots under this chapter.

The information ~~((on))~~ from the ~~((applications))~~ requests shall be recorded and lists of this information shall be available no later than twenty-four hours after their receipt.

This information about absentee voters shall be available according to the date of ~~((application))~~ the requests and by legislative district. It shall include the name of each applicant, the address and precinct in which the voter maintains a voting residence, the date on which an absentee ballot was issued to this voter, if applicable, the type of absentee ballot, and the address to which the ballot was or is to be mailed, if applicable.

The auditor shall make copies of these records available to the public for the actual cost of production or copying.

Sec. 34. RCW 29.36.160 and 1987 c 346 s 20 are each amended to read as follows:

A person who willfully violates any provision of this chapter regarding the assertion or declaration of qualifications to receive or cast an absentee ballot, unlawfully casts a vote by absentee ballot, or willfully violates any provision regarding the conduct of mail ballot special elections under RCW 29.36.120 through 29.36.139 is guilty of a class C felony punishable under RCW 9A.20.021. Except as provided in chapter 29.85 RCW a person who willfully violates any other provision of this chapter is guilty of a misdemeanor.

Sec. 35. RCW 29.36.170 and 1987 c 346 s 21 are each amended to read as follows:

(1) As provided in this section, county auditors shall provide special absentee ballots to be used for state primary or state general elections. A special absentee ballot shall only be provided to a voter who completes an application stating that:

(a) The voter believes that she or he will be residing or stationed or working outside the continental United States; and

(b) The voter believes that she or he will be unable to vote and return a regular absentee ballot by normal mail delivery within the period provided for regular absentee ballots.

The application for a special absentee ballot may not be filed earlier than ninety days before the applicable state primary or general election. The special absentee ballot shall list the offices and measures, if known, scheduled to appear on the state primary or general election ballot. The voter may use the special absentee ballot to write in the name of any eligible candidate for each office and vote on any measure.

(2) With any special absentee ballot issued under this section, the county auditor shall include a listing of any candidates who have filed before the time of the application for offices that will appear on the ballot at that primary or election and a list of any issues that have been referred to the ballot before the time of the application.

(3) Write-in votes on special absentee ballots shall be counted in the same manner provided by law for the counting of other write-in votes. The county auditor shall process and canvass the special absentee ballots provided under this section in the same manner as other absentee ballots under chapters 29.36 and 29.62 RCW.

(4) A voter who requests a special absentee ballot under this section may also ~~((make application for))~~ request an absentee ballot under RCW 29.36.010. If the regular absentee ballot is properly voted and returned, the special absentee ballot shall be deemed void and the county auditor shall reject it in whole when special absentee ballots are canvassed.

Sec. 36. RCW 29.64.020 and 1987 c 54 s 5 are each amended to read as follows:

An application for a recount shall state the office for which a recount is requested and whether the request is for all or only a portion of the votes cast in that jurisdiction of that office. The person filing an application shall, at the same time, deposit with the county canvassing board or secretary of state, in cash or by certified check, a sum equal to five cents for each ballot cast in the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the recount. These charges shall be determined by the county canvassing board or boards under RCW 29.64.060.

~~((Promptly after the filing of an application for a recount or the receipt of a request from the secretary of state to conduct a recount;))~~ The county canvassing board shall determine a time and a place or places at which the recount will be conducted. This time shall be less than five days after the day upon which: The application was filed with ((or)) the board; the request ((from the secretary of state)) for a recount or directive ordering a recount was received by the ((county canvassing)) board from the secretary of state; or the returns are certified which indicate that a recount is required under RCW 29.64.015 for an issue or office voted upon only within the county. The county auditor shall mail a notice of the time and place of the recount to the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office. The notice shall be

mailed by certified mail not less than two days before the date of the recount. Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel.

Proceedings of the canvassing board are public under chapter 42.30 RCW. Subject to reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount.

Sec. 37. RCW 29.64.030 and 1990 c 59 s 65 are each amended to read as follows:

(1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives. Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other than the ones for which a recount was (~~ordered~~) applied for or required.

At the time and place established for a recanvass of the votes cast on voting devices that do not provide an individual record of the choices of each voter, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the voting devices to be rechecked, and shall verify the votes cast for the offices and issues for which the recount was ordered. Witnesses shall be permitted to watch the recheck of the voting devices. The canvassing board shall not permit the rechecking of votes for any nomination, election, or issue other than the ones for which a recount was (~~ordered~~) applied for or required.

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

If the canvassing board finds that the results of the votes in the precincts recounted, if substituted for the results of the votes in those precincts as shown in the certified abstract of the votes would not change the result for that office or issue, it shall not recount the ballots of the precincts listed in the application for recount which have not been recounted before the request to stop the recount. The canvassing board shall attach a copy of the request to stop the recount to the partial returns of the recount.

The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. The observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than

two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process.

Sec. 38. RCW 29.64.070 and 1965 c 9 s 29.64.070 are each amended to read as follows:

The secretary of state, as chief election officer, shall ~~((make))~~ adopt rules ~~((and regulations, not inconsistent with this chapter;))~~ in accordance with chapter 34.05 RCW to facilitate and clarify ~~((any))~~ procedures contained ~~((herein))~~ in this chapter.

Sec. 39. RCW 35A.42.040 and 1967 ex.s. c 119 s 35A.42.040 are each amended to read as follows:

In addition to any specific enumeration of duties of city clerks in a code city's charter or ordinances, and without limiting the generality of RCW 35A.21.030 of this title, the clerks of all code cities shall perform the following duties in the manner prescribed, to wit: (1) Certification of city streets as part of the highway system in accordance with the provisions of RCW 47.24.010; (2) ~~((prepare statements of cancellation of registration as required by RCW 29.10.120; (3)))~~ perform the functions of a member of a firemen's pension board as provided by RCW 41.16.020; ~~((4))~~ (3) keep a record of ordinances of the city and provide copies thereof as authorized by RCW 5.44.080; ~~((5))~~ (4) serve as applicable the trustees of any police relief and pension board as authorized by RCW 41.20.010; and ~~((6))~~ (5) serve as secretary-treasurer of volunteer ~~((firemen's))~~ fire fighters' relief and pension boards as provided in RCW 41.24.060.

NEW SECTION. Sec. 40. RCW 29.85.190 and 29.85.200, as amended by this act, are each recodified as sections in chapter 29.07 RCW.

NEW SECTION. Sec. 41. The following acts or parts of acts are each repealed:

- (1) RCW 29.07.151 and 1986 c 167 s 5;
- (2) RCW 29.10.030 and 1971 ex.s. c 202 s 25 & 1965 c 9 s 29.10.030;
- (3) RCW 29.10.050 and 1965 c 9 s 29.10.050;
- (4) RCW 29.10.120 and 1977 ex.s. c 361 s 28, 1971 ex.s. c 202 s 33, & 1965 c 9 s 29.10.120;
- (5) RCW 29.10.160 and 1975 1st ex.s. c 184 s 3, 1971 ex.s. c 202 s 36, & 1965 ex.s. c 156 s 8;
- (6) RCW 29.30.105 and 1990 c 59 s 15;
- (7) RCW 29.85.030 and 1965 c 9 s 29.85.030;
- (8) RCW 29.85.050 and 1965 c 9 s 29.85.050;
- (9) RCW 29.85.080 and 1965 c 9 s 29.85.080;
- (10) RCW 29.85.105 and 1977 ex.s. c 329 s 17;
- (11) RCW 29.85.120 and 1965 c 9 s 29.85.120;
- (12) RCW 29.85.130 and 1965 c 9 s 29.85.130;
- (13) RCW 29.85.140 and 1965 c 9 s 29.85.140;

(14) RCW 29.85.160 and 1967 ex.s. c 109 s 31 & 1965 c 9 s 29.85-.160; and

(15) RCW 29.85.180 and 1965 c 9 s 29.85.180.

NEW SECTION. Sec. 42. This act shall take effect July 1, 1992.

Passed the House March 11, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 82

[Engrossed Substitute House Bill 1031]

WATER AND SEWER DISTRICTS—POWERS REVISED

Effective Date: 7/28/91

AN ACT Relating to water and sewer districts; amending RCW 56.08.100, 56.08.140, 57.08.100, and 57.08.120; reenacting and amending RCW 57.08.010; adding a new section to chapter 56.08 RCW; and adding a new section to chapter 57.08 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 56.08.100 and 1981 c 190 s 5 are each amended to read as follows:

A sewer district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance and/or social security insurance for the benefit of its employees and may pay all or any part of the cost thereof. Any two or more sewer districts or one or more sewer districts and one or more water districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of each participating sewer and/or water district may by appropriate resolution authorize their respective district to pay all or any portion of the cost thereof.

A sewer district with five thousand or more customers providing health, group, or life insurance to its employees may provide its commissioners with the same coverage: PROVIDED, That the per person amounts for such insurance paid by the district shall not exceed the per person amounts paid by the district for its employees.

Sec. 2. RCW 56.08.140 and 1967 c 178 s 3 are each amended to read as follows:

No such lease shall be made unless secured by a bond conditioned on the performance of the terms of the lease, with surety satisfactory to the commissioners, in a penalty of not less than one-sixth of the term of the lease or for one year's rental, whichever is greater; and no such lease shall be made for a term longer than twenty-five years. However, the board of

commissioners may require a reasonable security deposit in lieu of a bond on leased real property owned by the water or sewer district.

NEW SECTION. Sec. 3. A new section is added to chapter 56.08 RCW to read as follows:

A district may operate and maintain a park or recreational facilities on real property that it owns or in which it has an interest that is not immediately necessary for its purposes.

If such park or recreational facilities are operated by a person other than the district, including a corporation, partnership, or other business enterprise, the person shall indemnify and hold harmless the district for any injury or damage caused by the action of the person.

Sec. 4. RCW 57.08.010 and 1989 c 389 s 9 and 1989 c 308 s 2 are each reenacted and amended to read as follows:

(1) (a) A water district may acquire by purchase or condemnation, or both, all property and property rights and all water and water rights, both within and without the district, necessary for its purposes.

(b) A water district may lease real or personal property necessary for its purposes for a term of years for which such leased property may reasonably be needed where in the opinion of the board of water commissioners such property may not be needed permanently or substantial savings to the district can be effected thereby.

(c) The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities of the third class, insofar as consistent with the provisions of this title, except that all assessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the water district, and the duties devolving upon the city treasurer are hereby imposed upon the county treasurer.

(d) A water district may construct, condemn and purchase, purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof, and any city or town therein and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire, or own buildings and other necessary district facilities. Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer.

(e) A water district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the district and inhabitants thereof and residents of Canada with an ample supply of water under terms approved by the board of commissioners. Such waterworks may

include facilities which result in combined water supply and electric generation, provided that the electricity generated thereby is a byproduct of the water supply system.

(f) Such electricity may be used by the water district or sold to any entity authorized by law to distribute electricity. Such electricity is a byproduct when the electrical generation is subordinate to the primary purpose of water supply.

(g) For such purposes, a water district may take, condemn and purchase, purchase, acquire, and retain water from any public or navigable lake, river, or watercourse, or any underflowing water and, by means of aqueducts or pipe line conduct the same throughout such water district and any city or town therein and carry it along and upon public highways, roads, and streets, within and without such district.

(h) For the purpose of constructing or laying aqueducts or pipe lines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such water district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution.

(i) For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a water district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner.

(2) A water district may purchase and take water from any municipal corporation.

(3) A water district may fix rates and charges for water supplied and may charge property owners seeking to connect to the district's water supply system, as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that such property owners shall bear their equitable share of the cost of such system.

(a) For purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants.

(b) The connection charge may include interest charges applied from the date of construction of the water system until the connection, or for a

period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the water system, or at the time of installation of the water lines to which the property owner is seeking to connect.

(4) (a) A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The county treasurer may charge and collect a fee of three dollars for each year for the treasurer's services. Such fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer.

(b) Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule.

(5) A district may operate and maintain a park or recreational facilities on real property that it owns or in which it has an interest that is not immediately necessary for its purposes.

(6) If such park or recreational facilities are operated by a person other than the district, including a corporation, partnership, or other business enterprise, the person shall indemnify and hold harmless the district for any injury or damage caused by the action of the person.

Sec. 5. RCW 57.08.100 and 1981 c 190 s 6 are each amended to read as follows:

A water district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance and/or social security insurance for the benefit of its employees and may pay all or any part of the cost thereof. Any two or more water districts or any one or more water districts and one or more sewer districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of each participating sewer and/or water district may by appropriate resolution authorize their respective district to pay all or any portion of the cost thereof.

A water district with five thousand or more customers providing health, group, or life insurance to its employees may provide its commissioners with the same coverage: PROVIDED, That the per person amounts for such insurance paid by the district shall not exceed the per person amounts paid by the district for its employees.

Sec. 6. RCW 57.08.120 and 1967 ex.s. c 135 s 1 are each amended to read as follows:

A water district may lease out real property which it owns or in which it has an interest and which is not immediately necessary for its purposes

upon such terms as the board of water commissioners deems proper: **PROVIDED**, That no such lease shall be made until the water district has first caused notice thereof to be published twice in a newspaper in general circulation in the water district, the first publication to be at least fifteen days and the second at least seven days prior to the making of such lease, which notice shall describe the property proposed to be leased out, to whom, for what purpose, and the rental to be charged therefor. A hearing shall be held pursuant to the terms of the said notice, at which time any and all persons who may be interested shall have the right to appear and to be heard.

No such lease shall be for a period longer than twenty-five years, and each lease of real property shall be secured by a bond conditioned to perform the terms of such lease with surety satisfactory to the commissioners, in a penalty not less than the rental for one-sixth of the term: **PROVIDED**, That the penalty shall not be less than the rental for one year where the term is one year or more. In a lease, the term of which exceeds five years, and when at the option of the commissioners, it is so stipulated in the lease, the commission shall accept, with surety satisfactory to it, a bond conditioned to perform the terms of the lease for some part of the term, in no event less than five years (unless the remainder of the unexpired term is less than five years, in which case for the full remainder) and in every such case the commissioners shall require of the lessee, another or other like bond to be delivered within two years, and not less than one year prior to the expiration of the period covered by the existing bond, covering an additional part of the term in accordance with the foregoing provisions in respect to the original bond, and so on until the end of the term so that there will always be in force a bond securing the performance of the lease, and the penalty in each bond shall be not less than the rental for one-half the period covered thereby, but no bond shall be construed to secure the furnishing of any other bond. However, the board of commissioners may require a reasonable security deposit in lieu of a bond on leased real property owned by a water district.

The commissioners may accept as surety on any bond required by this section, either an approved surety company or one or more persons satisfactory to the commissioners, or in lieu of such bond may accept a deposit as security of such property or collateral or the giving of such other form of security as may be satisfactory to the commissioners.

NEW SECTION. Sec. 7. A new section is added to chapter 57.08 RCW to read as follows:

A water district may adopt a water conservation plan and emergency water use restrictions. The district may enforce a water conservation plan and emergency water use restrictions by imposing a fine as provided by resolution for failure to comply with any such plan or restrictions. The commissioners may provide by resolution that if a fine for failure to comply with

the water conservation plan or emergency water use restrictions is delinquent for a specified period of time, the district shall certify the delinquency to the treasurer of the county in which the real property is located and serve notice of the delinquency on the subscribing water customer who fails to comply, and the fine is then a separate item for inclusion on the bill of the party failing to comply with the water conservation plan or emergency water use restrictions.

Passed the House March 6, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 83

[Substitute House Bill 1454]

UNDERGROUND STORAGE TANKS—LIMITS ON PREEMPTION OF UNIFORM FIRE CODE

Effective Date: 7/28/91

AN ACT Relating to underground storage tank law preemption; and amending RCW 90.76.110.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 90.76.110 and 1989 c 346 s 12 are each amended to read as follows:

(1) Except as provided in RCW 90.76.040 and subsections (2), (3), ~~((and))~~ (4), and (5) of this section, the rules adopted under this chapter supersede and preempt any state or local underground storage tank law, ordinance, or resolution governing any aspect of regulation covered by the rules adopted under this chapter.

(2) Provisions of the uniform fire code adopted under chapter 19.27 RCW, which are not more stringent than, and do not directly conflict with, rules adopted under this chapter are not superseded or preempted.

(3) Local laws, ordinances, and resolutions pertaining to local authority to take immediate action in response to a release of a regulated substance are not superseded or preempted.

~~((3))~~ (4) City, town, or county underground storage tank ordinances that are more stringent than the federal regulations and the uniform codes adopted under chapter 19.27 RCW and that are in effect on November 1, 1988, are not superseded or preempted. A city, town, or county with an ordinance that meets these criteria shall notify the department of the existence of that ordinance by July 1, 1989.

~~((4))~~ (5) Local laws, ordinances, and resolutions pertaining to permits and fees for the use of underground storage tanks in street right of

ways that were in existence prior to July 1, 1990, are not superseded or preempted.

Passed the House March 14, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 84

[Substitute Senate Bill 5204]

PRACTICAL NURSES—LICENSING REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to practical nurses; amending RCW 18.78.005, 18.78.020, 18.78.030, 18.78.040, 18.78.050, 18.78.055, 18.78.060, 18.78.080, 18.78.100, 18.78.182, 18.78.160, and 18.78.010; reenacting and amending RCW 18.78.090; and repealing RCW 18.78.110.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.78.005 and 1983 c 55 s 1 are each amended to read as follows:

The purpose of this chapter is to protect the health of the general public and to provide for the establishment and enforcement of standards for licensing practical nurses. Any person offering to practice as a licensed practical nurse or using any title, representation, sign, or device to indicate that the person is practicing as a practical nurse or licensed practical nurse in this state shall submit evidence that he or she is qualified to practice and shall be licensed as provided in this chapter.

Sec. 2. RCW 18.78.020 and 1983 c 55 s 3 are each amended to read as follows:

There is hereby created a board to be known and designated as the "Washington state board of practical nursing." The board of practical nursing shall be composed of five members, appointed by the governor as follows:

(1) Two members shall be licensed practical nurses who shall have had not less than five years' actual experience as a licensed practical nurse and who have practiced as a practical nurse within two years of appointment;

(2) Two members shall be licensed registered nurses who have no less than five years' experience in the practice of nursing, one of whom shall be a registered nurse actively engaged in instructing in an approved practical nursing course, and one of whom shall be a registered nurse supervisor of licensed practical nurses;

~~((2))~~ (3) There shall be one public member who does not derive his or her livelihood primarily from the provision of health services and is not:

- (a) A present or former member of another licensing board;
- (b) A licensed health professional; or
- (c) An employee of a health care facility((;

~~(3) Two members shall be licensed practical nurses who shall have had not less than five years' actual experience as a licensed practical nurse and who have practiced as a practical nurse within two years of appointment).~~

Sec. 3. RCW 18.78.030 and 1983 c 55 s 4 are each amended to read as follows:

~~((On July 24, 1983, the members of the board shall be appointed to serve as follows:~~

- ~~(1) One licensed practical nurse for a term of five years;~~
- ~~(2) One registered nurse for a term of four years;~~
- ~~(3) One licensed practical nurse for a term of three years;~~
- ~~(4) One registered nurse for a term of two years; and~~
- ~~(5) One public member for a term of one year.~~

~~Thereafter all appointments shall be for terms of five years each.))~~
 Vacancies occurring on the board shall be filled for the unexpired term by appointment of the governor, who also may remove any member from the board for neglect of duty required by law, ~~((or))~~ for incompetency, or for unprofessional ~~((or disorderly))~~ conduct as defined in chapter 18.130 RCW. All appointments shall be for terms of five years each. No person may serve as a member of the board for more than two consecutive terms, except that a member who is filling less than one-half of an uncompleted term shall be eligible for two full terms in addition to the uncompleted term. Board members shall serve until a successor is appointed.

The board shall meet at least quarterly at times and places it designates. It shall hold such other meetings during the year as may be deemed necessary to transact its business. A majority of the board currently serving shall constitute a quorum at any meeting.

Sec. 4. RCW 18.78.040 and 1984 c 287 s 47 are each amended to read as follows:

Each board member shall be compensated in accordance with RCW 43.03.240 and shall be paid travel expenses while away from home in accordance with RCW 43.03.050 and 43.03.060. The ~~((members of the))~~ board shall appoint ~~((a chairman and a secretary from among its entire members, who shall serve until his or her successor is appointed by the board))~~ officers annually.

Sec. 5. RCW 18.78.050 and 1988 c 211 s 4 are each amended to read as follows:

The board shall conduct examinations for all applicants for licensure under this chapter and shall certify qualified applicants for licensure to the department ~~((of licensing for licensing)).~~ The board in consultation with the state board for community college education and the superintendent of public instruction shall also determine and formulate what constitutes the curriculum for ~~((an))~~ approved practical nursing ~~((program))~~ schools/programs and shall establish criteria for minimum standards for

schools/programs preparing persons for licensure under this chapter. The board shall establish criteria for licensure by endorsement.

The board may adopt rules or issue advisory opinions in response to questions from professional health associations, health care practitioners, and consumers in this state concerning licensed practical nurse practice. The board shall establish criteria for proof of reasonable currency of knowledge and skill as a basis for safe practice (~~(after three years inactive or lapsed status))~~ of practical nursing.

The board shall adopt such rules as are necessary to fulfill the purposes of this chapter pursuant to chapter 34.05 RCW.

Sec. 6. RCW 18.78.055 and 1983 c 55 s 7 are each amended to read as follows:

An institution desiring to conduct a school/program of practical nursing shall apply to the board and submit evidence satisfactory to the board that: (1) It is prepared to carry out the approved curriculum for an approved practical nursing school/program; and (2) it is prepared to meet other standards established by this chapter and by the board.

If in the opinion of the board (~~(the curriculum of a program of)~~) a school/program of practical nursing meets the requirements of this chapter and the board, the program shall be approved.

All approved practical nursing (~~(programs))~~ schools/programs in the state shall be surveyed and the board shall review written reports of each survey. The surveys shall be conducted periodically as determined by the board. If the board determines that an approved practical nursing (~~(program))~~ school/program is not maintaining the curriculum standards or other standards required (~~(for approval, the board shall give))~~ by the board written notice shall be given specifying the deficiencies. Failure to correct the deficiencies within a period of time specified by the board shall result in the suspension of the program's approval.

Sec. 7. RCW 18.78.060 and 1988 c 212 s 1 are each amended to read as follows:

An applicant for a license to practice nursing as a licensed practical nurse shall submit to the board written evidence, on a form provided by the board, verified under oath, that the applicant:

- (1) Is at least eighteen years of age;
- (2) Is of good moral character;
- (3) Is of good physical and mental health;
- (4) Has (~~(completed at least a tenth grade course or its equivalent, as determined by the board))~~ a high school diploma or general educational development certificate or diploma;

(5) Has completed an approved program (~~(of not less than nine months))~~ for the education of practical nurses, or its equivalent, as determined by the board;

(6) Has provided written information or completed other requirements of the board;

(7) At the time of submission, is not in violation of chapter 18.130 RCW or any provisions of this chapter.

To be licensed as a practical nurse, each applicant shall be required to pass an examination in such subjects as the board may determine within the scope of and commensurate with the work to be performed by a licensed practical nurse. Upon approval by the board, the department shall issue an interim permit authorizing the applicant to practice nursing as authorized under this chapter pending notification of the results of the first licensing examination following verification of satisfactory completion of an approved program of practical nursing. Any applicant failing to pass ~~((such an))~~ the examination may apply for reexamination. If the applicant fails the examination, the interim permit expires upon notification and is not renewable. Upon passing ~~((such))~~ the examination ~~((as determined by the board, the director shall issue))~~ a license shall be issued to the applicant ~~((a license))~~ to practice as a licensed practical nurse, providing the license fee is paid by the applicant and the applicant meets all other requirements of the board.

Sec. 8. RCW 18.78.080 and 1985 c 7 s 65 are each amended to read as follows:

~~((Att))~~ Applicants applying for a license to practice as a licensed practical nurse, with or without examination ~~((, as provided in this chapter)), or for reexamination,~~ shall pay ~~((a license))~~ fees determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250 to the department ~~((of licensing. PROVIDED, HOWEVER, That the applicant applying for a reexamination shall pay a fee determined by the director as provided in RCW 43.24.086)).~~

Sec. 9. RCW 18.78.090 c 1986 c 259 s 131 and 1985 c 7 s 66 are each reenacted and amended to read as follows:

Every licensed practical nurse in this state shall renew the license with the department ~~((of licensing and)),~~ shall pay a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250, and shall provide evidence of knowledge and skill in current practice as required by the board. Any failure to register ~~((and)),~~ pay the renewal registration fee, or meet the requirements of the board shall render the license ~~((invalid, but such))~~ lapsed. The lapsed license shall be reinstated ~~((upon written application therefor and))~~ upon payment to the state of ~~((a))~~ renewal and penalty fees determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086))~~ 43.70.250 and upon compliance with the rules established by the board.

Sec. 10. RCW 18.78.100 and 1983 c 55 s 11 are each amended to read as follows:

After consultation with the board, the ~~((director))~~ secretary shall appoint an executive secretary of the board to carry out the provisions of this chapter ~~((who shall have the following qualifications:~~

- ~~(1) Be a registered nurse in the state of Washington;~~
- ~~(2) Be the holder of a baccalaureate degree from an accredited four-year institution of higher education;~~
- ~~(3) Have not less than five years' experience in the field of nursing; and~~
- ~~(4) Have not less than two years' experience in nursing education)).~~

The board and secretary shall determine the qualifications required to be employed as the executive secretary.

Sec. 11. RCW 18.78.182 and 1983 c 55 s 19 are each amended to read as follows:

A licensed practical nurse under his or her license may perform nursing care (as that term is usually understood) of the ill, injured, or infirm, and in the course thereof is authorized, under the direction and supervision of a licensed physician and surgeon, osteopathic physician and surgeon, dentist, ~~((podiatrist))~~ physician assistant, osteopathic physician assistant, advanced registered nurse practitioner authorized under chapter 18.88 RCW, podiatric physician and surgeon (acting within the scope of his or her license), or at the direction and under the supervision of a registered nurse, to administer drugs, medications, treatments, tests, injections, and inoculations, whether or not the piercing of tissues is involved and whether or not a degree of independent judgment and skill is required, when selected to do so by one of the licensed practitioners designated in this section, or by a registered nurse who need not be physically present; provided the order given ~~((by such physician, dentist, or podiatrist be))~~ is reduced to writing within a reasonable time and made a part of the patient's record.

Sec. 12. RCW 18.78.160 and 1983 c 55 s 15 are each amended to read as follows:

This chapter shall not be construed as conferring authority to practice medicine or surgery, or to practice as a registered nurse, or to undertake the treatment or cure of disease, pain, injury, deformity or physical condition; nor shall it be construed to prohibit:

- (1) The incidental care of the sick by domestic servants or persons primarily employed as housekeepers, if they do not practice practical nursing within the meaning of this chapter;
- (2) The domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;
- (3) Practical nurse practice by students enrolled in approved schools if incidental to their course of study, nor shall it prohibit these students from working as nursing ~~((aides))~~ assistants;

(4) Auxiliary services provided by persons performing duties necessary for the support of nursing service including those duties which involve minor

nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of registered nurses;

(5) The practice of nursing in this state by a practical nurse legally qualified in another state or territory of the United States whose engagement requires the person to accompany and care for a patient temporarily residing in this state during the period of one engagement not to exceed six months, if the person does not represent himself or herself as a nurse licensed to practice in this state;

(6) Nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any church by its adherents if they do not engage in practical nurse practice as defined in this chapter; or

(7) The practice, while in the course of official duties, of any legally qualified practical nurse of another state who is employed by the United States government or any of its bureaus, divisions, or agencies.

Sec. 13. RCW 18.78.010 and 1983 c 55 s 2 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Board" shall mean "Washington state board of practical nursing."

(2) "Curriculum" means the theoretical and practical studies which must be taught in order for students to meet the minimum standards of competency as determined by the board.

(3) "~~Director~~" shall mean "~~director of licensing~~) Secretary" means the "secretary of health."

(4) "Licensed practical nurse," abbreviated "L.P.N.," means a person licensed by the board to practice practical nursing.

(5) "Licensed practical nurse practice" shall mean the performance of services requiring the knowledge, skill, and judgment necessary for carrying out selected aspects of the designated nursing regimen under the direction and supervision of a licensed physician and surgeon, dentist, osteopathic physician and surgeon, physician assistant, osteopathic physician assistant, advanced registered nurse practitioner authorized under chapter 18.88 RCW, or ((podiatrist)) podiatric physician and surgeon or at the direction and under the supervision of a registered nurse.

(6) "Supervision" shall mean the critical evaluation of acts performed with authority to take corrective action, but shall not be construed so as to require direct and bodily presence.

NEW SECTION. Sec. 14. RCW 18.78.110 and 1983 c 55 s 12, 1975-'76 2nd ex.s. c 34 s 46, & 1949 c 222 s 12 are each repealed.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 85

[Engrossed House Bill 1228]

GOVERNMENT RECEIVABLES—COLLECTION PROCEDURES

Effective Date: 7/28/91

AN ACT Relating to the management of state government receivables; amending RCW 43.88.175; and adding a new section to chapter 43.17 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.88.175 and 1989 c 100 s 1 are each amended to read as follows:

State agencies may report (~~past due accounts~~) receivables to credit reporting agencies whenever the agency determines that such reporting would be cost-effective and does not violate confidentiality or other legal requirements. Within thirty-five days after satisfaction of a debt reported to a credit reporting agency, the state agency reporting the debt shall notify the credit reporting agency that the debt has been satisfied.

NEW SECTION. Sec. 2. A new section is added to chapter 43.17 RCW to read as follows:

Interest at the rate of one percent per month, or fraction thereof, shall accrue on debts owed to the state, starting on the date the debts become past due. This section does not apply to: (1) Any instance where such interest rate would conflict with the provisions of a contract or with the provisions of any other law; or (2) debts to be paid by other governmental units. The office of financial management may adopt rules specifying circumstances under which state agencies may waive interest, such as when assessment or collection of interest would not be cost-effective. This section does not affect any authority of the state to charge or collect interest under any other law on a debt owed to the state by a governmental unit. This section applies only to debts which become due on or after the effective date of this act.

Passed the House March 20, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 86

[House Bill 1377]

SCOLIOSIS SCREENING—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to the screening program for scoliosis; amending RCW 28A.210.180, 28A.210.190, and 28A.210.200; and repealing RCW 28A.210.230.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.210.180 and 1990 c 33 s 201 are each amended to read as follows:

The legislature recognizes that the condition known as scoliosis, a lateral curvature of the spine commonly appearing in adolescents, can develop into a permanent, crippling disability if left untreated. Early diagnosis and referral can often result in the successful treatment of this condition and greatly reduce the need for major surgery. Therefore, the purpose of RCW 28A.210.180 through 28A.210.250 is to recognize that a school screening program is an invaluable tool for detecting the number of adolescents with scoliosis. It is the intent of the legislature to insure that the superintendent of public instruction provide and require screening of children for the condition known as scoliosis (~~of all children in the highest risk age group, grades 5 through 10~~), to ascertain which, if any, of these children have defects requiring corrective treatment.

Sec. 2. RCW 28A.210.190 and 1990 c 33 s 202 are each amended to read as follows:

As used in RCW 28A.210.180 through 28A.210.250, the following terms have the meanings indicated.

(1) "Superintendent" means the superintendent of public instruction of public schools in the state, or the superintendent's designee.

(2) "Pupil" means a student enrolled in the public school system in the state.

(3) "Scoliosis" includes idiopathic scoliosis and kyphosis.

(4) "Screening" means an examination to be performed (~~on all pupils in grades 5 through 10~~) for the purpose of detecting the condition known as scoliosis (~~(, except as provided in RCW 28A.210.230)~~).

(5) "Public schools" means the common schools referred to in Article IX of the state Constitution and those schools and institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at public expense.

Sec. 3. RCW 28A.210.200 and 1990 c 33 s 203 are each amended to read as follows:

The superintendent shall provide for and require the ((yearly)) examination of ((all)) children attending public schools ((in grades 5 through 10;

~~except as provided in RCW 28A.210.230;))~~ at least three times between grades four and eleven in accordance with procedures and standards adopted by rule of the state board of health in cooperation with the superintendent of public instruction and the department of health. The examination shall be made by a school physician, school nurse, qualified licensed health practitioner, or physical education instructor or by other school personnel. Proper training of the personnel in the screening process for scoliosis shall be provided by the superintendent.

NEW SECTION, Sec. 4. RCW 28A.210.230 and 1990 c 33 s 206 & 1985 c 216 s 6 are each repealed.

Passed the House March 12, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 87

[Senate Bill 5684]

PHARMACIES—LICENSING OF NONRESIDENT PHARMACIES

Effective Date: 10/1/91

AN ACT Relating to licensing nonresident pharmacies; amending RCW 42.17.310; adding new sections to chapter 18.64 RCW; adding a new section to chapter 48.20 RCW; adding a new section to chapter 48.21 RCW; adding a new section to chapter 48.44 RCW; adding a new section to chapter 48.46 RCW; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION, Sec. 1. (1) The legislature finds and declares that the practice of pharmacy is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug-related therapy.

(2) The legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payors and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail-order pharmacies located outside the state of Washington.

(3) As a result, the legislature finds and declares that to continue to protect the Washington consumer-patient, all out-of-state pharmacies that provide services to Washington residents shall be licensed by the department of health, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence.

NEW SECTION, Sec. 2. (1) For the purposes of this chapter any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an individual, controlled substances, legend drugs, or devices into this state is a nonresident pharmacy,

and shall be licensed by the department of health, and shall disclose to the department the following:

(a) The location, names, and titles of all owners including corporate officers and all pharmacists employed by the pharmacy who are dispensing controlled substances, legend drugs, or devices to residents of this state. A report containing this information shall be made on an annual basis and within ninety days after a change of location, corporate officer, or pharmacist;

(b) Proof of compliance with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the department of health under this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state in which it is located. As a prerequisite to be licensed by the department of health, the nonresident pharmacy shall submit a copy of the most recent inspection report issued by the regulatory licensing agency of the state in which it is located;

(c) Proof that it maintains its records of controlled substances, legend drugs, or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(2) Any pharmacy subject to this section shall, during its regular hours of operation, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on the label affixed to each container of drugs dispensed to patients in this state.

(3) A pharmacy subject to this section shall comply with board rules regarding the maintenance and use of patient medication record systems.

(4) A pharmacy subject to this section shall comply with board of pharmacy rules regarding the provision of drug information to the patient. Drug information may be contained in written form setting forth directions for use and any additional information necessary to assure the proper utilization of the medication prescribed.

(5) A pharmacy subject to this section shall not dispense medication in a quantity greater than authorized by the prescriber.

(6) The license fee specified by the secretary, in accordance with the provisions of RCW 43.70.250, shall not exceed the fee charged to a pharmacy located in this state.

(7) The license requirements of this section apply to nonresident pharmacies that ship, mail, or deliver controlled substances, legend drugs, and devices into this state only under a prescription. The board of pharmacy may grant an exemption from licensing under this section upon application by an out-of-state pharmacy that restricts its dispensing activity in Washington to isolated transactions.

(8) Each nonresident pharmacy that ships, mails, or delivers legend drugs or devices into this state shall designate a resident agent in Washington for service of process. The designation of such an agent does not indicate that the nonresident pharmacy is a resident of Washington for tax purposes.

NEW SECTION. Sec. 3. (1) A nonresident pharmacy that has not obtained a license from the department of health shall not conduct the business of selling or distributing drugs in this state.

(2) Applications for a nonresident pharmacy license under sections 1 through 6 of this act shall be made on a form furnished by the department. The department may require such information as it deems is reasonably necessary to carry out the purpose of sections 1 through 6 of this act.

(3) The nonresident pharmacy license shall be renewed annually on a date to be established by the department by rule. In the event the license fee remains unpaid, no renewal or new license shall be issued except upon payment of the license renewal fee and a penalty fee equal to the original license fee.

NEW SECTION. Sec. 4. A nonresident pharmacy shall:

(1) Submit to the department, upon request, information acceptable to the secretary concerning controlled substances shipped, mailed, or delivered to a Washington resident.

(2) Submit to on-site inspection by the department of the nonresident pharmacy's prescription records if the information in subsection (1) of this section is not provided to the department upon request.

NEW SECTION. Sec. 5. (1) The board may deny, revoke, or suspend a nonresident pharmacy license or impose a fine not to exceed one thousand dollars per violation for failure to comply with any requirement of sections 1 through 6 of this act.

(2) The board may deny, revoke, or suspend a nonresident pharmacy license or impose a fine not to exceed one thousand dollars per violation for conduct that causes serious bodily or psychological injury to a resident of this state if the secretary has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and that regulatory or licensing agency fails to initiate an investigation within forty-five days of the referral under this subsection or fails to make a determination on the referral.

NEW SECTION. Sec. 6. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an individual, controlled substances, legend drugs, or devices into this state. It is unlawful for:

(1) Any nonresident pharmacy that is not licensed under sections 1 through 6 of this act to advertise its service in this state; or

(2) Any resident of this state to advertise the pharmaceutical services of a nonresident pharmacy with the knowledge that the nonresident pharmacy is not licensed by the department and that the advertisement will or is likely to induce persons within this state to use the nonresident pharmacy to fill prescriptions.

NEW SECTION. Sec. 7. A new section is added to chapter 48.20 RCW to read as follows:

For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and sections 1 through 6 of this act from the nonresident pharmacy and keep that proof of licensure on file.

The department of health may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs to residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under section 2 or 3 of this act or of the identity of a nonresident pharmacy disciplined under sections 1 through 6 of this act.

NEW SECTION. Sec. 8. A new section is added to chapter 48.21 RCW to read as follows:

For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and sections 1 through 6 of this act from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall

be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under section 2 or 3 of this act or of the identity of a nonresident pharmacy disciplined under sections 1 through 6 of this act.

NEW SECTION. Sec. 9. A new section is added to chapter 48.44 RCW to read as follows:

For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health care service contractor providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health care service contractors shall obtain proof of current licensure in conformity with this section and sections 1 through 6 of this act from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health care service contractor the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under section 2 or 3 of this act or of the identity of a nonresident pharmacy disciplined under sections 1 through 6 of this act.

NEW SECTION. Sec. 10. A new section is added to chapter 48.46 RCW to read as follows:

For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health maintenance organization providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health maintenance organizations shall obtain proof of current licensure in conformity with this section and sections 1 through 6 of this act from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health maintenance organization the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents

of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a non-resident pharmacy that is or has been licensed under section 2 or 3 of this act or of the identity of a nonresident pharmacy disciplined under sections 1 through 6 of this act.

NEW SECTION. Sec. 11. The board may adopt rules to implement the provisions of sections 1 through 6 and 12 of this act.

NEW SECTION. Sec. 12. All records, reports, and information obtained by the department from or on behalf of an entity licensed under chapter 48.20, 48.21, 48.44, or 48.46 RCW shall be confidential and exempt from inspection and copying under chapter 42.17 RCW. Nothing in this section restricts the investigation or the proceedings of the board or the department so long as the board and the department comply with the provisions of chapter 42.17 RCW. Nothing in this section or in chapter 42.17 RCW shall restrict the board or the department from complying with any mandatory reporting requirements that exist or may exist under federal law, nor shall the board or the department be restricted from providing to any person the name of any nonresident pharmacy that is or has been licensed or disciplined under sections 1 through 6 of this act.

Sec. 13. RCW 42.17.310 and 1990 2nd ex.s. c 1 s 1103 are each amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life,

physical safety, or property. If at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

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

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) 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.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

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

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) 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.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044 ((and)), 69.41.280, and section 12 of this act.

(y) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(z) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(aa) Financial and valuable trade information under RCW 51.36.120.

(bb) Effective March 1, 1991, the work and home addresses, other than the city of residence, of a person shall remain undisclosed or be omitted from all documents made available for public review if that person requests in writing, under oath, that these addresses be kept private because disclosure would endanger his or her life, physical safety, or property. This provision does not in any way restrict the sharing or collection of information by state and local governmental agencies required for the daily administration of their duties. The secretary of state shall administer this provision and establish the procedures and rules that are necessary for its

operation. An agency that has not been furnished with a request for confidentiality of address information is not liable for damages resulting from its disclosure of the information. For purpose of service of process, the secretary of state shall serve as agent for each person who submits a request under this subsection. A request shall be of no force or effect if the requester does not include a statement, along with or part of the request, designating the secretary of state as agent of the requester for purposes of service of process.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION. Sec. 14. Sections 1 through 6, 11, and 12 of this act are each added to chapter 18.64 RCW.

NEW SECTION. Sec. 15. This act shall take effect October 1, 1991.

Passed the Senate April 22, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 88

[House Bill 1206]

WORKERS' COMPENSATION—RECOVERY OF OVERPAYMENTS

Effective Date: 7/28/91

AN ACT Relating to industrial insurance payments; amending RCW 51.32.240, 51.32-.050, 51.12.100, and 51.16.110; and repealing RCW 51.16.115.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 51.32.240 and 1986 c 54 s 1 are each amended to read as follows:

(1) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived. The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(3) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been induced by fraud the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the fraud was committed, as the case may be, and the amount of

such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within one year of the discovery of the fraud.

(5) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (4) of this section, the director, director's designee, or self-insurer may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by certified mail accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the

state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after the effective date of this act: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(6) Orders assessing an overpayment which are issued on or after the effective date of this act shall include a conspicuous notice of the collection methods available to the department or self-insurer.

Sec. 2. RCW 51.32.050 and 1988 c 161 s 2 are each amended to read as follows:

(1) Where death results from the injury the expenses of burial not to exceed two thousand dollars shall be paid.

(2) (a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker but not less than one hundred eighty-five dollars;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker but not less than two hundred twenty-two dollars;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker but not less than two hundred fifty-three dollars;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker but not less than two hundred seventy-six dollars;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker but not less than two hundred ninety-nine dollars; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker but not less than three hundred twenty-two dollars.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section exceed one hundred percent of the average monthly wage in the state as computed under RCW 51.08.018.

(e) In addition to the monthly payments provided for in (2)(a) through (2)(c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be

forthwith paid the sum of one thousand six hundred dollars, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of ~~((seventy-five hundred dollars))~~ twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to (2)(a)(i) of this section and subject to any modifications specified under (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to ((July 1, 1971)) the effective date of this section, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum ~~((of seventy-five hundred dollars))~~ specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker

shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: **PROVIDED**, That benefits under this subsection or subsection (4) shall not exceed sixty-five percent of the wages of the deceased worker at the time of his or her death or one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, whichever is the lesser of the two sums.

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed sixty-five percent of the wages of the deceased worker at the time of the death or one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, whichever is the lesser of the two sums. If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067.

Sec. 3. RCW 51.12.100 and 1988 c 271 s 2 are each amended to read as follows:

(1) The provisions of this title shall not apply to a master or member of a crew of any vessel, or to employers and workers for whom a right or obligation exists under the maritime laws or federal employees' compensation act for personal injuries or death of such workers.

(2) If an accurate segregation of payrolls of workers for whom such a right or obligation exists under the maritime laws cannot be made by the employer, the director is hereby authorized and directed to fix from time to time a basis for the approximate segregation of the payrolls of employees to cover the part of their work for which no right or obligation exists under the maritime laws for injuries or death occurring in such work, and the employer, if not a self-insurer, shall pay premiums on that basis for the time such workers are engaged in their work.

(3) Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workers, such site or place shall be deemed for the purposes of this title to be the common plant of such employers.

(4) In the event payments are made under this title prior to the final determination under the maritime laws or federal employees' compensation act, such benefits shall be repaid by the worker or beneficiary if recovery is subsequently made under the maritime laws or federal employees' compensation act.

Sec. 4. RCW 51.16.110 and 1977 ex.s. c 323 s 12 are each amended to read as follows:

Every employer who shall enter into any business, or who shall resume operations in any work or plant after the final adjustment of his or her payroll in connection therewith, or who was formerly a self-insurer and wishes to continue his or her operations subject to this title, shall, before so commencing or resuming or continuing operations, as the case may be, notify the department of such fact (~~(, accompanying such notification with a cash deposit in a sum equal to the estimated premiums for the first three full calendar months of his or her proposed operations which shall remain on deposit subject to the other provisions of this section:~~

~~The department may, in its discretion and in lieu of such deposit, accept a bond, in an amount which it deems sufficient, to secure payment of premiums due or to become due to the accident fund and medical aid fund. The deposit or posting of a bond shall not relieve the employer from paying premiums subsequently due.~~

~~Should the employer acquire sufficient assets to assure the payment of premiums due to the accident fund and the medical aid fund the department may, in its discretion, refund the deposit or cancel the bond.~~

~~If the employer ceases to be an employer under this title, the department shall, upon receipt of all payments due the accident fund and medical aid fund, or any other fund under this title, refund to the employer all deposits remaining to the employer's credit and shall cancel any bond given under this section:))~~

NEW SECTION. Sec. 5. RCW 51.16.115 and 1986 c 9 s 7 are each repealed.

Passed the House February 15, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 89

[Engrossed House Bill 1352]

LABOR AND INDUSTRIES DEPARTMENT—PROTECTION OF CONFIDENTIAL INFORMATION

Effective Date: 7/28/91

AN ACT Relating to confidential information acquired by the department of labor and industries through research, experiments, demonstrations, and employer-requested services; and amending RCW 49.17.210, 49.17.250, and 51.36.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 49.17.210 and 1973 c 80 s 21 are each amended to read as follows:

The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. Employer identity, employee identity, and personal identifiers of voluntary participants in research, experiments, and demonstrations shall be deemed confidential and shall not be open to public inspection. Information obtained from such voluntary activities shall not be deemed to be medical information for the purpose of RCW 51.36.060 and shall be deemed confidential and shall not be open to public inspection. The director, in his or her discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he or she determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, ~~((which))~~ and the experiment is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment.

Sec. 2. RCW 49.17.250 and 1973 c 80 s 25 are each amended to read as follows:

(1) In carrying out ~~((his))~~ the responsibilities for the development of a voluntary compliance program under the authority of RCW 49.17.050(8) and the rendering of advisory and consultative services to employers, the director may grant an employer's application for advice and consultation, and for the purpose of affording such consultation and advice visit the employer's work place. Such consultation and advice shall be limited to the matters specified in the request affecting the interpretation and applicability

of safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's work place. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or ~~((his))~~ an authorized representative, ~~((may))~~ will make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: PROVIDED, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any work place which has been visited for consultative purposes. However, in the event of a subsequent inspection, the director, or ~~((his))~~ an authorized representative, may in his or her discretion take into consideration any information obtained during the consultation visit of that work place in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be advised of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. Information obtained by the department as a result of employer-requested consultation and training services shall be deemed confidential and shall not be open to public inspection. Within thirty days of receipt, the employer

shall make voluntary services reports available to employees or their collective bargaining representatives for review. Employers may satisfy the availability requirement by requesting a copy of the reports from the department. The director may provide by rule for the frequency, manner, and method of the rendering of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter.

Sec. 3. RCW 51.36.060 and 1989 c 12 s 17 are each amended to read as follows:

Physicians examining or attending injured workers under this title shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-insurer upon the condition or treatment of any such worker, or upon any other matters concerning such workers in their care. Except under RCW 49.17.210 and 49.17.250, all medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request, and no person shall incur any legal liability by reason of releasing such information.

Passed the House April 28, 1991.

Passed the Senate April 28, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 90

[Engrossed Substitute House Bill 1571]

ELECTIONS—RECOUNT PROCEDURES REVISED

Effective Date: 7/28/91

AN ACT Relating to recounting votes; amending RCW 29.64.015; adding a new section to chapter 29.64 RCW; creating a new section; and repealing RCW 29.64.050.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that it is in the public interest to determine the winner of close contests for elective offices as expeditiously and as accurately as possible. It is the purpose of this act to provide procedures which promote the prompt and accurate recounting of votes for elective offices and which provide closure to the recount process.

Sec. 2. RCW 29.64.015 and 1987 c 54 s 4 are each amended to read as follows:

(1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is not more than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct ~~((or the secretary of state shall direct the appropriate county canvassing boards to conduct,))~~ a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position which appears on the ballot in more than one county, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b) Whenever the difference in the number of votes cast for such candidates is less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29.64.020, 29.64.030, and 29.64.040. No cost of a mandatory recount may be charged to any candidate.

NEW SECTION. Sec. 3. A new section is added to chapter 29.64 RCW to read as follows:

After being counted, the votes cast in any single precinct may not be recounted more than twice.

NEW SECTION. Sec. 4. RCW 29.64.050 and 1990 c 59 s 67 & 1965 c 9 s 29.64.050 are each repealed.

Passed the House March 13, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 91

[Senate Bill 5528]

LIBRARIES—LEARN-IN-LIBRARIES PROGRAM EXPANDED

Effective Date: 7/28/91

AN ACT Relating to community support for education; amending 1990 c 290 s 2 (uncodified); adding a new section to chapter 27.04 RCW; and repealing 1990 c 290 s 5 (uncodified).

Be it enacted by the Legislature of the State of Washington:

Sec. 1. 1990 c 290 s 2 (uncodified) is amended to read as follows:

(1) The learn-in-libraries program is hereby created. The state library commission shall administer the program.

(2) The state library commission may provide grants, with funds appropriated for that purpose, to local libraries to develop and implement learn-in-library programs that provide after school and vacation programs for children. Grant applicants shall be encouraged to develop programs that use older adult volunteers and other community volunteer resources. The programs shall be designed to increase literacy, improve reading skills, encourage reading, and provide homework assistance for school-age children who would otherwise be unsupervised. Applicants shall be encouraged to develop innovative models to provide services.

(3) In addition to grants provided under subsection (2) of this section, the state library commission may provide grants, with funds appropriated for that purpose, to local libraries to develop and implement other innovative programs for children throughout the year. Programs may be developed in cooperation with a school district and occur during the school day. Programs shall be designed to provide services to children or to help provide training to parents or other persons working with children in order to increase literacy, encourage reading, promote reading readiness, and improve reading and other learning skills. The commission shall encourage grant applicants to develop programs that use older adult volunteers and other community volunteer resources and to develop innovative models to provide services.

(4) The state library commission shall report to the legislature on the results of the program by December 1, 1991.

NEW SECTION. Sec. 2. 1990 c 290 s 5 (uncodified) is repealed.

NEW SECTION. Sec. 3. Section 1 of this act is added to chapter 27-.04 RCW.

Passed the Senate April 22, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 92

[Substitute House Bill 1358]

SCHOOL AND EDUCATIONAL SERVICE DISTRICTS—REMUNERATION FOR UNUSED SICK LEAVE

Effective Date: 7/28/91

AN ACT Relating to school and educational service districts' employee attendance incentive programs; and amending RCW 28A.310.490 and 28A.400.210.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.310.490 and 1989 c 69 s 1 are each amended to read as follows:

Every educational service district board of directors shall establish an attendance incentive program for all certificated and noncertificated employees in the following manner.

(1) In January of the year following any year in which a minimum of sixty days of leave for illness or injury is accrued, and each January thereafter, any eligible employee may exercise an option to receive remuneration for unused leave for illness or injury accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued leave for illness or injury in excess of sixty days. Leave for illness or injury for which compensation has been received shall be deducted from accrued leave for illness or injury at the rate of four days for every one day's monetary compensation. No employee may receive compensation under this section for any portion of leave for illness or injury accumulated at a rate in excess of one day per month.

(2) At the time of separation from educational service district employment due to retirement or death an eligible employee or the employee's estate shall receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days accrued leave for illness or injury ~~((or, in lieu of monetary compensation and with equivalent funds, a school district board of directors may provide eligible employees postretirement medical benefits))~~.

(3) In lieu of remuneration for unused leave for illness or injury as provided for in subsections (1) and (2) of this section, an educational service district board of directors may, with equivalent funds, provide eligible employees a benefit plan that provides reimbursement for medical expenses. Any benefit plan adopted after the effective date of this act shall require, as a condition of participation under the plan, that the employee sign an agreement with the district to hold the district harmless should the United States government find that the district or the employee is in debt to the United States as a result of the employee not paying income taxes due on the equivalent funds placed into the plan, or as a result of the district not withholding or deducting any tax, assessment, or other payment on such funds as required under federal law.

Moneys or ~~((postretirement medical))~~ benefits received under this section shall not be included for the purposes of computing a retirement allowance under any public retirement system in this state.

The superintendent of public instruction in its administration hereof, shall promulgate uniform rules and regulations to carry out the purposes of this section.

Should the legislature revoke any benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

Sec. 2. RCW 28A.400.210 and 1989 c 69 s 2 are each amended to read as follows:

Every school district board of directors may, in accordance with chapters 41.56 and 41.59 RCW, establish an attendance incentive program for all certificated and noncertificated employees in the following manner, including covering persons who were employed during the 1982-'83 school year: (1) In January of the year following any year in which a minimum of sixty days of leave for illness or injury is accrued, and each January thereafter, any eligible employee may exercise an option to receive remuneration for unused leave for illness or injury accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued leave for illness or injury in excess of sixty days. Leave for illness or injury for which compensation has been received shall be deducted from accrued leave for illness or injury at the rate of four days for every one day's monetary compensation. No employee may receive compensation under this section for any portion of leave for illness or injury accumulated at a rate in excess of one day per month.

(2) At the time of separation from school district employment due to retirement or death an eligible employee or the employee's estate shall receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days accrued leave for illness or injury.

(3) In lieu of remuneration for unused leave for illness or injury as provided in subsections (1) and (2) of this section, a school district board of directors may, with equivalent funds, provide eligible employees (~~(postretirement medical benefits)~~) a benefit plan that provides reimbursement for medical expenses. Any benefit plan adopted after the effective date of this act shall require, as a condition of participation under the plan, that the employee sign an agreement with the district to hold the district harmless should the United States government find that the district or the employee is in debt to the United States as a result of the employee not paying income taxes due on the equivalent funds placed into the plan, or as a result of the district not withholding or deducting any tax, assessment, or other payment on such funds as required under federal law.

Moneys or (~~(postretirement medical)~~) benefits received under this section shall not be included for the purposes of computing a retirement allowance under any public retirement system in this state.

The superintendent of public instruction in its administration hereof, shall promulgate uniform rules and regulations to carry out the purposes of this section.

Should the legislature revoke any benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

Passed the House March 19, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 93

[Eng.ossed Substitute Senate Bill 5363]

CRIMINAL OFFENDERS—PAYMENT OF LEGAL FINANCIAL OBLIGATIONS— REVISED PROVISIONS

Effective Date: 5/9/91

AN ACT Relating to legal financial obligations; amending RCW 9.94A.145; adding new sections to chapter 9.94A RCW; creating new sections; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. "EARNINGS," "DISPOSABLE EARNINGS," AND "OBLIGEE" DEFINED. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, hours, or otherwise, and notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy court-ordered legal financial obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type. Earnings shall specifically include all gain derived from capital, from labor, or from both, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. The term "obligee" means the department, party, or entity to whom the legal financial obligation is owed, or the department, party, or entity to whom the right to receive or collect support has been assigned.

Sec. 2. RCW 9.94A.145 and 1989 c 252 s 3 are each amended to read as follows:

(1) Whenever a person is convicted of a felony, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs~~((+))~~, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court

fails to set the offender monthly payment amount, the department shall set the amount. Upon receipt of an offender's monthly payment, after restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department of corrections.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be immediately issued. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) All legal financial obligations that are ordered as a result of a conviction for a felony, may also be enforced in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. These obligations may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period is longer. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation.

~~((3))~~ (5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to truthfully and honestly respond to all questions concerning present, past,

and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring any and all documents as requested by the department.

~~((4))~~ (6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

~~((5))~~ (7) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. Also, during the period of supervision, the offender may be required at the request of the department to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to truthfully and honestly respond to all questions concerning earning capabilities and the location and nature of all property or financial assets. Also, the offender is required to bring any and all documents as requested by the department in order to prepare the collection schedule.

~~((6))~~ (8) After the judgment and sentence or payment order is entered, the department shall for any period of supervision be authorized to collect the legal financial obligation from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purposes of disbursements. The department is authorized to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

~~((7))~~ (9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.2001.

~~((8))~~ (10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition ~~((and term of community supervision))~~ or requirement of a sentence and the offender is subject to the penalties as provided in RCW 9.94A.200 for noncompliance.

~~((9))~~ (11) The county clerk shall provide the department with individualized monthly billings for each offender with an unsatisfied legal financial obligation and shall provide the department with ~~((written))~~ notice of payments by such offenders no less frequently than weekly.

NEW SECTION. Sec. 3. LEGAL FINANCIAL OBLIGATION—NOTICE OF PAYROLL DEDUCTION—ISSUANCE AND CONTENT. (1) The department may issue a notice of payroll deduction in a criminal action if:

(a) The court at sentencing orders its immediate issuance; or
 (b) The offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month, provided:

(i) The judgment and sentence or subsequent order to pay contains a statement that a notice of payroll deduction may be issued without further notice to the offender; or

(ii) The department has served a notice on the offender stating such requirements and authorization. Service of such notice shall be made by personal service or any form of mail requiring a return receipt.

(2) The notice of payroll deduction is to be in writing and include:

(a) The name, social security number, and identifying court case number of the offender/employee;

(b) The amount to be deducted from the offender/employee's disposable earnings each month, or alternative amounts and frequencies as may be necessary to facilitate processing of the payroll deduction by the employer;

(c) A statement that the total amount withheld on all payroll deduction notices for payment of court-ordered legal financial obligations combined shall not exceed twenty-five percent of the offender/employee's disposable earnings; and

(d) The address to which the payments are to be mailed or delivered.

(3) An informational copy of the notice of payroll deduction shall be mailed to the offender's last known address by regular mail or shall be personally served.

(4) Neither the department nor any agents of the department shall be held liable for actions taken under RCW 9.94A.145 and sections 1 and 3 through 11 of this act.

NEW SECTION. Sec. 4. LEGAL FINANCIAL OBLIGATIONS—NOTICE OF PAYROLL DEDUCTION—AMOUNTS TO BE WITHHELD. (1) The total amount to be withheld from the offender/employee's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the offender.

(2) If the offender is subject to two or more notices of payroll deduction for payment of a court-ordered legal financial obligation from different obligees, the employer or entity shall, if the nonexempt portion of the offender's earnings is not sufficient to respond fully to all notices of payroll deduction, apportion the offender's nonexempt disposable earnings between or among the various obligees equally.

NEW SECTION. Sec. 5. LEGAL FINANCIAL OBLIGATIONS—NOTICE OF PAYROLL DEDUCTION—EMPLOYER OR ENTITY RESPONSIBILITIES. (1) An employer or entity upon whom a notice of payroll deduction is served, shall make an answer to the department within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no

payroll deduction is in effect. The answer shall also state whether the offender is employed by or receives earnings from the employer or entity, whether the employer or entity anticipates paying earnings, and the amount of earnings. If the offender is no longer employed, or receiving earnings from the employer or entity, the answer shall state the present employer or entity's name and address, if known.

(2) Service of a notice of payroll deduction upon an employer or entity requires an employer or entity to immediately make a mandatory payroll deduction from the offender/employee's unpaid disposable earnings. The employer or entity shall thereafter at each pay period deduct the amount stated in the notice divided by the number of pay periods per month. The employer or entity must remit the proper amounts to the appropriate clerk of the court on each date the offender/employee is due to be paid.

(3) The employer or entity may combine amounts withheld from the earnings of more than one employee in a single payment to the clerk of the court, listing separately the amount of the payment that is attributable to each individual employee.

(4) The employer or entity may deduct a processing fee from the remainder of the employee's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under section 11 of this act. The processing fee may not exceed:

(a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and

(b) One dollar for each subsequent disbursement made under the notice of payroll deduction.

(5) The notice of payroll deduction shall remain in effect until released by the department or the court enters an order terminating the notice.

(6) An employer shall be liable to the obligee for the amount of court-ordered legal financial obligation moneys that should have been withheld from the offender/employee's earnings, if the employer:

(a) Fails or refuses, after being served with a notice of payroll deduction, to deduct and promptly remit from unpaid earnings the amounts of money required in the notice; or

(b) Fails or refuses to submit an answer to the notice of payroll deduction after being served. In such cases, liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, reasonable attorney fees, and staff costs as part of the award.

(7) No employer who complies with a notice of payroll deduction under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discipline or discharge an employee or refuse to hire a person by reason of an action authorized in this chapter. If an employer disciplines or discharges an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action

against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual.

NEW SECTION. Sec. 6. MOTION TO QUASH, MODIFY, OR TERMINATE PAYROLL DEDUCTION—GROUNDS FOR RELIEF.

(1) The offender subject to a payroll deduction under this chapter, may file a motion in superior court to quash, modify, or terminate the payroll deduction. The court may grant relief if:

(a) It is demonstrated that the payroll deduction causes extreme hardship or substantial injustice; or

(b) In cases where the court did not immediately order the issuance of a notice of payroll deduction at sentencing, that a court-ordered legal financial obligation payment was not more than thirty days past due in an amount equal to or greater than the amount payable for one month.

(2) Satisfaction by the offender of all past-due payments subsequent to the issuance of the notice of payroll deduction is not grounds to quash, modify, or terminate the notice of payroll deduction. If a notice of payroll deduction has been in operation for twelve consecutive months and the offender's payment towards a court-ordered legal financial obligation is current, upon motion of the offender, the court may order the department to terminate the payroll deduction, unless the department can show good cause as to why the notice of payroll deduction should remain in effect.

NEW SECTION. Sec. 7. LEGAL FINANCIAL OBLIGATIONS—ORDER TO WITHHOLD AND DELIVER—ISSUE AND CONTENTS.

(1) The department may issue to any person or entity an order to withhold and deliver property of any kind, including but not restricted to, earnings that are due, owing, or belonging to the offender, if the department has reason to believe that there is in the possession of such person or entity, property that is due, owing, or belonging to the offender. Such order to withhold and deliver may be issued when a court-ordered legal financial obligation payment is past due:

(a) If an offender's judgment and sentence or a subsequent order to pay includes a statement that other income-withholding action under this chapter may be taken without further notice to the offender.

(b) If a judgment and sentence or a subsequent order to pay does not include the statement that other income-withholding action under this chapter may be taken without further notice to the offender but the department has served a notice on the offender stating such requirements and authorizations. The service shall have been made by personal service or any form of mail requiring a return receipt.

(2) The order to withhold and deliver shall:

- (a) Include the amount of the court-ordered legal financial obligation;
- (b) Contain a summary of moneys that may be exempt from the order to withhold and deliver and a summary of the civil liability upon failure to comply with the order; and
- (c) Be served by personal service or by any form of mail requiring a return receipt.

(3) The department shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by any form of mail requiring a return receipt, a copy of the order to withhold and deliver to the offender at the offender's last known post office address, or, in the alternative, a copy of the order shall be personally served on the offender on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with an explanation of the right to petition for judicial review. If the copy is not mailed or served as this section provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the offender promptly made and supported by affidavit showing that the offender has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver.

NEW SECTION. Sec. 8. LEGAL FINANCIAL OBLIGATIONS—ORDER TO WITHHOLD AND DELIVER—DUTIES OF PERSON OR ENTITY SERVED. (1) A person or entity upon whom service has been made is hereby required to:

(a) Answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the order; and

(b) Provide further and additional answers when requested by the department.

(2) Any person or entity in possession of any property that may be subject to the order to withhold and deliver shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver;

(ii) Deliver the property to the appropriate clerk of the court as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the offender at each succeeding disbursement interval and deliver amounts withheld from earnings to the appropriate clerk of the court within ten days of the date earnings are payable to the offender;

(iv) Inform the department of the date the amounts were withheld as requested under this section; or

(b) Furnish the appropriate clerk of the court a good and sufficient bond, satisfactory to the clerk, conditioned upon final determination of liability.

(3) Where money is due and owing under any contract of employment, expressed or implied, or is held by any person or entity subject to withdrawal by the offender, the money shall be delivered by remittance payable to the order of the appropriate clerk of the court.

(4) Delivery to the appropriate clerk of the court of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(5) The person or entity required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the offender's earnings, even if the remainder would otherwise be exempt under section 11 of this act. The processing fee may not exceed:

(a) Ten dollars for the first disbursement to the appropriate clerk of the court; and

(b) One dollar for each subsequent disbursement.

(6) A person or entity shall be liable to the obligee in an amount equal to one hundred percent of the value of the court-ordered legal financial obligation that is the basis of the order to withhold and deliver, or the amount that should have been withheld, whichever amount is less, together with costs, interest, and reasonable attorneys' fees if that person or entity fails or refuses to deliver property under the order.

The department is authorized to issue a notice of debt pursuant to and to take appropriate action to collect the debt under this chapter if a judgment has been entered as the result of an action by the court against a person or entity based on a violation of this section.

(7) Persons or entities delivering money or property to the appropriate clerk of the court under this chapter shall not be held liable for wrongful delivery.

(8) Persons or entities withholding money or property under this chapter shall not be held liable for wrongful withholding.

NEW SECTION. Sec. 9. LEGAL FINANCIAL OBLIGATIONS—BANKS, SAVINGS AND LOAN ASSOCIATIONS, CREDIT UNIONS—SERVICE ON MAIN OFFICE OR BRANCH, EFFECT—COLLECTION ACTIONS AGAINST COMMUNITY BANK ACCOUNT, RIGHT TO COURT HEARING. An order to withhold and deliver or any other income-withholding action authorized by this chapter may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of the financial institution. Service on the main office shall be effective to attach the deposits of an offender in the financial institution and compensation payable for personal services due the offender from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the offender, excluding compensation payable for personal services, in the possession or control of the particular branch served.

Notwithstanding any other provision of this act, if the department initiates collection action against a joint bank account, with or without the right of survivorship, or any other funds which are subject to the community property laws of this state, notice shall be given to all affected parties that the account or funds are subject to potential withholding. Such notice shall be by first class mail, return receipt required, or by personal service and be given at least twenty calendar days before withholding is made. Upon receipt of such notice, the nonobligated person shall have ten calendar days to file a petition with the department contesting the withholding of his or her interest in the account or funds. The department shall provide notice of the right of the filing of the petition with the notice provided in this paragraph. If the petition is not filed within the period provided for herein, the department is authorized to proceed with the collection action.

NEW SECTION. Sec. 10. LEGAL FINANCIAL OBLIGATIONS—NOTICE OF DEBT—SERVICE OR MAILING—CONTENTS—ACTION ON, WHEN. (1) The department may issue a notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver.

(2) The notice of debt may be personally served upon the offender or be mailed to the offender at his or her last known address by any form of mail requiring a return receipt, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the total court-ordered legal financial obligation and the amount to be paid each month.

(b) A statement that earnings are subject to a notice of payroll deduction.

(c) A statement that earnings or property, or both, are subject to an order to withhold and deliver.

(d) A statement that the net proceeds will be applied to the satisfaction of the court-ordered legal financial obligation.

(4) Action to collect a court-ordered legal financial obligation by notice of payroll deduction or an order to withhold and deliver shall be lawful after twenty days from the date of service upon the offender or twenty days from the receipt or refusal by the offender of the notice of debt.

(5) The notice of debt will take effect only if the offender's monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owned.

(6) The department shall not be required to issue or serve the notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver if either the offender's judgment and sentence or a

subsequent order to pay includes a statement that income-withholding action under this chapter may be taken without further notice to the offender.

NEW SECTION. Sec. 11. LEGAL FINANCIAL OBLIGATIONS—CERTAIN AMOUNT OF EARNINGS EXEMPT FROM NOTICE OF PAYROLL DEDUCTION OR ORDER TO WITHHOLD AND DELIVER. Whenever a notice of payroll deduction or order to withhold and deliver is served upon a person or entity asserting a court-ordered legal financial obligation debt against earnings and there is in the possession of the person or entity any of the earnings, RCW 6.27.150 shall not apply, but seventy-five percent of the disposable earnings shall be exempt and may be disbursed to the offender whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there is due the offender earnings for one week or for a longer period. The notice of payroll deduction or order to withhold and deliver shall continue to operate and require said person or entity to withhold the nonexempt portion of earnings, at each succeeding earnings disbursement interval until the entire amount of the court-ordered legal financial obligation debt has been withheld.

NEW SECTION. Sec. 12. Captions as used in this act constitute no part of the law.

NEW SECTION. Sec. 13. Sections 1 and 3 through 11 of this act are each added to chapter 9.94A RCW.

NEW SECTION. Sec. 14. The code reviser shall codify sections 1 and 3 through 11 of this act between RCW 9.94A.200 and 9.94A.2001.

NEW SECTION. Sec. 15. The provisions of this act are retroactive and apply to any actions commenced but not final before the effective date of this act.

NEW SECTION. Sec. 16. 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 shall take effect immediately.

Passed the Senate April 22, 1991.

Passed the House April 11, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 94

[Substitute Senate Bill 5720]

MOTORIST INFORMATION SIGNS—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to motorist information signs; amending RCW 47.42.020 and 47.42.040; adding new sections to chapter 47.36 RCW; and recodifying RCW 47.42.046, 47.42.047, 47.42.0475, 47.42.052, 47.42.160, and 47.42.170.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 47.42.020 and 1990 c 258 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Department" means the Washington state department of transportation.

(2) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(3) "Interstate system" means any state highway which is or does become part of the national system of interstate and defense highways as described in section 103(d) of title 23, United States Code.

(4) "Maintain" means to allow to exist.

(5) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual or individuals.

(6) "Primary system" means any state highway which is or does become part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(7) "Scenic system" means (a) any state highway within any public park, federal forest area, public beach, public recreation area, or national monument, (b) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic system, or (c) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025.

(8) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing that is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway.

(9) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code, or if unzoned by a county or municipal code, that area occupied by three or more separate and distinct commercial or industrial activities, or any combination thereof, within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, or storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which the activities are located. Measurements shall be along or parallel to the edge of the main traveled way of the highway. The following shall not be considered commercial or industrial activities:

(a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;

- (b) Transient or temporary activities;
- (c) Railroad tracks and minor sidings;
- (d) Signs;
- (e) Activities more than six hundred and sixty feet from the nearest edge of the right of way;
- (f) Activities conducted in a building principally used as a residence.

If any commercial or industrial activity that has been used in defining or delineating an unzoned area ceases to operate for a period of six continuous months, any signs located within the former unzoned area become nonconforming and shall not be maintained by any person.

~~(10) ("Specific information panel" means a panel, rectangular in shape, located in the same manner as other official traffic signs readable from the main traveled ways, and consisting of:~~

~~(a) The words "GAS," "FOOD," or "LODGING" and directional information, and~~

~~(b) One or more individual business signs mounted on the panel.~~

~~(11) "Business sign" means a separately attached sign mounted on the specific information panel or roadside area information panel to show the brand or trademark and name, or both, of the motorist service available on the crossroad at or near the interchange. Nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants, and motels shall be used when applicable. The brand or trademark identification symbol used on the business sign shall be reproduced with the colors and general shape consistent with customary use. Any messages, trademarks, or brand symbols which interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal, or device are prohibited.~~

~~(12)) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.~~

~~((13) "Tourist-oriented directional sign" means a sign on a specific information panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.~~

~~(14) "Qualified tourist-oriented business" means any lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.~~

~~(15)) (11) "Temporary agricultural directional sign" means a sign on private property adjacent to state highway right of way to provide directional information to places of business offering for sale seasonal agricultural products on the property where the sale is taking place.~~

~~(((16) "Adopt-a-highway sign" means a sign on state highway right of way referring to the department's adopt-a-highway litter control program.))~~

Sec. 2. RCW 47.42.040 and 1990 c 258 s 2 are each amended to read as follows:

It is declared to be the policy of the state that no signs which are visible from the main traveled way of the interstate system, primary system, or scenic system shall be erected or maintained except the following types:

(1) Directional or other official signs or notices that are required or authorized by law;

(2) Signs advertising the sale or lease of the property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, and the national standards promulgated thereunder by the secretary of commerce or the secretary of transportation, advertising activities being conducted at a location within twelve miles of the point at which such signs are located: PROVIDED, That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;

(5) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, and the regulations promulgated thereunder by the secretary of commerce or the secretary of transportation, designed to give information in the specific interest of the traveling public: PROVIDED, That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;

(6) Signs lawfully in existence on October 22, 1965, determined by the commission, subject to the approval of the United States secretary of transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of chapter 47.42 RCW;

(7) Public service signs, located on school bus stop shelters, which:

(a) Identify the donor, sponsor, or contributor of said shelters;

(b) Contain safety slogans or messages which occupy not less than six percent of the area of the sign;

(c) Contain no other message;

(d) Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved; and

(e) Do not exceed thirty-two square feet in area. Not more than one sign on each shelter may face in any one direction.

Subsection (7) of this section notwithstanding, the department of transportation shall adopt regulations relating to the appearance of school bus shelters, the placement, size, and public service content of public service signs located thereon, and the prominence of the identification of the donors, sponsors, or contributors of the shelters.

(8) Temporary agricultural directional signs, with the following restrictions:

(a) Signs shall be posted only during the period of time the seasonal agricultural product is being sold;

(b) Signs shall not be placed adjacent to the interstate highway system unless the sign qualifies as an on-premise sign;

(c) Signs shall not be placed within an incorporated city or town;

(d) Premises on which the seasonal agricultural products are sold must be within fifteen miles of the state highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway;

(e) Signs must be located so as not to restrict sight distances on approaches to intersections;

(f) The department shall establish a permit system and fee schedule and rules for the manufacturing, installation, and maintenance of these signs in accordance with the policy of this chapter;

(g) Signs in violation of these provisions shall be removed in accordance with the procedures in RCW 47.42.080;

~~((9) Adopt-a-highway signs, with the following restrictions:~~

~~(a) Signs shall be designed by the department and may only include the words "adopt-a-highway litter control next XX miles" and the name of the litter control area sponsor. The sponsor's name shall not be displayed more predominantly than the remainder of the sign message. No trademarks or business logos may be displayed;~~

~~(b) Signs may be placed along interstate, primary and scenic system highways;~~

~~(c) For each litter control area designated by the department, one sign may be placed visible to traffic approaching from each direction;~~

~~(d) Signs shall be located so as not to detract from official traffic control signs installed pursuant to the manual on uniform traffic control devices adopted by the department;~~

~~(e) Signs shall be located so as not to restrict sight distance on approaches to intersections or interchanges;~~

~~(f) The department may charge reasonable fees to defray the cost of manufacture, installation, and maintenance of adopt-a-highway signs:))~~

Only signs of types 1, 2, 3, 7, and 8(, and 9)) may be erected or maintained within view of the scenic system. Signs of types 7(;) and 8(, and 9)) may also be erected or maintained within view of the federal aid primary system.

NEW SECTION. Sec. 3. A new section is added to chapter 47.36 RCW to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(2) "Interstate system" means a state highway that is or becomes part of the national system of interstate and defense highways as described in section 103(d) of title 23, United States Code.

(3) "Maintain" means to allow to exist.

(4) "Primary system" means a state highway that is or becomes part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(5) "Scenic system" means (a) a state highway within a public park, federal forest area, public beach, public recreation area, or national monument, (b) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic system, or (c) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025.

(6) "Specific information panel" means a panel, rectangular in shape, located in the same manner as other official traffic signs readable from the main traveled ways, and consisting of:

(a) The words "GAS," "FOOD," or "LODGING" and directional information; and

(b) One or more individual business signs mounted on the panel.

(7) "Business sign" means a separately attached sign mounted on the specific information panel or roadside area information panel to show the brand or trademark and name, or both, of the motorist service available on the crossroad at or near the interchange. Nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants, and motels shall be used when applicable. The brand or trademark identification symbol used on the business sign shall be reproduced with the colors and general shape consistent with customary use. Messages, trademarks, or brand symbols that interfere with, imitate, or resemble an official warning or regulatory traffic sign, signal, or device are prohibited.

(8) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected

in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(9) "Tourist-oriented directional sign" means a sign on a specific information panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.

(10) "Qualified tourist-oriented business" means a lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

(11) "Adopt-a-highway sign" means a sign on a state highway right of way referring to the departments' adopt-a-highway litter control program.

NEW SECTION. Sec. 4. A new section is added to chapter 47.36 RCW to read as follows:

The department may install adopt-a-highway signs, with the following restrictions:

(1) Signs shall be designed by the department and may only include the words "adopt-a-highway litter control next XX miles" and the name of the litter control area sponsor. The sponsor's name shall not be displayed more predominantly than the remainder of the sign message. No trademarks or business logos may be displayed;

(2) Signs may be placed along interstate, primary, and scenic system highways;

(3) For each litter control area designated by the department, one sign may be placed visible to traffic approaching from each direction;

(4) Signs shall be located so as not to detract from official traffic control signs installed pursuant to the manual on uniform traffic control devices adopted by the department;

(5) Signs shall be located so as not to restrict sight distance on approaches to intersections or interchanges;

(6) The department may charge reasonable fees to defray the cost of manufacture, installation, and maintenance of adopt-a-highway signs.

NEW SECTION. Sec. 5. A new section is added to chapter 47.36 RCW to read as follows:

The department shall ensure that specific information panels are installed within nine months of receiving the request for installation.

NEW SECTION. Sec. 6. RCW 47.42.046, 47.42.047, 47.42.0475, 47.42.052, 47.42.160, and 47.42.170 are each recodified as sections in chapter

47.36 RCW. The code reviser may correct internal references within the recodified sections accordingly.

- Passed the Senate April 22, 1991.
- Passed the House April 10, 1991.
- Approved by the Governor May 9, 1991.
- Filed in Office of Secretary of State May 9, 1991.

CHAPTER 95

[Senate Bill 5041]

MOTORCYCLISTS—USE OF STATE PATROL APPROVED AUDIO HEADSETS

Effective Date: 7/28/91

AN ACT Relating to the use of Washington state patrol approved audio headsets and earphones by motorcyclists; and amending RCW 46.37.480.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.37.480 and 1988 c 227 s 6 are each amended to read as follows:

(1) No person shall drive any motor vehicle equipped with any television viewer, screen, or other means of visually receiving a television broadcast which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle.

(2) No person shall operate any motor vehicle on a public highway while wearing any headset or earphones connected to any electronic device capable of receiving a radio broadcast or playing a sound recording for the purpose of transmitting a sound to the human auditory senses and which headset or earphones muffle or exclude other sounds. This subsection does not apply to students and instructors participating in a Washington state motorcycle safety program.

(3) This section does not apply to authorized emergency vehicles or to motorcyclists wearing a helmet with built-in headsets or earphones as approved by the Washington state patrol.

- Passed the Senate February 8, 1991.
- Passed the House April 15, 1991.
- Approved by the Governor May 9, 1991.
- Filed in Office of Secretary of State May 9, 1991.

CHAPTER 96

[Substitute House Bill 2056]

VITAL STATISTICS—REQUIREMENTS FOR CERTIFICATES AND DOCUMENTS

Effective Date: 7/28/91

AN ACT Relating to vital statistics; amending RCW 70.58.104; adding new sections to chapter 70.58 RCW; and repealing RCW 70.58.200.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) To promote and maintain nation-wide uniformity in the system of vital statistics, the certificates required by this chapter or by the rules adopted under this chapter shall include, as a minimum, the items recommended by the federal agency responsible for national vital statistics.

(2) The state board of health by rule may require additional pertinent information relative to the birth and manner of delivery as it may deem necessary for statistical study. This information shall be placed in a confidential section of the birth certificate form and shall not be subject to the view of the public or for certification purposes except upon order of the court. The state board of health may eliminate from the forms items that it determines are not necessary for statistical study.

(3) Each certificate or other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(4) All vital records shall contain the data required for registration. No certificate may be held to be complete and correct that does not supply all items of information called for or that does not satisfactorily account for the omission of required items.

(5) Information required in certificates or documents authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar.

NEW SECTION. Sec. 2. The department is authorized to prescribe by rule the schedule and system for electronic and hard copy transmission of certificates and documents required by this chapter.

NEW SECTION. Sec. 3. The department, in mutual agreement with a local health officer as defined in RCW 70.05.010, may authorize a local registrar to access the state-wide birth data base or death data base and to issue a certified copy of birth or death certificates from the respective state-wide electronic data bases. In such cases, the department may bill local registrars for only direct line charges associated with accessing birth and death data bases.

Sec. 4. RCW 70.58.104 and 1987 c 223 s 2 are each amended to read as follows:

(1) The state registrar may prepare typewritten, photographic, electronic, or other reproductions of records of birth, death, fetal death, marriage, or decrees of divorce, annulment, or legal separation registered under law or that portion of the record of any birth which shows the child's full name, sex, date of birth, and date of filing of the certificate. Such reproductions, when certified by the state registrar, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated therein.

(2) The department may authorize by regulation the disclosure of information contained in vital records for research purposes. All research proposals must be submitted to the department and must be reviewed and approved as to scientific merit and to ensure that confidentiality safeguards are provided in accordance with department policy.

(3) Local registrars may, upon request, furnish certified copies of the records of birth, death, and fetal death, subject to all provisions of state law applicable to the state registrar. ~~((Local registrars in health districts or departments that have within their jurisdiction cities of the first class may issue certified copies only if they have an original certificate in their possession at the time of issuance of a certified copy or have a copy of the original certificate transmitted to the state registrar which was produced by a photographic or other exact reproduction method. Local registrars of all counties or districts may, upon request, furnish certified copies of the records of birth, death, and fetal death during the period that the original certificates are in their possession prior to transmittal of the original certificates to the state registrar. Certified copy forms used by local registrars furnishing certified copies while the original records are in their possession shall be supplied or approved by the state registrar and no other forms shall be used.))~~

NEW SECTION. Sec. 5. Sections 1 through 3 of this act are each added to chapter 70.58 RCW.

NEW SECTION. Sec. 6. RCW 70.58.200 and 1979 ex.s. c 162 s 2, 1975-'76 2nd ex.s. c 42 s 39, 1969 ex.s. c 279 s 2, 1967 c 26 s 10, 1961 ex.s. c 5 s 15, & 1945 c 159 s 6 are each repealed.

Passed the House March 20, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 97

[House Bill 1470]

PUBLIC WORKS PROJECTS—APPROPRIATIONS FOR PUBLIC WORKS BOARD APPROVED PROJECTS

Effective Date: 5/9/91

AN ACT Relating to appropriations for projects recommended by the public works board; creating new sections; making an appropriation; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Pursuant to chapter 43.155 RCW, the following project loans recommended by the public works board are authorized to be made with funds previously appropriated from the public works assistance account:

- (1) Annapolis Water District—water project—replace three existing wells by drilling new wells \$575,000
- (2) Asotin County—sewer project—participate with the City of Clarkston in regional sewage treatment plant upgrade \$968,400
- (3) City of Bellevue—storm sewer project—replace portions of storm drainage system and install an oil/water separator \$377,100
- (4) City of Bellingham—sanitary sewer project—replace deteriorated trunk sewer \$445,500
- (5) Chelan County PUD No. 1—sanitary sewer project—construct new waste water system around Lake Wenatchee \$2,500,000
- (6) City of Cheney—sanitary sewer project—construct a new waste water treatment facility to meet discharge standards \$2,500,000
- (7) Clark County—sanitary sewer project—construct new trunk sewer and extend sewer to elementary school \$243,200
- (8) City of Clarkston—sanitary sewer project—improve sludge management and provide for treatment plant upgrades to meet discharge standards \$1,792,400
- (9) City of Colfax—water project—replace water line, improve pump station, and rehabilitate reservoir \$644,560
- (10) City of Colville—road project—repair damage to roads and storm drainage system caused by flooding \$787,500
- (11) Douglas County—road project—make road network and storm water improvements in East Wenatchee area \$891,000
- (12) Town of Eatonville—water project—replace deteriorated water line and make reservoir improvements \$129,150
- (13) City of Ellensburg—road project—reconstruct street to provide drainage, sidewalks, and wider roadway \$161,000
- (14) City of Everett—water project—replace two miles of water supply pipeline \$2,500,000
- (15) City of Everson—capital improvement plan—develop a comprehensive plan to cover bridge, roads, domestic water, sanitary sewer, and storm sewer systems \$15,000
- (16) Federal Way Water and Sewer District—water project—make improvements to water reservoir and provide for water main replacement \$590,940
- (17) Federal Way Water and Sewer District—sanitary sewer project—improve pump station and replace electrical generator \$575,280
- (18) Franklin County—road project—pave approximately thirty miles of graveled county roads to improve public safety and reduce maintenance costs \$2,500,000
- (19) Town of Friday Harbor—water project—improve water treatment and storage facilities \$670,000
- (20) Town of Granite Falls—capital improvement plan—develop plan to cover water and sanitary sewer systems \$15,000

- (21) Grays Harbor County Water District No. 7—water project—provide for a new water system for the Pacific Beach/Moclips area \$1,098,930
- (22) Hansville Water District—water project—construct new well and provide an emergency generator \$147,000
- (23) Town of Ione—sanitary sewer project—make improvements to waste water facility and provide flood protection \$300,000
- (24) Juniper Beach Water District—water project—drill new wells further inland from existing well field \$180,979
- (25) City of Kennewick—water project—replace deteriorated water lines throughout the city \$700,000
- (26) City of Kennewick—road project—improve and widen narrow roads \$1,800,000
- (27) King County Water District No. 42—water project—replace deteriorated water lines throughout the district \$909,000
- (28) King County Water District No. 75—water project—repair or replace parts of water distribution system \$1,006,400
- (29) Kitsap County—road project—install guard rails on various roadways throughout the county \$494,932
- (30) Kitsap County—bridge project—replace three existing wood bridges \$933,600
- (31) Klickitat County PUD No. 1—water project—replace deteriorated pipes and install new pipes and a new well in Wishram, Klickitat, and Lyle \$874,755
- (32) Town of LaCrosse—capital improvement plan—develop a plan to cover roads, domestic water, and sanitary sewer systems \$4,500
- (33) City of McCleary—capital improvement plan—develop a plan that will cover roads, domestic water, sanitary sewer, and storm sewer systems \$15,000
- (34) Town of Metaline—capital improvement plan—develop plan that will cover roads, domestic water, sanitary sewer, and storm sewer systems \$15,000
- (35) City of North Bend—road project—make improvements to arterial roadway including traffic signal \$220,000
- (36) City of North Bend—sanitary sewer project—repair or replace deteriorated sewer lines \$1,074,600
- (37) North East Lake Washington Sewer and Water District—water project—replace approximately forty thousand feet of deteriorated water lines \$1,610,000
- (38) City of Okanogan—capital improvement plan—develop a plan to cover bridges, roads, domestic water, sanitary sewer, and storm sewer systems \$15,000
- (39) Olympic View Water and Sewer District—water project—replace deteriorated water lines \$875,042

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| (40) City of Pateros—capital improvement plan—develop a plan that will cover roads, domestic water, sanitary sewer, and storm sewer systems | \$15,000 |
| (41) City of Port Angeles—sanitary sewer project—expand primary treatment facilities, develop sludge management program and construct secondary treatment | \$2,500,000 |
| (42) Rainier Vista Sewer District—sanitary sewer project—rehabilitate pump stations and sewer lines and install an emergency generator | \$325,872 |
| (43) City of Redmond—bridge project—replace the Union Hill Road bridge | \$700,000 |
| (44) Rhodena Beach Water District—water project—construct a new water reservoir | \$34,000 |
| (45) Ronald Sewer District—sanitary sewer project—rehabilitate seventy-two-year-old sewer line and upgrade lift station | \$570,600 |
| (46) Rose Hill Water District—water project—construct a new reservoir and replace deteriorated water lines | \$2,000,000 |
| (47) City of Shelton—water project—replace undersized and deteriorated water lines | \$426,951 |
| (48) Skagit County Sewer District No. 1—sanitary sewer project—in coordination with the Swinomish Indian Tribe, construct pumping station, force main, and collection system rehabilitation | \$545,400 |
| (49) Snohomish County—storm sewer project—improve detention facilities and draining systems to reduce erosion and sedimentation | \$1,688,000 |
| (50) Snohomish County—bridge project—participate in replacement of four bridges | \$812,000 |
| (51) Town of South Cle Elum—sanitary sewer project—make improvements to collection system and a pumping station | \$116,000 |
| (52) South Hill Sewer District—sewer project—construct new pipelines to connect to Pierce County treatment plant | \$579,600 |
| (53) Southwest Suburban Sewer District—sanitary sewer project—provide for odor control improvement and repair deteriorated sewer lines | \$1,553,292 |
| (54) City of Spokane—sanitary sewer project—repair and replace deteriorated sewer lines | \$490,000 |
| (55) City of Spokane—water project—replace deteriorating water lines | \$900,000 |
| (56) City of Tukwila—storm sewer project—make improvements to storm sewer system and reduce flooding caused by heavy rainfall | \$1,313,000 |
| (57) City of Tumwater—road project—install traffic signal at a hazardous intersection | \$141,300 |
| (58) City of Tumwater—water project—replace failing water supply wells | \$332,550 |

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| (59) Val Vue Sewer District—sanitary sewer project—rehabilitate aged, undersized, and deteriorated collection system | \$415,000 |
| (60) City of Vancouver—water project—install aeration system to restore water quality | \$1,500,000 |
| (61) City of Vancouver—road project—intersection improvements and resurfacing of a major arterial | \$1,000,000 |
| (62) Vashon Sewer District—capital improvement plan—develop a plan for sanitary sewer system | \$15,000 |
| (63) City of Yakima—storm sewer project—cover part of an open storm sewer canal near schools and playgrounds | \$1,188,000 |
| (64) City of Yakima—road project—improve arterial roadway to handle increased truck operations | \$1,155,000 |
| Emergency Public Works Loans—as authorized by RCW 43.155.065 | \$397,256 |

NEW SECTION. Sec. 2. (1) In addition to the money previously appropriated in the 1989–91 capital budget, there is hereby appropriated for the biennium ending June 30, 1991, six million five hundred sixty-eight thousand dollars from the public works assistance account for the purpose of providing the following loans also recommended by the public works board for funding:

- (a) Jefferson County PUD No. 1—water project—improve Triten Cove and Lazy C water systems \$338,200
- (b) Mukilteo Water District—water project—replace a deteriorated water transmission line \$258,890
- (c) North Perry Avenue Water District—water project—replace undersized pipes and install additional pipes throughout system \$1,947,177
- (d) City of Olympia—road project—repair and rehabilitate four major downtown streets \$1,143,310
- (e) City of Redmond—road project—improve a hazardous intersection and drainage in area \$683,689
- (f) City of Seattle—road project—improve deteriorated roadway and increase safety for motorists, bicyclists, and pedestrians \$2,217,448

(2) Total approved list from this section and section 1 of this act \$58,458,303

NEW SECTION. Sec. 3. 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 shall take effect immediately.

Passed the House February 15, 1991.
 Passed the Senate April 10, 1991.
 Approved by the Governor May 9, 1991.
 Filed in Office of Secretary of State May 9, 1991.

CHAPTER 98

[Engrossed House Bill 1723]

FUND FOR EXCELLENCE IN HIGHER EDUCATION PROGRAM

Effective Date: 7/28/91

AN ACT Relating to the Washington fund for excellence in higher education program; adding a new chapter to Title 28B RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that encouraging collaboration among the various educational sectors to meet state-wide needs will strengthen the entire educational system, kindergarten through twelfth grade and higher education. The legislature also recognizes that the most effective way to develop innovative and collaborative programs is to encourage institutions to develop them voluntarily, in line with established state goals. Through a system of competitive grants, the legislature shall encourage the development of innovative and collaborative solutions to issues of critical state-wide need, including:

- (1) Improving rates of participation and completion at each educational level;
- (2) Recognizing needs of special populations of students;
- (3) Improving the effectiveness of education by better coordinating communication and understanding between sectors.

NEW SECTION. Sec. 2. The Washington fund for excellence in higher education program is established. The higher education coordinating board shall administer the program. Through this program the board may award on a competitive basis incentive grants to state public institutions of higher education or consortia of institutions to encourage cooperative programs designed to address specific system problems. Grants shall not exceed a two-year period. Each institution or consortia of institutions receiving the award shall contribute some financial support, either by covering part of the costs for the program during its implementation, or by assuming continuing support at the end of the grant period. Strong priority will be given to proposals that involve more than one sector of education, and to proposals that show substantive institutional commitment. Institutions are encouraged to solicit nonstate funds to support these cooperative programs.

NEW SECTION. Sec. 3. The higher education coordinating board shall have the following powers and duties in administering the program:

- (1) To adopt rules necessary to carry out the program;
- (2) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committee shall include individuals with significant experience in higher education in areas relevant to one or more of the funding period priorities;

(3) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program. During the 1991-93 biennium the guidelines shall be consistent with the following priorities: (a) Minority and diversity initiatives that encourage the participation of minorities in higher education, including students with disabilities, at a rate consistent with their proportion of the population; (b) K-12 teacher preparation models that encourage collaboration between higher education and K-12 to improve the preparedness of teachers, including provisions for higher education faculty involved with teacher preparation to spend time teaching in K-12 schools; and (c) articulation and transfer activities to smooth the transfer of students from K-12 to higher education, or from the community colleges to four-year institutions. After June 30, 1993, and each biennium thereafter, the board shall determine funding priorities for collaborative proposals for the biennium in consultation with the governor, the legislature, the office of the superintendent of public instruction, the state board for community college education, the state board for vocational education, higher education institutions, educational associations, and business and community groups consistent with state-wide needs;

(4) To solicit grant proposals and provide information to the institutions of higher education about the program; and

(5) To establish reporting, monitoring, and dissemination requirements for the recipients of the grants.

NEW SECTION. Sec. 4. The higher education coordinating board may solicit and receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the program and may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

NEW SECTION. Sec. 5. The fund for excellence is hereby established in the custody of the state treasurer. The higher education coordinating board shall deposit in the fund all moneys received under section 4 of this act. Moneys in the fund may be spent only for the purposes of sections 2 and 3 of this act. Disbursements from the fund shall be on the authorization of the higher education coordinating board. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

NEW SECTION. Sec. 6. Sections 2 through 5 of this act shall constitute a new chapter in Title 28B RCW.

Passed the House March 15, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 99

[House Bill 1458]

LIMOUSINE CHARTER PARTY CARRIERS—EXCLUSION FROM DEFINITION OF 'FOR HIRE VEHICLE'

Effective Date: 7/28/91

AN ACT Relating to limousine charter party carriers; and amending RCW 46.72.010.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.72.010 and 1979 c 111 s 14 are each amended to read as follows:

When used in this chapter:

(1) The term "for hire vehicle" includes all vehicles used for the transportation of passengers for compensation, except auto stages, school buses operating exclusively under a contract to a school district, ((and)) ride-sharing vehicles, and limousine charter party carriers licensed under chapter 81.90 RCW whose sole use as a for hire vehicle is that of a limousine charter party carrier;

(2) The term "for hire operator" means and includes any person, concern, or entity engaged in the transportation of passengers for compensation in for hire vehicles.

Passed the House March 12, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 100

[Substitute Senate Bill 5260]

NONMUNICIPAL WATER SYSTEMS—REGULATION BY UTILITIES AND TRANSPORTATION COMMISSION

Effective Date: 7/28/91

AN ACT Relating to the regulatory authority of the utilities and transportation commission over certain nonmunicipal systems; amending RCW 80.04.010; and reenacting and amending RCW 80.04.110.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 80.04.010 and 1989 c 101 s 2 are each amended to read as follows:

As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or partnership.

"Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

"Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

"Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

"LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

"Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

"Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

"Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state: PROVIDED, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by

the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce: AND PROVIDED FURTHER, That such measurement of customers or revenues shall include all portions of water companies having common ownership or control, regardless of location or corporate designation. "Control" as used herein shall be defined by the commission by rule and shall not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company. "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to the commission pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

"Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

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

The term "service" is used in this title in its broadest and most inclusive sense.

Sec. 2. RCW 80.04.110 and 1989 c 207 s 2 and 1989 c 101 s 17 are each reenacted and amended to read as follows:

Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: PROVIDED,

That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service, or at least twenty-five percent of the consumers or purchasers of the company's service: PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. The commission shall enter its final order with respect to a complaint filed by any entity or person other

than the commission within ten months from the date of filing of the complaint, unless the date is extended for cause. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. Such rules may include the requirement that a complainant use informal processes before filing a formal complaint.

The commission shall, as appropriate, ~~((exercise auditing and accounting supervision or initiate a complaint))~~ audit a nonmunicipal water system upon receipt of an administrative order from the department, or the city or county in which the water system is located, finding that the water delivered by a system does not meet state board of health standards adopted under RCW 43.20.050(2)(a) or standards adopted under chapter 70.116 RCW and the results of the audit shall be provided to the requesting department, city, or county. However, the number of nonmunicipal water systems referred to the commission in any one calendar year shall not exceed twenty percent of the water companies subject to commission regulation as defined in RCW 80.04.010.

Every nonmunicipal water system referred to the commission for audit under this section shall pay to the commission an audit fee in an amount, based on the system's twelve-month audited period, equal to the fee required to be paid by regulated companies under RCW 80.24.010.

Passed the Senate April 22, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 101

[House Bill 1581]

UTILITIES—OPERATIONS EXEMPT FROM REGULATION—BURDEN OF PROOF ON UTILITY

Effective Date: 7/28/91

AN ACT Relating to placing the burden of proof on utilities to show that certain operations are not subject to regulation; amending RCW 80.04.015; and adding a new section to chapter 80.28 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 80.04.015 and 1986 c 11 s 1 are each amended to read as follows:

Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in any activity without first complying with the requirements of this title, it may institute a special proceeding requiring such person or

corporation to appear before the commission at a location convenient for witnesses and the production of evidence and produce information, books, records, accounts, and other memoranda, and give testimony under oath as to the activities being conducted. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After investigation, the commission is authorized and directed to issue the necessary order or orders declaring the activities to be subject to, or not subject to, the provisions of this title. In the event the activities are found to be subject to the provisions of this title, the commission shall issue such orders as may be necessary to require all parties involved in the activities to comply with this title, and with respect to services found to be reasonably available from alternative sources, to issue orders to cease and desist from providing jurisdictional services pending full compliance.

In proceedings under this section, no person or corporation may be excused from testifying or from producing any information, book, document, paper, or account before the commission when ordered to do so, on the ground that the testimony or evidence, information, book, document, or account required may tend to incriminate him or her or subject him or her to penalty or forfeiture specified in this title; but no person or corporation may be prosecuted, punished, or subjected to any penalty or forfeiture specified in this title for or on account of any account, transaction, matter, or thing concerning which he or she shall under oath have testified or produced documentary evidence in proceedings under this section: PROVIDED, That no person so testifying may be exempt from prosecution or punishment for any perjury committed by him or her in such testimony: PROVIDED FURTHER, That the exemption from prosecution in this section extends only to violations of this title.

Until July 1, 1994, in any proceeding instituted under this section to determine whether a person or corporation owning, controlling, operating, or managing a water system is subject to commission regulation, and where the person or corporation has failed or refused to provide sufficient information or documentation to enable the commission to make such a determination, the burden shall be on such person or corporation to prove that the person's or corporation's operations or acts are not subject to commission regulation.

NEW SECTION. Sec. 2. A new section is added to chapter 80.28 RCW to read as follows:

The commission's jurisdiction over the rates, charges, practices, acts or services of any water company shall include any aspect of line extension, service installation, or service connection. If the charges for such services are not set forth by specific amount in the company's tariff filed with the commission pursuant to RCW 80.28.050, the commission shall determine

the fair, just, reasonable, and sufficient charge for such extension, installation, or connection. In any such proceeding in which there is no specified tariffed rate, the burden shall be on the company to prove that its proposed charges are fair, just, reasonable, and sufficient.

Passed the House March 12, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 102

[Senate Bill 5449]

SCHOOL EMPLOYEES—NOTICE OF DISCHARGE—CONTENTS

Effective Date: 7/28/91

AN ACT Relating to discharges of educational employees; and adding a new section to chapter 28A.400 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28A.400 RCW to read as follows:

Any notice of discharge given to a classified or certificated employee, if that employee has a right to appeal the discharge, shall contain notice of that right, notice that a description of the appeal process is available, and how the description of the appeal process may be obtained.

Passed the Senate April 22, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 103

[House Bill 1125]

PUBLIC ASSISTANCE—BILLING PERIOD FOR VENDORS EXTENDED

Effective Date: 7/28/91

AN ACT Relating to the billing period for vendors; and amending RCW 74.09.160.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 74.09.160 and 1980 c 32 s 11 are each amended to read as follows:

Each vendor or group who has a contract and is rendering service to eligible persons as defined in this chapter shall submit such charges as agreed upon between the department and the individual or group ~~((on a monthly basis and shall present their final charges not more))~~ no later than ~~((one hundred twenty days after))~~ twelve months from the ~~((termination))~~

date of service. If the final charges are not presented within the ((one hundred twenty day)) ~~twelve-month~~ period, they [there] shall not be a charge against the state ((unless previous extension in writing has been given by the department)). Said ((one hundred twenty day)) ~~twelve-month~~ period may also be extended by regulation, but only if required by applicable federal law or regulation, and to no more than the extension of time so required. For services rendered prior to the effective date of this act, final charges shall not be a charge against the state unless they are presented within one hundred twenty days from the date of service.

Passed the House March 19, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 104

[House Bill 1371]

PROBATION—MONTHLY ASSESSMENT FOR COSTS OF SUPERVISION

Effective Date: 7/28/91

AN ACT Relating to probationer assessments; and amending RCW 9.94A.270, 72.04A.120, and 9.94A.120.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.94A.270 and 1989 c 252 s 8 are each amended to read as follows:

(1) Whenever a punishment imposed under this chapter requires ((community)) supervision services to be provided, the ((sentencing court shall require that the)) offender shall pay to the department of corrections the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the ((probation)) terms of supervision and which shall be considered as payment or part payment of the cost of providing ((probation)) supervision to the ((probationer)) offender. The ((court)) department may exempt or defer a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the ((court)) department.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the ~~((court))~~ department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments that shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment that is less than ten dollars nor more than fifty dollars.

(3) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(4) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982.

Sec. 2. RCW 72.04A.120 and 1989 c 252 s 20 are each amended to read as follows:

(1) Any person placed on parole shall be required to pay the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the parole and which shall be considered as payment or part payment of the cost of providing parole supervision to the parolee. The ~~((board))~~ department may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment which provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the ~~((board))~~ department.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the ~~((board))~~ department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments which shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment which is less than ten dollars nor more than fifty dollars.

(3) Payment of the assessed amount shall constitute a condition of parole for purposes of the application of RCW 72.04A.090.

(4) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(5) This section shall not apply to parole services provided under an interstate compact pursuant to chapter 9.95 RCW or to parole services provided for offenders paroled before June 10, 1982.

Sec. 3. RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (5), and (7) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

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

(4) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years, and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum five-year term except for the purpose of commitment to an inpatient treatment facility. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;

(d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(e) Report as directed to the court and a community corrections officer; or

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(A) Frequency and type of contact between offender and therapist;

(B) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(D) Anticipated length of treatment; and

(E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;

(II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) After July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender is convicted of any felony sex offense committed before July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of social and health services for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary of social and health services cannot begin the evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the

treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

If the offender does not comply with the conditions of the treatment program, the secretary of social and health services may refer the matter to the sentencing court. The sentencing court shall commit the offender to the department of corrections to serve the balance of the term of confinement.

If the offender successfully completes the treatment program before the expiration of the term of confinement, the court may convert the balance of confinement to community supervision and may place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

After June 30, 1993, this subsection (b) shall cease to have effect.

(c) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his community supervision, the court may order the offender to serve out the balance of his community supervision term in confinement in the custody of the department of corrections.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (c) does not apply to any crime committed after July 1, 1990.

(d) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(8)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the

term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances; and

(v) The offender shall pay supervision fees as determined by the department of corrections.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol;

(v) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(vi) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(9) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(10) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum

toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(12) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, ((and)) notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(13) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(14) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(15) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(16) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(17) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release or in a program of home detention.

(18) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

Passed the House March 14, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 105

[Engrossed Substitute Senate Bill 5672]

ADMINISTRATION OF ANTIPSYCHOTIC MEDICINES

Effective Date: 7/28/91

AN ACT Relating to antipsychotic medicine; amending RCW 71.05.120, 71.05.130, 71.05.210, and 71.05.370; and adding a new section to chapter 71.05 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 71.05 RCW to read as follows:

(1) A person found to be gravely disabled or presents a likelihood of serious harm as a result of a mental disorder has a right to refuse antipsychotic medication unless it is determined that the failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication in the best interest of that person.

(2) The department shall adopt rules to carry out the purposes of this chapter. These rules shall include:

(a) An attempt to obtain the informed consent of the person prior to administration of antipsychotic medication.

(b) For short-term treatment up to thirty days, the right to refuse antipsychotic medications unless there is an additional concurring medical opinion approving medication.

(c) For continued treatment beyond thirty days through the hearing on any petition filed under RCW 71.05.370(7), the right to periodic review of the decision to medicate by the medical director or designee.

(d) Administration of antipsychotic medication in an emergency and review of this decision within twenty-four hours. An emergency exists if the person presents an imminent likelihood of serious harm to self or others, and medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and in the opinion of the physician, the person's condition constitutes an emergency requiring the treatment be instituted prior to obtaining a second medical opinion.

(e) Documentation in the medical record of the physician's attempt to obtain informed consent and the reasons why antipsychotic medication is being administered over the person's objection or lack of consent.

Sec. 2. RCW 71.05.120 and 1989 c 120 s 3 are each amended to read as follows:

(1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to admit, release, administer antipsychotic medications (~~on an emergency basis~~), or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel.

Sec. 3. RCW 71.05.130 and 1989 c 120 s 4 are each amended to read as follows:

In any judicial proceeding for involuntary commitment or detention, (~~or administration of antipsychotic medication;~~) or in any proceeding challenging such commitment or detention, (~~or administration of antipsychotic medication;~~) the prosecuting attorney for the county in which the

proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention (~~(or administration of antipsychotic medication)~~) and shall defend all challenges to such commitment or detention (~~(or administration of antipsychotic medication)~~): PROVIDED, That after January 1, 1980, the attorney general shall represent and provide legal services and advice to state hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention (~~(and administration of antipsychotic medication)~~).

Sec. 4. RCW 71.05.210 and 1989 c 120 s 6 are each amended to read as follows:

Each person involuntarily admitted to an evaluation and treatment facility shall, within twenty-four hours of his or her admission, be examined and evaluated by a licensed physician who may be assisted by a (~~(physician's)~~) physician assistant according to chapter 18.71A RCW or a nurse practitioner according to chapter 18.88 RCW and a mental health professional as defined in this chapter, and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a court proceeding, the individual may refuse all but emergency life-saving treatment, and the individual shall be informed at an appropriate time of his or her right to such refusal of treatment. Such person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm to himself or herself or others, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the licensed physician and mental health professional determine that the initial needs of the person would be better served by placement in an alcohol treatment facility, then the person shall be referred to an approved treatment (~~(facility)~~) program defined under RCW 70.96A.020.

An evaluation and treatment center admitting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated county mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days.

Sec. 5. RCW 71.05.370 and 1989 c 120 s 8 are each amended to read as follows:

Insofar as danger to the individual or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(1) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(2) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(3) To have access to individual storage space for his or her private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.320(2) or the performance of ((shock treatment, the administration of antipsychotic medications;)) electroconvulsant therapy or surgery, except emergency life-saving surgery, ((and not to have shock treatment, antipsychotic medications, or nonemergency surgery in such circumstance)) unless ordered by a court of competent jurisdiction pursuant to the following standards and procedures:

(a) ~~((Shock treatment and))~~ The administration of antipsychotic medication or electroconvulsant therapy shall not be ordered unless the petitioning party proves by clear, cogent, and convincing evidence that there exists a compelling state interest that justifies overriding the patient's lack of consent to ~~((shock treatment or))~~ the administration of antipsychotic medications or electroconvulsant therapy, that the proposed treatment is necessary and effective, and that medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective.

(b) The court shall make specific findings of fact concerning: (i) The existence of one or more compelling state interests; (ii) the necessity and effectiveness of the treatment; and (iii) the person's desires regarding the proposed treatment. If the patient is unable to make a rational and informed decision about consenting to or refusing the proposed treatment, the court shall make a substituted judgment for the patient as if he or she were competent to make such a determination.

(c) The person shall be present at any hearing on a request to administer ~~((shock treatment or))~~ antipsychotic medication((s)) or electroconvulsant therapy filed pursuant to this subsection. The person has

the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to prepare for the hearing. The court may appoint a psychiatrist, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for ~~((shock treatment))~~ electroconvulsant therapy is sought.

(d) An order for the administration of antipsychotic medications entered following a hearing conducted pursuant to this section shall be effective for the period of the current involuntary treatment order, ~~((any succeeding order entered pursuant to RCW 71.05.320(1);))~~ and any interim period during which the person is awaiting trial or hearing on a new petition for involuntary treatment or involuntary medication. ~~((Upon a request timely filed, a review of any such medication order shall be conducted by the court at the hearing on a petition filed pursuant to RCW 71.05.300. If a succeeding involuntary treatment order is entered pursuant to RCW 71.05.320(2), a person who refuses to consent to the administration of antipsychotic medications shall be entitled to an evidentiary hearing in accordance with this section.))~~

(e) Any person detained pursuant to RCW 71.05.320(2), who subsequently refuses antipsychotic medication, shall be entitled to the procedures set forth in RCW 71.05.370(7).

~~((e))~~ (f) Antipsychotic medication may be administered to a nonconsenting person detained or committed pursuant to this chapter without a court order pursuant to section 1(2) of this act or under the following circumstances:

(i) A person presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available, have not been successful, or are not likely to be effective; and

(iii) In the opinion of the physician with responsibility for treatment of the person, or his or her designee, the person's condition constitutes an emergency requiring the treatment be instituted before a judicial hearing as authorized pursuant to this section can be held.

If antipsychotic medications are administered over a person's lack of consent pursuant to this subsection, a petition for an order authorizing the administration of antipsychotic medications shall be filed on the next judicial day. The hearing shall be held within two judicial days. If deemed necessary by the physician with responsibility for the treatment of the person,

administration of antipsychotic medications may continue until the hearing is held;

(8) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue;

(9) Not to have psychosurgery performed on him or her under any circumstances.

NEW SECTION. Sec. 6. 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.

Passed the Senate April 22, 1991.

Passed the House April 10, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 106

[Engrossed House Bill 1071]

PRECINCT ELECTION OFFICERS—APPOINTMENT

Effective Date: 7/28/91

AN ACT Relating to the appointment of precinct election officers; and amending RCW 29.45.010 and 29.45.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29.45.010 and 1983 1st ex.s. c 71 s 7 are each amended to read as follows:

(1) At least ten days prior to any primary or election, general or special, the county auditor shall appoint one inspector and two judges of election for each precinct (or each combination of precincts temporarily consolidated as a single precinct for that primary or election), other than those precincts designated as vote-by-mail precincts pursuant to RCW 29.36.120(~~(-from)~~). Except as provided in subsection (3) of this section, the persons appointed shall be among ((the)) those whose names are contained on the lists furnished under RCW 29.45.030 by the ((chairman)) chairpersons of the county central committees of the political parties entitled to representation thereon. Such precinct election officers, whenever possible, should be residents of the precinct in which they serve.

(2) The county auditor may delete from the lists of names submitted to the auditor by the chairpersons of the county central committees under RCW 29.45.030: (a) The names of those persons who indicate to the auditor that they cannot or do not wish to serve as precinct election officers for the primary or election or who otherwise cannot so serve; and (b) the names of those persons who lack the ability to conduct properly the duties of an

inspector or judge of election after training in that proper conduct has been made available to them by the auditor. The lists which are submitted to the auditor in a timely manner under RCW 29.45.030, less the deletions authorized by this subsection, constitute the official nomination lists for inspectors and judges of election.

(3) If the number of persons whose names are on the official nomination list for a political party is not sufficient to satisfy the requirements of subsection (4) of this section as it applies to that political party or is otherwise insufficient to provide the number of precinct election officials required from that political party, the auditor shall notify the chair of the party's county central committee regarding the deficiency. The chair may, within five business days of being notified by the auditor, add to the party's nomination list the names of additional persons belonging to that political party who are qualified to serve on the election boards. To the extent that, following this procedure, the number of persons whose names appear on the official nomination lists of the political parties is insufficient to provide the number of election inspectors and judges required for a primary or election, the auditor may appoint a properly trained person whose name does not appear on such a list as an inspector or judge of election for a precinct.

(4) The county auditor shall designate the inspector and one judge in each precinct from that political party which polled the highest number of votes in the county for its candidate for president at the last preceding presidential election and one judge from that political party polling the next highest number of votes in the county for its candidate for president at the same election. The provisions of this subsection apply only if the number of names on the official nomination list for inspectors and judges of election for a political party is sufficient to satisfy the requirements imposed by this subsection.

(5) Except as provided in RCW 29.45.040 for the filling of vacancies, this shall be the exclusive method for the appointment of inspectors and judges to serve as precinct election officers at any primary or election, general or special, and shall supersede the provisions of any and all other statutes, whether general or special in nature, having different requirements.

Sec. 2. RCW 29.45.030 and 1987 c 295 s 16 are each amended to read as follows:

The precinct committee officer of each major political party shall certify to the officer's county chair a list of those persons belonging to the officer's political party qualified to act upon the election board in the officer's precinct.

((At least sixty days prior to the primary or election)) By the first day of June each year, the chair of the county central committee of each major political party shall certify to the officer having jurisdiction of the election((-)) a list of those persons belonging to the county chair's political party in each precinct who are qualified to act on the election board therein.

The county chair shall compile this list from the names certified by the various precinct committee officers unless no names or not [no] sufficient names have been certified from a precinct, in which event the county chair may include therein the names of qualified members of the county chair's party selected by the county chair. The county chair shall also have the authority to substitute names of persons recommended by the precinct committee officers if in the judgment of the county chair such persons are not qualified to serve as precinct election officers.

Passed the House February 11, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 107

[Substitute House Bill 1112]

STATE PARKS—ENVIRONMENTAL INTERPRETATION ACTIVITIES

Effective Date: 7/28/91

AN ACT Relating to environmental interpretation in Washington's state parks; and adding new sections to chapter 43.51 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. **INTENT.** The legislature finds that the lands owned and managed by the state parks and recreation commission are a significant collection of valuable natural, historical, and cultural resources for the citizens of Washington state. The legislature further finds that if citizens understand and appreciate the state park ecological resources, they will come to appreciate and understand the ecosystems and natural resources throughout the state. Therefore, the state parks and recreation commission may increase the use of its facilities and resources to provide environmental interpretation throughout the state parks system.

NEW SECTION. Sec. 2. **DEFINITIONS.** The state parks and recreation commission may provide environmental interpretative activities for visitors to state parks that:

- (1) Explain the functions, history, and cultural aspects of ecosystems;
- (2) Explain the relationship between human needs, human behaviors and attitudes, and the environment; and
- (3) Offer experiences and information to increase citizen appreciation and stewardship of the environment and its multiple uses.

NEW SECTION. Sec. 3. The state parks and recreation commission may consult and enter into agreements with and solicit assistance from private sector organizations and other governmental agencies that are interested in conserving and interpreting Washington's environment. The commission shall not permit commercial advertising in state park lands or

interpretive centers as a condition of such agreements. Logos or credit lines for sponsoring organizations may be permitted. The commission shall maintain an accounting of all monetary gifts provided, and expenditures of monetary gifts shall not be used to increase personnel.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act are each added to chapter 43.51 RCW.

Passed the House February 15, 1991.

Passed the Senate April 8, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 108

[House Bill 1355]

INDUSTRIAL SAFETY AND HEALTH VIOLATIONS—CIVIL PENALTIES

Effective Date: 7/28/91

AN ACT Relating to civil penalties for industrial safety and health violations; amending RCW 49.17.180; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 49.17.180 and 1986 c 20 s 2 are each amended to read as follows:

(1) Any employer who willfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed ~~((fifty))~~ seventy thousand dollars for each violation. A minimum penalty of five thousand dollars shall be assessed for a willful violation.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (6) of this section, shall be assessed a civil penalty not to exceed ~~((five))~~ seven thousand dollars for each such violation.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided

in subsection (6) of this section, may be assessed a civil penalty not to exceed ~~((three))~~ seven thousand dollars for each such violation, unless such violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than ~~((five))~~ seven thousand dollars for each day during which such failure or violation continues.

(5) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules promulgated by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall be assessed a penalty not to exceed ~~((three))~~ seven thousand dollars for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty not to exceed ~~((one))~~ seven thousand ~~((five hundred))~~ dollars for each such violation.

(6) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(7) The director, or his authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(8) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of

the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150.

Passed the House March 12, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 109

[Substitute Senate Bill 5713]

AGRICULTURE DEPARTMENT—ADMINISTRATION OF LICENSES BY

Effective Date: 7/28/91

AN ACT Relating to the administration of licenses by the department of agriculture; amending RCW 15.32.100, 15.32.110, 15.32.584, 16.49.440, 16.49.442, 16.49.630, 15.80.460, 15.80.470, 15.80.500, 16.58.060, 16.58.095, 16.58.110, 16.58.120, 16.58.130, 16.58.160, 20.01.040, 20.01.050, 20.01.210, 20.01.212, 20.01.370, 20.01.380, 20.01.420, 20.01.440, 22.09.050, 22.09.055, 22.09.070, 22.09.075, 22.09.240, 17.21.070, 17.21.110, 17.21.122, 17.21.126, 17.21.129, 17.21.132, 17.21.140, 17.21.220, 15.58.200, 15.58.210, and 15.58.220; adding a new section to chapter 20.01 RCW; and repealing RCW 16.58.090.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.32.100 and 1989 c 354 s 4 are each amended to read as follows:

Every person who sells, offers or exposes for sale, barter, or exchanges any milk or milk product as defined by rule under chapter 15.36 RCW must have a milk vendor's license to do so (~~(-PROVIDED, That such))~~. The license shall not include retail stores or restaurants (~~(which))~~ that purchase milk prepackaged or bottled elsewhere for sale at retail or establishments (~~(which))~~ that sell milk only for consumption in such establishment. Such license, issued by the director on application and payment of a fee of ten dollars, shall contain the license number, and name, residence and place of business, if any, of the licensee. It shall be nontransferable, shall expire (~~(June 30th subsequent to issue))~~ annually on a date set by rule by the director, and may be revoked by the director, upon reasonable notice to the licensee, for any violation of or failure to comply with any provision of this chapter or any rule or regulation, or order of the department, or any officer or inspector thereof. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 2. RCW 15.32.110 and 1961 c 11 s 15.32.110 are each amended to read as follows:

Every creamery, milk plant, shipping station, milk-condensing plant, factory of milk products, and other person who receives or purchases milk or cream in bulk and by weight or measure or upon the basis of milk fat contained therein shall obtain annually a license to do so. The license shall

be issued by the director upon payment of ten dollars and his being satisfied that the building or premises where the milk or cream is to be received is maintained in a sanitary condition in accordance with the provisions of this chapter; except, such license shall not be required of persons purchasing milk or cream for their own consumption nor of hotels, restaurants, boarding houses, eating houses, bakeries, or candy manufacturing plants.

The license shall expire ~~((on June 30th subsequent to date of issue))~~ annually on a date set by rule by the director, unless sooner revoked by the director, upon reasonable notice to the licensee, for a failure to comply with the provisions of this chapter, and the rules and regulations issued hereunder. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

A licensee under this section shall not be required to obtain a milk vendor's license.

Sec. 3. RCW 15.32.584 and 1989 c 175 s 46 are each amended to read as follows:

The initial application for a dairy technician's license shall be accompanied by the payment of a license fee of ten dollars. Where such license is renewed and it is not necessary that an examination be given the fee for renewal of the license shall be five dollars. All dairy technicians' licenses shall ~~((be renewed on or before January 1, 1964 and every two years thereafter))~~ expire biennially on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. The director is authorized to deny, suspend, or revoke any dairy technician's license subject to a hearing if the licensee has failed to comply with the provisions of this chapter, or has exhibited in the discharge of his functions any gross carelessness or lack of qualification, or has failed to comply with the rules and regulations adopted under authority of this chapter. All hearings for the suspension, denial, or revocation of such license shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings.

Sec. 4. RCW 16.49.440 and 1987 c 77 s 1 are each amended to read as follows:

It shall be unlawful for any person to act as a custom farm slaughterer or to operate a custom slaughtering establishment or custom meat facility without first obtaining a license from the director. The license shall be an annual license and shall expire on ~~((June 30th of each year))~~ a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. For custom farm slaughterers, a separate license shall be required for each mobile unit. Each custom slaughtering establishment and custom meat facility shall also require a separate license. Application for a license shall be made on a form prescribed by the director of agriculture and accompanied by a twenty-five dollar annual license fee. The application shall include the full name

and address of the applicant. If the applicant is a partnership or corporation, the application shall include the full name and address of each partner or officer. The application shall further state the principal business address of the applicant in the state or elsewhere and the name of a resident of this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director of agriculture. The license shall be issued by the director upon his satisfaction that the applicant's equipment is properly constructed, has the proper sanitary and mechanical equipment and is maintained in a sanitary manner as required under this chapter and/or rules adopted hereunder. The director of agriculture shall also provide for the periodic inspection of equipment used by licensees to assure compliance with the provisions of this chapter and the rules adopted hereunder.

Sec. 5. RCW 16.49.442 and 1985 c 415 s 11 are each amended to read as follows:

If the application for the renewal of any license provided for under this chapter is not filed prior to (~~July 1st in any year~~) the expiration date, an additional fee of twenty-five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That the additional fee shall not be charged if the applicant furnishes an affidavit certifying that the applicant has not carried on the activity for which the applicant was licensed under this chapter subsequent to the expiration of the applicant's license.

Sec. 6. RCW 16.49.630 and 1971 ex.s. c 98 s 5 are each amended to read as follows:

It shall be unlawful for any person to operate a custom meat facility without first obtaining an annual license from the department of agriculture. Application for such license shall be on a form prescribed by the department and accompanied by a twenty-five dollar license fee. Such application shall include the full name of the applicant, if such applicant is an individual, receiver, or trustee; and the full name of each member of the firm or the names of the officers of the corporation if such applicant is a firm or corporation. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of the person domiciled in this state authorized to receive and accept service of legal process of all kinds for the applicant, and the applicant shall supply any other information required by the department. All custom meat facility licenses shall expire (~~on June 30th of each year~~) annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 7. RCW 15.80.460 and 1971 ex.s. c 292 s 14 are each amended to read as follows:

The director shall issue a license to an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and the rules adopted hereunder and that such applicant is of good moral character, not less than eighteen years of age, and has the ability to weigh accurately and make correct certified weight tickets. Any license issued under this chapter shall expire ~~((on June 30th following the date of issuance))~~ annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 8. RCW 15.80.470 and 1969 ex.s. c 100 s 18 are each amended to read as follows:

If an application for renewal of any license provided for in this chapter is not filed prior to ~~((July of any one year))~~ the expiration date, there shall be assessed and added to the renewal fee as a penalty therefor fifty percent of said renewal fee which shall be paid by the applicant before any renewal license shall be issued ~~((: PROVIDED, That such))~~. The penalty shall not apply if the applicant furnishes an affidavit that he has not acted as a weighmaster or weigher subsequent to the expiration of his or her prior license.

Sec. 9. RCW 15.80.500 and 1969 ex.s. c 100 s 21 are each amended to read as follows:

Upon the director's satisfaction that the applicant is of good moral character, has the ability to weigh accurately and make correct certified weight tickets and that he is an employee or agent of the weighmaster, the director shall issue a weigher's license which will expire ~~((on June 30th following the date of issuance))~~ annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 10. RCW 16.58.060 and 1971 ex.s. c 181 s 6 are each amended to read as follows:

~~((All certified feed lot licenses shall expire on June 30th, subsequent to the date of issue. Any))~~ The director shall establish by rule an expiration date or dates for all certified feed lot licenses. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. If an application for renewal of a certified feed lot license is not received by the department per the date required by rule or should a person ~~((who))~~ fail ~~((s))~~, refuse ~~((s))~~, or neglect ~~((s))~~ to apply for renewal of a pre-existing license on or before the date of expiration, that person shall be assessed an additional twenty-five dollars which shall be added to the regular license fee and shall be paid before the director may issue a license to the applicant ~~((: PROVIDED, That such additional fee shall not be assessed if the applicant furnishes an affidavit certifying that he has not engaged in the~~

~~business of operating a certified feed lot subsequent to the expiration of his license)).~~

Sec. 11. RCW 16.58.095 and 1979 c 81 s 6 are each amended to read as follows:

All cattle entering or re(=)entering a certified feed lot must be inspected for brands upon entry, unless they are accompanied by a brand inspection certificate issued by the director, or any other agency authorized in any state or Canadian province by law to issue such a certificate. Licensees shall report a discrepancy between cattle entering or reentering a certified feed lot and the brand inspection certificate accompanying the cattle to the nearest brand inspector immediately. A discrepancy may require an inspection of all the cattle entering or reentering the lot, except as may otherwise be provided by rule.

Sec. 12. RCW 16.58.110 and 1971 ex.s. c 181 s 11 are each amended to read as follows:

All certified feed lots shall furnish the director with records as requested by him from time to time on all cattle entering or on feed in said certified feed lots and dispersed therefrom. All such records shall be subject to ((audit)) examination by the director for the purpose of maintaining the integrity of the identity of all such cattle. The director ((shall cause such audits to be made)) may make the examinations only during regular business hours except in an emergency to protect the interest of the owners of such cattle.

Sec. 13. RCW 16.58.120 and 1971 ex.s. c 181 s 12 are each amended to read as follows:

The licensee shall maintain sufficient records as required by the director ((so that a true audit can be properly performed)) at each certified feed lot, if said licensee operates more than one certified feed lot.

Sec. 14. RCW 16.58.130 and 1979 c 81 s 4 are each amended to read as follows:

Each licensee shall pay to the director a fee of ten cents for each head of cattle handled through ((his)) the licensee's feed lot. Payment of such fee shall be made by the licensee ((following the completion of an official audit and within fifteen days of billing by the director)) on a monthly basis. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. Further, the director shall not renew a certified feed lot license if ((an applicant is in arrears as to his audit payments)) a licensee has failed to make prompt and timely payments.

Sec. 15. RCW 16.58.160 and 1971 ex.s. c 181 s 16 are each amended to read as follows:

The director ((shall)) may, when a certified feed lot's conditions become such that the integrity of ((an audit conducted)) reports or records of the cattle therein becomes doubtful, suspend such certified feed lot's license

until such time as the director can conduct ~~((a valid audit as required))~~ an investigation to carry out the purpose of this chapter.

Sec. 16. RCW 20.01.040 and 1989 c 354 s 39 are each amended to read as follows:

No person may act as a commission merchant, dealer, broker, cash buyer, or agent without a license. Any person applying for such a license shall file an application with the director prior to conducting business pursuant to this chapter. No application shall be considered complete unless an effective bond or other acceptable form of security is also filed with the director, as provided under RCW 20.01.210, 20.01.211, or 20.01.212. Each license issued under this chapter shall require renewal on or before ~~((January 1st of each year))~~ the renewal date prescribed by the director by rule. License fees shall be prorated where necessary to accommodate staggered renewals of a license or licenses. The application shall be accompanied by a license fee as prescribed by the director by rule.

Sec. 17. RCW 20.01.050 and 1959 c 139 s 5 are each amended to read as follows:

If an application for renewal of a commission merchant, dealer, broker or cash buyer license is not filed prior to ~~((January 1st in any year,))~~ the prescribed renewal date a penalty of ~~((ten dollars))~~ twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued~~((PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit certifying that he has not acted as a commission merchant, dealer, broker or cash buyer subsequent to the expiration of his prior license))~~.

Sec. 18. RCW 20.01.210 and 1986 c 178 s 9 are each amended to read as follows:

(1) Before the license is issued to any commission merchant or dealer, or both, the applicant shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be to the state for the benefit of qualified consignors of agricultural products in this state. All such sureties on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on such bond by giving notice to the principal and the director by certified mail. Upon receipt of such notice the director shall notify the surety and the principal of the effective date of termination which shall be thirty days from the receipt of such notice by the director, but this shall not relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration period provided for above.

(2) The bond for a commission merchant or dealer in hay, straw or turf, forage or vegetable seed shall be not less than fifteen thousand dollars. The actual amount of such bond shall be determined by dividing the annual

dollar volume of the licensee's net proceeds or net payments due consignors by twelve and increasing that amount to the next multiple of five thousand dollars, except that the bond amount for dollar volume arising from proprietary seed bailment contracts shall be computed as provided in subsection (4) of this section. Such bond for a new commission merchant or dealer in hay, straw or turf, forage or vegetable seed shall be subject to increase at any time during the licensee's first year of operation based on the average of business volume for any three months. Except as provided in subsection (3) of this section, the bond shall be not less than ~~((three))~~ ten thousand dollars for any other dealer.

(3) The bond for a commission merchant or dealer in livestock shall be not less than ten thousand dollars. The actual amount of such bond shall be determined in accordance with the formula set forth in the packers and stockyard act of 1921 (7 U.S.C. 181), except that a commission merchant or dealer in livestock shall increase ~~((his))~~ the commission merchant's or dealer's bond by five thousand dollars for each agent ~~((he))~~ the commission merchant or dealer has endorsed under RCW 20.01.090. A dealer who also acts as an order buyer for other persons who are also licensed and bonded under this chapter or under the packers and stockyards act (7 U.S.C. 181) may subtract that amount of business from the annual gross volume of purchases reported to the director in determining the amount of bond coverage that must be provided and maintained for the purposes of this chapter.

(4) The bond for a commission merchant handling agricultural products other than livestock, hay, straw or turf, forage or vegetable seed shall not be less than ~~((seven))~~ ten thousand ~~((five-hundred))~~ dollars. The bond for a dealer handling agricultural products other than livestock, hay, straw or turf, forage or vegetable seed shall not be less than ~~((three))~~ ten thousand dollars. The actual amount of such bond shall be determined by dividing the annual dollar volume of the licensee's net proceeds or net payments due consignors by fifty-two and increasing that amount to the next multiple of two thousand dollars. However, bonds above twenty-six thousand dollars shall be increased to the next multiple of five thousand dollars.

(5) When the annual dollar volume of any commission merchant or dealer reaches two million six hundred thousand dollars, the amount of the bond required above this level shall be on a basis of ten percent of the amount arrived at by applying the appropriate formula.

Sec. 19. RCW 20.01.212 and 1977 ex.s. c 304 s 7 are each amended to read as follows:

If an applicant for a commission merchant's and/or dealer's license is bonded as a livestock dealer or packer under the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181), as amended, on June 13, 1963, and acts as a commission merchant, packer, and/or a dealer only in livestock as defined in said Packers and Stockyards Act of 1921 (7 U.S.C. 181), the director may accept such bond in lieu of the bond required in RCW

20.01.210 as good and sufficient and issue the applicant a license limited solely to dealing in livestock. A dealer buying and selling livestock who has furnished a bond as required by the packers and stockyards administration to cover acting as order buyer as well as dealer may also act as an order buyer for others under the provisions of this chapter, and all persons who act as order buyers of livestock shall license under this chapter as a livestock dealer: **PROVIDED**, That the applicant shall furnish the director with a bond approved by the United States secretary of agriculture. Such bond shall be in a minimum amount of ~~((seventy-five hundred))~~ ten thousand dollars. It shall be a violation for the licensee to act as a commission merchant and/or dealer in any other agricultural commodity without first having notified the director and furnishing him with a bond as required under the provisions of RCW 20.01.210, and failure to furnish the director with such bond shall be cause for the immediate suspension of the licensee's license, and revocation subject to a hearing.

Sec. 20. RCW 20.01.370 and 1989 c 354 s 41 are each amended to read as follows:

Every commission merchant taking control of any agricultural products for sale as such commission merchant, shall promptly make and keep for a period of three years, beginning on the day the sale of the product is complete, a correct record showing in detail the following with reference to the handling, sale, or storage of such agricultural products:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.
- (4) An accounting of all sales, including dates, terms of sales, quality and quantity of agricultural products sold, and proof of payments received on behalf of the consignor.
- (5) The terms of payment to the producer.
- (6) An itemized statement of the charges to be paid by consignor in connection with the sale.
- (7) The names and addresses of all purchasers if said commission merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in said records following the name of any such purchaser.
- (8) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags and other essential records needed to show what the agricultural products actually sold for.

(9) Any claim or claims which have been or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of such agricultural products by the act, neglect or failure of such person and such records shall be open to the inspection of the director and the consignor of agricultural products for whom such claim or claims are made.

Before a commission merchant may handle an agricultural product in a pooling arrangement or accounting, the consignor must have agreed in writing to allow the pooling.

Where a pooling arrangement is agreed to in writing between the consignor and commission merchant, the reporting requirements of subsections (4), (5), (6), and (8) of this section shall apply to the pool rather than to the individual consignor or consignment and the records of the pool shall be available for inspection by any consignor to that pool.

For individual accounting, the commission merchant shall transmit a copy of the record required by this section to the consignor on the same day the final remittance is made to the consignor as required by RCW 20.01.430 ((as now or hereafter amended)). For a consignor who is participating in a pooling arrangement, the commission merchant shall, on the same day final remittance and accounting are made to the consignor as required by RCW 20.01.430, transmit to the consignor a summary of the records which are available for inspection by any consignor to that pool.

Sec. 21. RCW 20.01.380 and 1989 c 354 s 42 are each amended to read as follows:

Every dealer or cash buyer purchasing any agricultural products from the consignor thereof shall promptly make and keep for three years a correct record showing in detail the following:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The terms of the sale.
- (4) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.
- (5) An itemized statement of any charges paid by the dealer or cash buyer for the account of the consignor.
- (6) The name and address of the purchaser: PROVIDED, That the name and address of the purchaser may be deleted from the record furnished to the consignor.

~~((7) A copy of the itemized list of charges required under RCW 20.01.080 in effect on the date the terms of sale were agreed upon.))~~

A copy of such record containing the above matters shall be forwarded to the consignor forthwith.

Livestock dealers must also maintain individual animal identification and disposition records as may be required by law, or regulation adopted by the director.

Sec. 22. RCW 20.01.420 and 1959 c 139 s 42 are each amended to read as follows:

When requested by ~~((his))~~ a consignor, a commission merchant shall ~~((; before the close of the next business day following the sale of any agricultural products consigned to him, transmit or deliver to the owner or))~~ promptly make available to the consignor ~~((of the agricultural products a true written report of such sale;))~~ or to the director all records of the ongoing sales of the consignor's agricultural products showing the amount sold, ~~((and))~~ the selling price, and any other information required under RCW 20.01.370.

Sec. 23. RCW 20.01.440 and 1959 c 139 s 44 are each amended to read as follows:

Every commission merchant shall retain a copy of all records covering each transaction for a period of ~~((one year))~~ three years from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the director and the consignor, or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment or consignment of agricultural products, the department shall furnish, upon the payment of a reasonable fee therefor by the requesting party, a certificate establishing the condition, quality, grade, pack, quantity, or weight of such lot, shipment or consignment. Such certificate shall be prima facie evidence in all courts of this state as to the recitals thereof. The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction which may be questioned.

NEW SECTION. Sec. 24. A new section is added to chapter 20.01 RCW to read as follows:

In the preparation and use of written contracts, it is unlawful for a commission merchant to include in such contracts a requirement that a consignor give up all involvement in determining the time the consignor's agricultural products will be sold. This provision does not apply to agricultural products consigned to a commission merchant under a written pooling agreement.

Sec. 25. RCW 22.09.050 and 1986 c 203 s 13 are each amended to read as follows:

Any application for a license to operate a warehouse shall be accompanied by a license fee of four hundred dollars for a terminal warehouse, three hundred dollars for a subterminal warehouse, and one hundred dollars for a country warehouse. If a licensee operates more than one warehouse under one state license as provided for in RCW 22.09.030, the license fee shall be computed by multiplying the number of physically separated warehouses within the station by the applicable terminal, subterminal, or country

warehouse license fee. If an application for renewal of a warehouse license or licenses is not received by the department prior to ~~((June 30th of any year;))~~ the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he has not acted as a warehouseman subsequent to the expiration of his prior license.

Sec. 26. RCW 22.09.055 and 1988 c 95 s 1 are each amended to read as follows:

An application for a license to operate as a grain dealer shall be accompanied by a license fee of three hundred dollars unless the applicant is also a licensed warehouseman, in which case the fee for a grain dealer license shall be one hundred fifty dollars. The license fee for grain dealers exempted from bonding under RCW 22.09.060 shall be seventy-five dollars.

If an application for renewal of a grain dealer license is not received by the department before ~~((June 30th of any year;))~~ the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he has not acted as a grain dealer after the expiration of his prior license.

Sec. 27. RCW 22.09.070 and 1983 c 305 s 25 are each amended to read as follows:

The department shall issue a warehouse license to an applicant upon its determination that the applicant has facilities adequate for handling and storage of commodities and, if applicable, conditioning, and that the application is in the proper form and upon approval of the matters contained on the application and upon a showing that the applicant has complied with the provisions of this chapter and rules adopted hereunder. The licensee shall immediately upon receipt of the license post it in a conspicuous place in the office of the licensed warehouse or if a station license, in the main office at the station. The license automatically expires on ~~((June 30th after the date of issuance))~~ the date set by rule by the director unless it has been revoked, canceled, or suspended by the department before that date. Fees shall be prorated where necessary to accommodate the staggering of renewal dates of a license or licenses.

Sec. 28. RCW 22.09.075 and 1983 c 305 s 26 are each amended to read as follows:

The department shall issue a grain dealer license to an applicant upon its determination that the application is in its proper form and upon approval of the matters contained on the application and upon a showing that

the applicant has complied with the provisions of this chapter and rules adopted hereunder. The licensee shall immediately upon receipt of the license post it in a conspicuous place in its principal place of business. The license expires automatically on ~~((June 30th after the date of issuance))~~ a date set by rule by the director unless it has been revoked, canceled, or suspended by the department before that date. Fees shall be prorated where necessary in order to accommodate staggered renewal of a license or licenses.

Sec. 29. RCW 22.09.240 and 1983 c 305 s 40 are each amended to read as follows:

Every warehouseman shall annually, during the first week in July, publish by posting in a conspicuous place in each of his warehouses the schedule of handling, conditioning, and storage rates filed with the department for the ensuing license year. The schedule shall be kept posted, and the rates shall not be changed during such year except ~~((upon approval of the department))~~ after thirty days' written notice to the director and proper posting of the changes on the licensee's premises.

Sec. 30. RCW 17.21.070 and 1989 c 380 s 37 are each amended to read as follows:

It shall be unlawful for any person to engage in the business of applying pesticides to the land of another without a commercial pesticide applicator license. Application for the license shall be accompanied by a fee of one hundred twenty-five dollars and in addition a fee of ten dollars for each apparatus, exclusive of one, used by the applicant in the application of pesticides: PROVIDED, That the provisions of this section shall not apply to any person employed only to operate any apparatus used for the application of any pesticide, and in which such person has no financial interest or other control over such apparatus other than its day to day mechanical operation for the purpose of applying any pesticide. Commercial pesticide applicator licenses shall expire ~~((on December 31st following their issuance))~~ annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 31. RCW 17.21.110 and 1989 c 380 s 40 are each amended to read as follows:

It shall be unlawful for any person to act as an employee of a commercial pesticide applicator and apply pesticides manually or as the operator directly in charge of any apparatus which is licensed or should be licensed under the provisions of this chapter for the application of any pesticide, without having obtained a commercial pesticide operator license from the director. The commercial pesticide operator license shall be in addition to any other license or permit required by law for the operation or use of any such apparatus. Application for a license to apply pesticides manually

and/or to operate ground apparatuses shall be accompanied by a license fee of thirty dollars. Application for a license to operate an aerial apparatus shall be accompanied by a license fee of thirty dollars. The provisions of this section shall not apply to any individual who is a licensed commercial pesticide applicator. Commercial pesticide operator licenses shall expire ~~((on December 31st following their issuance))~~ annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 32. RCW 17.21.122 and 1989 c 380 s 41 are each amended to read as follows:

It shall be unlawful for any person to act as a private-commercial applicator without having obtained a private-commercial applicator license from the director. Application for a private-commercial applicator license shall be accompanied by a license fee of fifty dollars before a license may be issued. Private-commercial applicator licenses issued by the director shall ~~((expire on the fifth December 31st after the date of issuance))~~ be five year licenses expiring on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 33. RCW 17.21.126 and 1989 c 380 s 42 are each amended to read as follows:

It shall be unlawful for any person to act as a private applicator without first complying with the certification requirements determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use shall be relative to hazards according to RCW 17.21.030 as now or hereafter amended. In determining these standards the director shall take into consideration standards of the EPA and is authorized to adopt by rule these standards. Application for private applicator certification shall be accompanied by a license fee of fifteen dollars before a certification may be issued. Private applicator certification issued by the director shall expire ~~((on December 31st following issuance. PROVIDED, That private applicator certifications valid on July 1, 1989, shall expire on December 31, 1989. If the director does not qualify a private applicator under this section, the director shall inform the applicant in writing))~~ annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 34. RCW 17.21.129 and 1989 c 380 s 43 are each amended to read as follows:

Except as provided in RCW 17.21.203(1), it is unlawful for a person to use or supervise the use of any pesticide which is restricted to use by certified applicators, on small experimental plots for research purposes when no charge is made for the pesticide and its application, without a demonstration and research applicator's license.

A license fee of fifty dollars shall be paid before a demonstration and research license may be issued. The demonstration and research applicator license shall ~~((expire on the fifth December 31st after the date of issuance))~~ be a five year license expiring on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 35. RCW 17.21.132 and 1989 c 380 s 44 are each amended to read as follows:

Any person applying for a license or certification authorized under the provisions of this chapter shall file an application on a form prescribed by the director. The application shall state the license or certification and the classification(s) the applicant is applying for and the method in which the pesticides are to be applied. Application for a license to apply pesticides shall be accompanied by the required fee. Renewal applications shall be filed on or before ~~((January 1st of the appropriate year))~~ the applicable expiration date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 36. RCW 17.21.140 and 1989 c 380 s 47 are each amended to read as follows:

(1) If the application for renewal of any license provided for in this chapter is not filed on or prior to ~~((January 1st following))~~ the expiration date of the license as set by rule by the director, a penalty of twenty-five dollars for the commercial pesticide applicator's license, and a penalty equivalent to the license fee for any other license, shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued; PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit certifying that he or she has not acted as a licensee subsequent to the expiration of the license.

(2) Any license for which a timely renewal application has been made, all other requirements have been met, and the proper fee paid, continues in full force and effect until the director notifies the applicant that the license has been renewed or the application has been denied.

Sec. 37. RCW 17.21.220 and 1989 c 380 s 53 are each amended to read as follows:

(1) All state agencies, municipal corporations, and public utilities or any other governmental agency shall be subject to the provisions of this

chapter and rules adopted thereunder concerning the application of pesticides.

(2) It shall be unlawful for any employee of a state agency, municipal corporation, public utility, or any other government agency to use or to supervise the use of any pesticide restricted to use by certified applicators, or any pesticide by means of an apparatus, without having obtained a public operator license from the director. A license fee of fifteen dollars shall be paid before a public operator license may be issued. The license fee shall not apply to public operators licensed and working in the health vector field. Public operator licenses shall expire ~~((on December 31st following the date of issuance))~~ annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. The public operator license shall be valid only when the operator is acting as an employee of a government agency.

(3) The jurisdictional health officer or his or her duly authorized representative is exempt from this licensing provision when applying pesticides not restricted to use by certified applicators to control pests other than weeds.

(4) Such agencies, municipal corporations and public utilities shall be subject to legal recourse by any person damaged by such application of any pesticide, and such action may be brought in the county where the damage or some part thereof occurred.

Sec. 38. RCW 15.58.200 and 1989 c 380 s 15 are each amended to read as follows:

The director shall require each pesticide dealer manager to demonstrate to the director knowledge of pesticide laws and rules; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination after which the director shall issue a license of qualification. Application for a license shall be accompanied by a license fee of fifty dollars. The pesticide dealer manager license shall ~~((expire on the fifth December 31st after the date of issuance))~~ be a five-year license expiring on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 39. RCW 15.58.210 and 1989 c 380 s 16 are each amended to read as follows:

No individual may perform services as a pest control consultant without obtaining from the director an annual license, which license shall expire ~~((on the final day of February of each year))~~ annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. Application for a license shall be on a form prescribed by the director and shall be accompanied by a fee of thirty dollars. Licensed commercial pesticide applicators and operators; licensed private-commercial applicators; licensed

demonstration and research applicators; employees of federal, state, county, or municipal agencies when acting in their official capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet, are exempt from this licensing provision.

Sec. 40. RCW 15.58.220 and 1989 c 380 s 17 are each amended to read as follows:

For the purpose of this section public pest control consultant means any individual who is employed by a governmental agency or unit to act as a pest control consultant as defined in RCW 15.58.030(28). No person shall act as a public pest control consultant on or after February 28, 1973 without first obtaining an annual license from the director. The license shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. Application for a license shall be on a form prescribed by the director and shall be accompanied by an annual license fee of fifteen dollars. Federal and state employees whose principal responsibilities are in pesticide research, the jurisdictional health officer or a duly authorized representative, public pest control consultants licensed and working in the health vector field, and public operators licensed under RCW 17.21.220 shall be exempt from this licensing provision.

NEW SECTION. Sec. 41. RCW 16.58.090 and 1971 ex.s. c 181 s 9 are each repealed.

Passed the Senate April 22, 1991.

Passed the House April 10, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 110

[Substitute House Bill 1958]

LIVESTOCK BRANDS—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to livestock; amending RCW 16.57.080, 16.57.120, 16.57.160, 16.57.240, 16.57.280, 16.57.320, 16.57.360, and 16.57.380; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 16.57.080 and 1974 ex.s. c 64 s 2 are each amended to read as follows:

~~((The director shall, on or before the first day of September 1975, and every two years thereafter, notify by letter the owners of brands then of record, that on the payment of twenty-five dollars and application of renewal, the director shall issue written proof of payment allowing the brand~~

~~owner exclusive ownership and use of such brand for another two year period:))~~ The director shall establish by rule a schedule for the renewal of registered brands. The fee for renewal of the brands shall be twenty-five dollars for each two-year period of brand ownership, except that the director may, in adopting a renewal schedule, provide for the collection of renewal fees on a prorated basis. At least one hundred twenty days before the expiration of a registered brand, the director shall notify by letter the owner of record of the brand that on the payment of the requisite application fee and application of renewal the director shall issue the proof of payment allowing the brand owner exclusive ownership and use of the brand for the subsequent registration period. The failure of the registered owner to pay the renewal fee by ~~((December 31st of the renewal year))~~ the date required by rule shall cause such owner's brand to revert to the department. The director may for a period of one year following such reversion, reissue such brand only to the prior registered owner upon payment of twenty-five dollars and an additional fee of ten dollars for renewal subsequent to the regular renewal period. The director may at his discretion, if such brand is not reissued within one year to the prior registered owner, issue such brand to any other applicant.

Sec. 2. RCW 16.57.120 and 1959 c 54 s 12 are each amended to read as follows:

No person shall remove or alter a brand of record on livestock without first having secured the written permission of the director. Violation of this section shall be a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 3. RCW 16.57.160 and 1981 c 296 s 16 are each amended to read as follows:

~~((Brand inspection of cattle shall be mandatory at the following points:~~

~~(1) Prior to being moved out of state to any point where brand inspection is not maintained by the director, directly or in agreement with another state:~~

~~(2) Subsequent to delivery to a public livestock market and prior to sale at such public livestock market unless such cattle are exempt from brand inspection by law or regulation adopted by the director in order to avoid duplication and/or to allow for efficient administration of this chapter:~~

~~(3) Prior to slaughter at any point of slaughter unless such cattle are exempt from such brand inspection by law or regulations adopted by the director because of prior brand inspection or if such cattle are immediate slaughter cattle shipped directly to a point of slaughter from another state and accompanied by a brand inspection certificate specifically identifying such cattle issued by the state of origin or a lawful agency thereof:~~

~~(4) Prior to the branding of any cattle except as otherwise provided by law or regulation:~~

~~(5) Prior to the sale of any cattle except as otherwise provided by law or regulation:))~~

The director may by ~~((regulation))~~ rule adopted subsequent to a public hearing designate any ~~((other))~~ point for mandatory brand inspection of cattle or the furnishing of proof that cattle passing or being transported through such points have been brand inspected and are lawfully being moved. Further, the director may stop vehicles carrying cattle to determine if such cattle are identified ~~((or))~~, branded ~~((as immediate slaughter cattle, and if so that such cattle are not being diverted for other purposes to points other than the specified point of slaughter))~~, or accompanied by the form prescribed by the director under RCW 16.57.240 or a brand certificate issued by the department.

Sec. 4. RCW 16.57.240 and 1985 c 415 s 8 are each amended to read as follows:

Any person purchasing, selling, holding for sale, trading, bartering, transferring title, slaughtering, handling, or transporting cattle shall keep a record on forms prescribed by the director. Such forms shall show the number, specie, brand or other method of identification of such cattle and any other necessary information required by the director. ~~((Such records shall be made in triplicate;))~~ The original shall be kept for a period of three years ((and)) or shall be furnished to the director upon demand or as prescribed by rule, one copy shall accompany the cattle to their destination ((and one copy shall be kept by the person handling the transaction for a period of at least twelve months following the transaction)) and shall be subject to inspection at any time by the director or any peace officer or member of the state patrol: PROVIDED, That in the following instances only, cattle may be moved or transported within this state without being accompanied by a certificate of permit or an official brand inspection certificate or bill of sale:

(1) When such cattle are moved or transported upon lands under the exclusive control of the person moving or transporting such cattle;

(2) When such cattle are being moved or transported for temporary grazing or feeding purposes and have the registered brand of the person having or transporting such cattle.

Sec. 5. RCW 16.57.280 and 1959 c 54 s 28 are each amended to read as follows:

No person shall knowingly have ~~((in his))~~ unlawful possession of any livestock marked with a recorded brand or tattoo of another person unless:

(1) Such livestock lawfully bears ~~((his))~~ the person's own healed recorded brand, or

(2) Such livestock is accompanied by a certificate of permit from the owner of the recorded brand or tattoo, or

(3) Such livestock is accompanied by a brand inspection certificate, or

(4) Such livestock is accompanied by a bill of sale from the previous owner or other satisfactory proof of ownership.

A violation of this section constitutes a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 6. RCW 16.57.320 and 1959 c 54 s 32 are each amended to read as follows:

If, after the expiration of one year from the date of sale, the person presenting the animals for inspection has not provided the director with satisfactory proof of ownership, the proceeds from the sale shall be paid on the claim of the owner of the recorded brand. However, it shall be a gross misdemeanor for the owner of the recorded brand to knowingly accept such funds after he or she has sold, bartered or traded such animals to the claimant or any other person. A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 7. RCW 16.57.360 and 1959 c 54 s 36 are each amended to read as follows:

The department is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

The violation of any provision of this chapter and/or rules and regulations adopted hereunder shall constitute a ~~((misdemeanor))~~ class I civil infraction as provided under chapter 7.80 RCW unless otherwise specified herein.

Sec. 8. RCW 16.57.380 and 1981 c 296 s 22 are each amended to read as follows:

~~((Brand inspection of horses shall be mandatory at the following points:~~

~~(1) Prior to being moved out of state to any point where brand inspection is not maintained by the director, directly or in agreement with another state:~~

~~(2) Subsequent to delivery to a public livestock market and prior to sale at such public livestock market unless such horses are exempt from brand inspection by law, or regulations adopted by the director in order to avoid duplication and/or to allow for efficient administration of this chapter:~~

~~(3) Prior to slaughter at any point of slaughter unless such horses are exempt from such brand inspection by law, or regulations adopted by the director in order to avoid duplication and/or to allow for efficient administration of this chapter:~~

~~(4) Prior to the branding of any horses except as otherwise provided by law or regulation:~~

~~(5) Prior to the sale of any horses except as otherwise provided by law or regulation:))~~

The director may by ~~((regulation))~~ rule adopted subsequent to a public hearing designate any ~~((other))~~ point for mandatory brand inspection of horses or the furnishing of proof that horses passing or being transported through such points have been brand inspected and are lawfully being moved. Further, the director may stop vehicles carrying horses to determine if such horses are identified or branded ~~((as immediate slaughter horses, and if so that such horses are not being diverted for other purposes to points other than the specified point of slaughter))~~.

Passed the House March 12, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 111

[Substitute House Bill 1054]

ABUSE REPORTING—REVISED REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to reports of abuse of children or adult dependent or developmentally disabled persons; amending RCW 26.44.030; and repealing RCW 26.44.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 26.44.030 and 1989 c 22 s 1 are each amended to read as follows:

(1) When any practitioner, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, or juvenile probation officer has reasonable cause to believe that a child or adult dependent or developmentally disabled person, has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040. The report shall be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child or adult has suffered abuse or neglect. The report shall include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children, dependent adults, or developmentally disabled persons are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section shall apply.

(3) Any other person who has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

~~((3))~~ (4) The department, upon receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report shall also be made to the proper law enforcement agency within five days thereafter.

~~((4))~~ (5) Any law enforcement agency receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

~~((5))~~ (6) Any county prosecutor or city attorney receiving a report under subsection ~~((4))~~ (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

~~((6))~~ (7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services or department case services for the developmentally disabled. Upon request,

the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child or developmentally disabled person. Information considered privileged by statute and not directly related to reports required by this section shall not be divulged without a valid written waiver of the privilege.

~~((7))~~ (8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

~~((8))~~ (9) Persons or agencies exchanging information under subsection ~~((6))~~ (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

~~((9))~~ (10) Upon receiving reports of abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview shall occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

~~((10))~~ (11) Upon receiving a report of incidents, conditions, or circumstances of child abuse and neglect, the department shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

~~((11))~~ (12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

~~((+2))~~ (13) The department of social and health services shall, within funds appropriated for this purpose, use a risk assessment tool when investigating child abuse and neglect referrals. The tool shall be used, on a pilot basis, in three local office service areas. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

The department shall report to the ways and means committees of the senate and house of representatives on the use of the tool by December 1, 1989. The report shall include recommendations on the continued use and possible expanded use of the tool.

~~((+3))~~ (14) Upon receipt of such report the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

NEW SECTION. Sec. 2. RCW 26.44.070 and 1987 c 524 s 12, 1987 c 206 s 6, 1986 c 269 s 3, 1984 c 97 s 6, 1981 c 164 s 4, 1977 ex.s. c 80 s 29, 1975 1st ex.s. c 217 s 7, 1972 ex.s. c 46 s 1, & 1969 ex.s. c 35 s 6 are each repealed.

Passed the House March 20, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 112

[Substitute House Bill 1059]

JUDGMENTS—PERSONAL PROPERTY EXEMPT FROM ENFORCEMENT

Effective Date: 7/28/91

AN ACT Relating to personal property exempt from enforcement of judgments; and amending RCW 6.15.010.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 6.15.010 and 1988 c 231 s 5 are each amended to read as follows:

Except as provided in RCW 6.15.050, the following personal property shall be exempt from execution, attachment, and garnishment:

(1) All wearing apparel of every individual and family, but not to exceed ~~((seven hundred fifty))~~ one thousand dollars in value in furs, jewelry, and personal ornaments for any individual.

(2) All private libraries of every individual, but not to exceed ~~((one thousand))~~ fifteen hundred dollars in value, and all family pictures and keepsakes.

(3) To each individual or, as to community property of spouses maintaining a single household as against a creditor of the community, to the community:

(a) The individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed ~~((one))~~ two thousand ~~((five))~~ seven hundred dollars in value(;

~~((b))~~, said amount to include provisions and fuel for the comfortable maintenance of the individual or community ~~((for three months))~~;

~~((c))~~ ~~((b))~~ Other personal property, except personal earnings as provided under RCW 6.15.050(1), not to exceed ~~((five hundred))~~ one thousand dollars in value, of which not more than one hundred dollars in value may consist of cash, and of which not more than one hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities; and

~~((d) One))~~ ~~((c))~~ Two motor vehicles ~~((which is))~~ used for personal transportation, not to exceed ~~((one))~~ two thousand ~~((two))~~ five hundred dollars in aggregate value.

(4) To each qualified individual, one of the following exemptions:

(a) To a farmer, farm trucks, farm stock, farm tools, farm equipment, supplies and seed, not to exceed ~~((three))~~ five thousand dollars in value;

(b) To a physician, surgeon, attorney, clergyman, or other professional person, the individual's library, office furniture, office equipment and supplies, not to exceed ~~((three))~~ five thousand dollars in value;

(c) To any other individual, the tools and instruments and materials used to carry on his or her trade for the support of himself or herself or family, not to exceed ~~((three))~~ five thousand dollars in value.

For purposes of this section, "value" means the reasonable market value of the debtor's interest in an article or item at the time it is selected for exemption, exclusive of all liens and encumbrances thereon.

Passed the House March 12, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 113

[Engrossed House Bill 1118]

MOTOR VEHICLES—MAXIMUM LENGTHS

Effective Date: 7/28/91

AN ACT Relating to maximum lengths of vehicles; and amending RCW 46.44.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.44.030 and 1990 c 28 s 1 are each amended to read as follows:

It is unlawful for any person to operate upon the public highways of this state any vehicle ~~((other than a municipal transit vehicle))~~ having an overall length, with or without load, in excess of forty feet~~((: PROVIDED;~~

~~That an auto stage or school bus shall not exceed an overall length, inclusive of front and rear bumpers, of forty feet. PROVIDED FURTHER, That the route of any auto stage in excess of thirty-five feet or school bus in excess of thirty-six feet six inches upon or across the public highways shall be limited as determined by the department of transportation for state highways, or by the local legislative authority for other public roads)). This restriction does not apply to (1) a municipal transit vehicle or (2) an articulated auto stage with an overall length not to exceed sixty-one feet.~~

It is unlawful for any person to operate on the highways of this state any combination of vehicles that contains a vehicle in excess of forty-eight feet, with or without load.

It is unlawful for any person to operate upon the public highways of this state any combination consisting of a tractor and semitrailer that has a semitrailer length in excess of forty-eight feet or a combination consisting of a tractor and two trailers in which the combined length of the trailers exceeds sixty feet, with or without load.

It is unlawful for any person to operate on the highways of this state any combination consisting of a truck and trailer with an overall length, with or without load, in excess of seventy-five feet. However, a combination of vehicles transporting automobiles or boats may have a front overhang of three feet and a rear overhang of four feet beyond this allowed length.

These length limitations do not apply to vehicles transporting poles, pipe, machinery, or other objects of a structural nature that cannot be dismembered and operated by a public utility when required for emergency repair of public service facilities or properties, but in respect to night transportation every such vehicle and load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

The length limitations described in this section are exclusive of safety and energy conservation devices, such as mud flaps and splash and spray suppressant devices, refrigeration units or air compressors, and other devices that the department determines to be necessary for safe and efficient operation of commercial vehicles. No device excluded under this paragraph from the limitations of this section may have, by its design or use, the capability to carry cargo.

Passed the House March 1, 1991.

Passed the Senate April 9, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 114

[House Bill 1224]

SCHOOL DISTRICT INDEBTEDNESS—AUTHORITY TO CONTRACT FOR

Effective Date: 7/28/91

AN ACT Relating to school district indebtedness; amending RCW 28A.160.130 and 28A.530.010; and adding a new section to chapter 28A.530 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28A.530 RCW to read as follows:

In addition to the authority granted under RCW 28A.530.010, a school district may contract indebtedness for the purpose of purchasing any real or personal property, or property rights, in connection with the exercise of any powers or duties which it is now or hereafter authorized to exercise, and issue bonds, notes, or other evidences of indebtedness therefor without a vote of the qualified electors of the district, subject to the limitations on indebtedness set forth in RCW 39.36.020(3). Such bonds, notes, or other evidences of indebtedness shall be issued and sold in accordance with chapter 39.46 RCW, and the proceeds thereof shall be deposited in the capital projects fund, the transportation vehicle fund, or the general fund, as applicable.

Sec. 2. RCW 28A.160.130 and 1990 c 33 s 139 are each amended to read as follows:

(1) There is created a fund on deposit with each county treasurer for each school district of the county, which shall be known as the transportation vehicle fund. Money to be deposited into the transportation vehicle fund shall include, but is not limited to, the following:

(a) The balance of accounts held in the general fund of each school district for the purchase of approved transportation equipment and for major transportation equipment repairs under RCW 28A.150.280. The amount transferred shall be the balance of the account as of September 1, 1982;

(b) Reimbursement payments provided for in RCW 28A.160.200 except those provided under RCW 28A.160.200(4) that are necessary for contracted payments to private carriers;

(c) Earnings from transportation vehicle fund investments as authorized in RCW 28A.320.300; and

(d) The district's share of the proceeds from the sale of transportation vehicles, as determined by the superintendent of public instruction.

(2) Funds in the transportation vehicle fund may be used for the following purposes:

(a) Purchase of pupil transportation vehicles pursuant to RCW 28A.160.200 and 28A.150.280;

(b) Payment of conditional sales contracts (~~((for the purchase of pupil transportation vehicles))~~) as authorized in RCW 28A.335.200 or payment of obligations authorized in section 1 of this 1991 act, entered into or issued for the purpose of pupil transportation vehicles;

(c) Major repairs to pupil transportation vehicles.

The superintendent of public instruction shall (~~((promulgate))~~) adopt rules which shall establish the standards, conditions, and procedures governing the establishment and use of the transportation vehicle fund. The rules shall not permit the transfer of funds from the transportation vehicle fund to any other fund of the district.

Sec. 3. RCW 28A.530.010 and 1984 c 186 s 10 are each amended to read as follows:

The board of directors of any school district may borrow money and issue negotiable bonds therefor for the purpose of:

- (1) Funding outstanding indebtedness or bonds theretofore issued; or
- (2) For the purchase of sites for all buildings, playgrounds, physical education and athletic facilities and structures authorized by law or necessary or proper to carry out the functions of a school district; or
- (3) For erecting all buildings authorized by law, including but not limited to those mentioned in (~~((subparagraph))~~) subsection (2) of this section immediately above or necessary or proper to carry out the functions of a school district, and providing the necessary furniture, apparatus, or equipment therefor; or
- (4) For improving the energy efficiency of school district buildings and/or installing systems and components to utilize renewable and/or inexhaustible energy resources; or
- (5) For major and minor structural changes and structural additions to buildings, structures, facilities and sites necessary or proper to carrying out the functions of the school district; or
- (6) For any or all of these and other capital purposes.

Neither the amount of money borrowed nor bonds issued therefor shall exceed the limitation of indebtedness prescribed by chapter 39.36 RCW, as now or hereafter amended.

Except for bonds issued under section 1 of this 1991 act, bonds may be issued only when authorized by the vote of the qualified electors of the district as provided by law.

The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

Passed the House March 12, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 115

[House Bill 1263]

TEACHERS—CITIZENSHIP REQUIREMENTS

Effective Date: 5/9/91

AN ACT Relating to citizenship requirements for teachers; amending RCW 28A.405.050; repealing RCW 28A.405.020; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.405.050 and 1990 c 33 s 385 are each amended to read as follows:

Any person teaching in any school in violation of RCW ((28A.405.020 or)) 28A.405.040, and any school director knowingly permitting any person to teach in any school in violation of RCW ((28A.405.020 or)) 28A.405.040, shall be guilty of a misdemeanor.

NEW SECTION. Sec. 2. RCW 28A.405.020 and 1990 c 243 s 7, 1985 c 379 s 5, 1977 ex.s. c 340 s 1, & 1969 ex.s. c 223 s 28A.67.020 are each repealed.

NEW SECTION. Sec. 3. 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 shall take effect immediately.

Passed the House March 20, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 116

[House Bill 1264]

EDUCATION LAWS—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to education; amending RCW 28A.335.180, 28A.300.040, 28A.300.060, 28A.155.140, 28A.305.190, 28A.230.020, 28A.230.060, 28A.230.100, 28A.230.130, 28A.150.260, 28A.305.130, 28A.335.040, 28A.335.120, 28A.400.030, 28A.405.460, 28A.330.100, 28A.405.400, 28A.405.450, 28A.410.020, 28A.410.030, 28A.600.060, 28A.600.070, 28A.170.100, and 28A.315.230; reenacting and amending RCW 28A.335.040; adding a new section to chapter 28A.405 RCW; and repealing RCW 28A.26.010, 28A.26.020, 28A.26.030, 28A.26.040, 28A.26.050, 28A.26.060, 28A.26.900, 28A.150.090, 28A.150.430, 28A.155.110, 28A.155.120, 28A.155.130, 28A.230.200, 28A.305.180, 28A.310.450, 28A.310.900, 28A.320.220, 28A.410.130, 28A.410.900, 28A.505.190, 28A.525.100, 28A.525.102, 28A.525.104, 28A.525.106, 28A.525.108, 28A.525.110, 28A.525.112, 28A.525.114, 28A.525.116, 28A.550.010, 28A.615.010, 28A.615.020, 28A.615.030, 28A.615.040, 28A.630.310, and 28A.630.340.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.335.180 and 1990 c 33 s 361 are each amended to read as follows:

Notwithstanding any other provision of law, school districts, educational service districts, or any other state or local governmental agency concerned with education, when declaring texts and other books, equipment, materials or relocatable facilities as surplus, shall, prior to other disposal thereof, serve notice in writing ~~((to the office of the state superintendent of public instruction))~~ in a newspaper of general circulation in the school district and to any public school district or private school in Washington state annually requesting such a notice, that the same is available for sale, rent, or lease to public school districts or private schools, at depreciated cost or fair market value, whichever is greater: PROVIDED, That students wishing to purchase texts pursuant to RCW 28A.320.230(2) shall have priority as to such texts. Such districts or agencies shall not otherwise sell, rent or lease such surplus property to any person, firm, organization, or nongovernmental agency for at least ~~((forty-five))~~ thirty days following ~~((the date notification is mailed to the state superintendent of public instruction))~~ publication of notice in a newspaper of general circulation in the school district.

Sec. 2. RCW 28A.300.040 and 1990 c 33 s 251 are each amended to read as follows:

In addition to any other powers and duties as provided by law, the powers and duties of the superintendent of public instruction shall be:

(1) To have supervision over all matters pertaining to the public schools of the state.

(2) To report to the governor and the legislature such information and data as may be required for the management and improvement of the schools.

(3) To prepare and have printed such forms, registers, courses of study, rules and regulations for the government of the common schools, questions prepared for the examination of persons as provided for in RCW 28A.305.130(9), and such other material and books as may be necessary for the discharge of the duties of teachers and officials charged with the administration of the laws relating to the common schools, and to distribute the same to educational service district superintendents.

(4) To travel, without neglecting his or her other official duties as superintendent of public instruction, for the purpose of attending educational meetings or conventions, of visiting schools, of consulting educational service district superintendents or other school officials.

(5) To prepare and from time to time to revise a manual of the Washington state common school code, copies of which shall be provided in such numbers as determined by the superintendent of public instruction at no cost to those public agencies within the common school system and which shall be sold at approximate actual cost of publication and distribution per volume to all other public and nonpublic agencies or individuals,

said manual to contain Titles 28A and 28C RCW, rules and regulations related to the common schools, and such other matter as the state superintendent or the state board of education shall determine. Proceeds of the sale of such code shall be transmitted to the public printer who shall credit the state superintendent's account within the state printing plant revolving fund by a like amount.

(6) To act as ex officio member and the chief executive officer of the state board of education.

~~(7) ((To hold, annually, a convention of the educational service district superintendents of the state at such time and place as he or she may deem convenient, for the discussion of questions pertaining to supervision and the administration of the school laws and such other subjects affecting the welfare and interests of the common schools as may be brought before it. Said convention shall continue in session at the option of the superintendent of public instruction. It shall be the duty of every educational service district superintendent in this state to attend said convention during its entire session, and any educational service district superintendent who attends the convention shall be reimbursed for traveling and subsistence expenses as provided in RCW 28A.310.320 in attending said convention.~~

~~(8))~~ To file all papers, reports and public documents transmitted to the superintendent by the school officials of the several counties or districts of the state, each year separately. Copies of all papers filed in the superintendent's office, and the superintendent's official acts, may, or upon request, shall be certified by the superintendent and attested by the superintendent's official seal, and when so certified shall be evidence of the papers or acts so certified to.

~~((9))~~ (8) To require annually, on or before the 15th day of August, of the president, manager, or principal of every educational institution in this state, a report ~~((of such facts arranged in such manner as the superintendent may prescribe, and the superintendent shall furnish forms for such reports))~~ as required by the superintendent of public instruction; and it is ~~((hereby made))~~ the duty of every president, manager or principal, to complete and return such forms within such time as the superintendent of public instruction shall direct.

~~((+0))~~ (9) To keep in the superintendent's office a record of all teachers receiving certificates to teach in the common schools of this state.

~~((+1))~~ (10) To issue certificates as provided by law.

~~((+2))~~ (11) To keep in the superintendent's office at the capital of the state, all books and papers pertaining to the business of the superintendent's office, and to keep and preserve in the superintendent's office a complete record of statistics, as well as a record of the meetings of the state board of education.

~~((+3))~~ (12) With the assistance of the office of the attorney general, to decide all points of law which may be submitted to the superintendent in

writing by any educational service district superintendent, or that may be submitted to the superintendent by any other person, upon appeal from the decision of any educational service district superintendent; and the superintendent shall publish his or her rulings and decisions from time to time for the information of school officials and teachers; and the superintendent's decision shall be final unless set aside by a court of competent jurisdiction.

~~((+4))~~ (13) To administer oaths and affirmations in the discharge of the superintendent's official duties.

~~((+5))~~ (14) To deliver to his or her successor, at the expiration of the superintendent's term of office, all records, books, maps, documents and papers of whatever kind belonging to the superintendent's office or which may have been received by the superintendent's for the use of the superintendent's office.

~~((+6))~~ (15) To perform such other duties as may be required by law.

Sec. 3. RCW 28A.300.060 and 1990 c 33 s 253 are each amended to read as follows:

~~((The legislature finds that the administration costs of school districts are not sufficiently known to permit sound financial planning by those affected by such costs. Accordingly, the legislature hereby authorize and directs))~~ The superintendent of public instruction and the state auditor jointly, and in cooperation with the senate and house committees on education, ~~((to))~~ shall conduct appropriate studies and adopt classifications or revised classifications under RCW 28A.505.100, defining what expenditures shall be charged to each budget class including administration. ~~((Such))~~ The studies and classifications shall be published in the form of a manual or revised manual, suitable for use by the governing bodies of school districts, by the superintendent of public instruction, and by the legislature.

Sec. 4. RCW 28A.155.140 and 1990 c 33 s 131 are each amended to read as follows:

~~((By July 1, 1989, the superintendent of public instruction shall complete a study and, as may be necessary, adopt rules providing for the appropriate use of curriculum-based assessment procedures as a component of assessment procedures provided by RCW 28A.155.010 through 28A.155.100:))~~ School districts may use curriculum-based assessment procedures as measures for developing academic early intervention programs and curriculum planning: PROVIDED, That the use of curriculum-based assessment procedures shall not deny a student the right to an assessment to determine eligibility or participation in learning disabilities programs as provided by RCW 28A.155.010 through 28A.155.100.

Sec. 5. RCW 28A.305.190 and 1973 c 51 s 2 are each amended to read as follows:

The state board of education shall adopt rules and regulations governing the conditions by and under which a certificate of educational competence may be issued to a person nineteen years of age or older, ~~((and))~~ or to a child fifteen years of age and under nineteen years of age ~~((when such a))~~ if the child ~~((can evidence))~~ provides a substantial and warranted reason for leaving the regular high school education program, or if the child was home-schooled.

Sec. 6. RCW 28A.230.020 and 1988 c 206 s 403 are each amended to read as follows:

All common schools shall give instruction in reading, penmanship, orthography, written and mental arithmetic, geography, the history of the United States, English grammar, physiology and hygiene with special reference to the effects of ~~((alcoholic stimulants and narcotics))~~ alcohol and drug abuse on the human system, science with special reference to the environment, and such other studies as may be prescribed by rule or regulation of the state board of education. All teachers shall stress the importance of the cultivation of manners, the fundamental principles of honesty, honor, industry and economy, the minimum requisites for good health including the beneficial effect of physical exercise and methods to prevent exposure to and transmission of sexually transmitted diseases, and the worth of kindness to all living creatures and the land. The prevention of child abuse may be offered as part of the curriculum in the common schools.

Sec. 7. RCW 28A.230.060 and 1969 ex.s. c 57 s 2 are each amended to read as follows:

~~((To promote good citizenship and a greater interest in and better understanding of our national and state institutions and system of government; the state board of education shall prescribe a one-year course of study in the history and government of the United States, and the equivalent of a one-semester course of study in the state of Washington's history and government. No person shall be graduated from high school without completing such courses of study. PROVIDED, That))~~ Students in the twelfth grade who have not completed ~~((such))~~ a course of study in Washington's history and state government because of previous residence outside the state may have the ~~((foregoing))~~ requirement in RCW 28A.230.090 waived by their principal.

Sec. 8. RCW 28A.230.100 and 1990 c 33 s 239 are each amended to read as follows:

The state board of education shall adopt rules pursuant to chapter 34.05 RCW, to implement the course requirements set forth in RCW 28A.230.090. ~~((Such))~~ The rules shall include, as the state board deems necessary, granting equivalencies for and temporary exemptions from the course requirements in RCW 28A.230.090 and special alterations of the course requirements in RCW 28A.230.090. In developing such rules the

state board shall recognize the relevance of vocational and applied courses and allow such courses to fulfill in whole or in part the courses required for graduation in RCW 28A.230.090. ~~((Such))~~ The rules may include provisions for competency testing in lieu of such courses required for graduation in RCW 28A.230.090 or demonstration of specific skill proficiency or understanding of concepts through work or experience.

Sec. 9. RCW 28A.230.130 and 1988 c 172 s 2 are each amended to read as follows:

(1) All public high schools of the state shall provide a program, directly or ~~((otherwise))~~ in cooperation with a community college or another school district, for students whose educational plans include application for entrance to a baccalaureate-granting institution after being granted a high school diploma. The program shall help these students to meet at least the minimum entrance requirements under RCW 28B.10.050.

(2) The state board of education, upon request from local school districts, ~~((shall be authorized to))~~ may grant temporary exemptions from ((providing)) the requirements to provide the program described in subsection (1) of this section for reasons relating to school district size and the availability of staff authorized to teach subjects which must be provided.

Sec. 10. RCW 28A.150.260 and 1990 c 33 s 108 are each amended to read as follows:

The basic education allocation for each annual average full time equivalent student shall be determined in accordance with the following procedures:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula based on a ratio of students to staff for the distribution of a basic education allocation for each annual average full time equivalent student enrolled in a common school. The distribution formula shall have the primary objective of equalizing educational opportunities and shall provide appropriate recognition of the following costs among the various districts within the state:

- (a) Certificated instructional staff and their related costs;
- (b) Certificated administrative staff and their related costs;
- (c) Classified staff and their related costs;
- (d) Nonsalary costs;
- (e) Extraordinary costs of remote and necessary schools and small high schools, including costs of additional certificated and classified staff; and
- (f) The attendance of students pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district.

(2)(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. The formula shall be for allocation purposes only. While the legislature intends that the allocations for additional instructional staff be used to

increase the ratio of such staff to students, nothing in this section shall require districts to reduce the number of administrative staff below existing levels.

~~(b) ((The formula adopted by the legislature for the 1987-88 school year shall reflect the following ratios at a minimum: (i) Forty-eight certificated instructional staff to one thousand annual average full time equivalent students enrolled in grades kindergarten through three; (ii) forty-six certificated instructional staff to one thousand annual average full time equivalent students enrolled in grades four through twelve; (iii) four certificated administrative staff to one thousand annual average full time equivalent students enrolled in grades kindergarten through twelve; and (iv) sixteen and sixty-seven one-hundredths classified personnel to one thousand annual average full time equivalent students enrolled in grades kindergarten through twelve.~~

~~(c))~~ Commencing with the 1988-89 school year, the formula adopted by the legislature shall reflect the following ratios at a minimum: (i) Forty-nine certificated instructional staff to one thousand annual average full time equivalent students enrolled in grades kindergarten through three; (ii) forty-six certificated instructional staff to one thousand annual average full time equivalent students in grades four through twelve; (iii) four certificated administrative staff to one thousand annual average full time equivalent students in grades kindergarten through twelve; and (iv) sixteen and sixty-seven one-hundredths classified personnel to one thousand annual average full time equivalent students enrolled in grades kindergarten through twelve.

~~((d))~~ (c) 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: PROVIDED, That the distribution formula developed pursuant to this section shall be for state apportionment and equalization purposes only and shall not be construed as mandating specific operational functions of local school districts other than those program requirements identified in RCW 28A.150.220 and 28A.150.100. 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 and shall exclude full time equivalent handicapped students recognized for the purposes of allocation of state funds for programs under RCW 28A.155.010 through 28A.155.100. The definition of full time equivalent student shall be determined by rules and regulations of the superintendent of public instruction: PROVIDED, That the definition shall be included as part of the superintendent's biennial budget request: PROVIDED, FURTHER, That any revision of the present definition shall not take effect until approved by the house appropriations committee and the senate ways and means committee: PROVIDED, FURTHER, That 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.

(3)(a) Certificated instructional staff shall include those persons employed by a school district who are nonsupervisory employees within the meaning of RCW 41.59.020(8): PROVIDED, That in exceptional cases, people of unusual competence but without certification may teach students so long as a certificated person exercises general supervision: PROVIDED, FURTHER, That the hiring of such noncertificated people shall not occur during a labor dispute and such noncertificated people shall not be hired to replace certificated employees during a labor dispute.

(b) Certificated administrative staff shall include all those persons who are chief executive officers, chief administrative officers, confidential employees, supervisors, principals, or assistant principals within the meaning of RCW 41.59.020(4).

(4) Each annual average full time equivalent certificated classroom teacher's direct classroom contact hours shall average at least twenty-five hours per week. Direct classroom contact hours shall be exclusive of time required to be spent for preparation, conferences, or any other nonclassroom instruction duties. Up to two hundred minutes per week may be deducted from the twenty-five contact hour requirement, at the discretion of the school district board of directors, to accommodate authorized teacher/parent-guardian conferences, recess, passing time between classes, and informal instructional activity. Implementing rules to be adopted by the state board of education pursuant to RCW 28A.150.220(6) shall provide that compliance with the direct contact hour requirement shall be based upon teachers' normally assigned weekly instructional schedules, as assigned by the district administration. Additional record-keeping by classroom teachers as a means of accounting for contact hours shall not be required. However, upon request from the board of directors of any school district, the provisions relating to direct classroom contact hours for individual teachers in that district may be waived by the state board of education if the waiver is necessary to implement a locally approved plan for educational excellence and the waiver is limited to those individual teachers approved in the local plan for educational excellence. The state board of education shall develop criteria to evaluate the need for the waiver. Granting of the waiver shall depend upon verification that: (a) The students' classroom instructional time will not be reduced; and (b) the teacher's expertise is critical to the success of the local plan for excellence.

Sec. 11. RCW 28A.305.130 and 1990 c 33 s 266 are each amended to read as follows:

In addition to any other powers and duties as provided by law, the state board of education shall:

(1) Approve or disapprove the program of courses leading to teacher, school administrator, and school specialized personnel certification offered

by all institutions of higher education within the state which may be accredited and whose graduates may become entitled to receive such certification.

(2) Conduct every five years a review of the program approval standards, including the minimum standards for teachers, administrators, and educational staff associates, to reflect research findings and assure continued improvement of preparation programs for teachers, administrators, and educational staff associates.

(3) Investigate the character of the work required to be performed as a condition of entrance to and graduation from any institution of higher education in this state relative to such certification as provided for in subsection (1) above, and prepare a list of accredited institutions of higher education of this and other states whose graduates may be awarded such certificates.

(4)(a) The state board of education shall adopt rules to allow a teacher certification candidate to fulfill, in part, teacher preparation program requirements through work experience as a noncertificated teacher's aide in a public school or private school meeting the requirements of RCW 28A.195.010. The rules shall include, but are not limited to, limitations based upon the recency of the teacher preparation candidate's teacher aide work experience, and limitations based on the amount of work experience that may apply toward teacher preparation program requirements under this chapter.

(b) The state board of education shall require that at the time of the individual's enrollment in a teacher preparation program, the supervising teacher and the building principal shall jointly provide to the teacher preparation program of the higher education institution at which the teacher candidate is enrolled, a written assessment of the performance of the teacher candidate. The assessment shall contain such information as determined by the state board of education and shall include: Evidence that at least fifty percent of the candidate's work as a noncertificated teacher's aide was involved in instructional activities with children under the supervision of a certificated teacher and that the candidate worked a minimum of six hundred thirty hours for one school year; the type of work performed by the candidate; and a recommendation of whether the candidate's work experience as a noncertificated teacher's aide should be substituted for teacher preparation program requirements. In compliance with such rules as may be established by the state board of education under this section, the teacher preparation programs of the higher education institution where the candidate is enrolled shall make the final determination as to what teacher preparation program requirements may be fulfilled by teacher aide work experience.

(5) Supervise the issuance of such certificates as provided for in subsection (1) above and specify the types and kinds of certificates necessary

for the several departments of the common schools by rule or regulation in accordance with RCW 28A.410.010.

(6) Accredite, subject to such accreditation standards and procedures as may be established by the state board of education, all schools that apply for accreditation, and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades one through twelve: PROVIDED, That no public or private schools shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials: PROVIDED FURTHER, That the state board may elect to require all or certain classifications of the public schools to conduct and participate in such pre-accreditation examination and evaluation processes as may now or hereafter be established by the board.

(7) Make rules and regulations governing the establishment in any existing nonhigh school district of any secondary program or any new grades in grades nine through twelve. Before any such program or any new grades are established the district must obtain prior approval of the state board.

(8) Prepare such outline of study for the common schools as the board shall deem necessary, and prescribe such rules for the general government of the common schools, as shall seek to secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interest of the common schools.

~~(9) ((Prepare with the assistance of the superintendent of public instruction a uniform series of questions, with the proper answers thereto for use in the correcting thereof, to be used in the examination of persons, as this code may direct, and prescribe rules and regulations for conducting any such examinations:~~

~~(10))~~ Continuously reevaluate courses and adopt and enforce regulations within the common schools so as to meet the educational needs of students and articulate with the institutions of higher education and unify the work of the public school system.

~~((11))~~ (10) Carry out board powers and duties relating to the organization and reorganization of school districts under RCW 28A.315.010 through 28A.315.680 and 28A.315.900.

~~((12))~~ (11) By rule or regulation promulgated upon the advice of the director of community development, through the director of fire protection, provide for instruction of pupils in the public and private schools carrying out a K through 12 program, or any part thereof, so that in case of sudden emergency they shall be able to leave their particular school building in the shortest possible time or take such other steps as the particular emergency demands, and without confusion or panic; such rules and regulations shall be published and distributed to certificated personnel throughout the state whose duties shall include a familiarization therewith as well as the means of implementation thereof at their particular school.

~~((+3))~~ (12) Hear and decide appeals as otherwise provided by law.

The state board of education is given the authority to promulgate information and rules dealing with the prevention of child abuse for purposes of curriculum use in the common schools.

Sec. 12. RCW 28A.335.040 and 1990 c 96 s 1 & 1990 c 33 s 354 are each reenacted and amended to read as follows:

(1) Every school district board of directors is authorized to permit the rental, lease, or occasional use of all or any portion of any surplus real property owned or lawfully held by the district to any person, corporation, or government entity for profit or nonprofit, commercial or noncommercial purposes: PROVIDED, That the leasing or renting or use of such property is for a lawful purpose(~~(, is in the best interest of the district;))~~) and does not interfere with conduct of the district's educational program and related activities: PROVIDED FURTHER, That the lease or rental agreement entered into shall include provisions which permit the recapture of the leased or rented surplus property of the district should such property be needed for school purposes in the future except in such cases where, due to proximity to an international airport, land use has been so permanently altered as to preclude the possible use of the property for a school housing students and the school property has been heavily impacted by surrounding land uses so that a school housing students would no longer be appropriate in that area.

(2) Authorization to rent, lease or permit the occasional use of surplus school property under this section, RCW 28A.335.050 and 28A.335.090 is conditioned on the establishment by each school district board of directors of a policy governing the use of surplus school property.

(3) The board of directors of any school district desiring to rent or lease any surplus real property owned by the school district shall ~~((send))~~ publish a written notice ((to the office of the state superintendent of public instruction)) in a newspaper of general circulation in the school district for rentals or leases totalling ten thousand dollars or more in value. School districts shall not rent or lease the property for at least forty-five days following the ~~((date notification is mailed to the state superintendent of public instruction))~~ publication of the newspaper notice.

(4) Private schools shall have the same rights as any other person or entity to submit bids for the rental or lease of surplus real property and to have such bids considered along with all other bids: PROVIDED, That the school board may establish reasonable conditions for the use of such real property to assure the safe and proper operation of the property in a manner consistent with board policies.

Sec. 13. RCW 28A.335.120 and 1984 c 103 s 1 are each amended to read as follows:

(1) The board of directors of any school district of this state may:

(a) Sell for cash, at public or private sale, and convey by deed all interest of the district in or to any of the real property of the district which is no longer required for school purposes; and

(b) Purchase real property for the purpose of locating thereon and affixing thereto any house or houses and appurtenant buildings removed from school sites owned by the district and sell for cash, at public or private sale, and convey by deed all interest of the district in or to such acquired and improved real property.

(2) When the board of directors of any school district proposes a sale of school district real property pursuant to this section and the value of the property exceeds seventy thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper with a general circulation in the area in which the school district is located. The notice shall describe the property to be sold and designate the place where and the day and hour when a hearing will be held. The board shall hold a public hearing upon the proposal to dispose of the school district property at the place and the day and hour fixed in the notice and admit evidence offered for and against the propriety and advisability of the proposed sale.

(3) The board of directors of any school district desiring to sell surplus real property shall (~~send written notice of that intent to the office of the state superintendent of public instruction~~) publish a notice in a newspaper of general circulation in the school district. School districts shall not sell the property for at least forty-five days following the (~~date notification is mailed to the state superintendent of public instruction~~) publication of the newspaper notice.

(4) Private schools shall have the same rights as any other person or entity to submit bids for the purchase of surplus real property and to have such bids considered along with all other bids.

(5) Any sale of school district real property authorized pursuant to this section shall be preceded by a market value appraisal by three licensed real estate brokers or professionally designated real estate appraisers as defined in RCW 74.46.020 selected by the board of directors and no sale shall take place if the sale price would be less than ninety percent of the average of the three appraisals made by the brokers or professionally designated real estate appraisers: PROVIDED, That if the property has been on the market for one year or more the property may be reappraised and sold for not less than seventy-five percent of the average reappraised value with the unanimous consent of the board.

(6) If in the judgment of the board of directors of any district the sale of real property of the district not needed for school purposes would be facilitated and greater value realized through use of the services of licensed real estate brokers, a contract for such services may be negotiated and concluded: PROVIDED, That the use of a licensed real estate broker will not

eliminate the obligation of the board of directors to provide the notice described in this section: **PROVIDED FURTHER**, That the fee or commissions charged for any broker services shall not exceed seven percent of the resulting sale value for a single parcel: **PROVIDED FURTHER**, That any licensed real estate broker or professionally designated real estate appraisers as defined in RCW 74.46.020 selected by the board to appraise the market value of a parcel of property to be sold may not be a party to any contract with the school district to sell such parcel of property for a period of three years after the appraisal.

(7) If in the judgment of the board of directors of any district the sale of real property of the district not needed for school purposes would be facilitated and greater value realized through sale on contract terms, a real estate sales contract may be executed between the district and buyer: **PROVIDED**, That the terms and conditions of any such sales contract must comply with rules and regulations of the state board of education, herein authorized, governing school district real property contract sales.

Sec. 14. RCW 28A.400.030 and 1990 c 33 s 378 are each amended to read as follows:

In addition to such other duties as a district school board shall prescribe the school district superintendent shall:

(1) Attend all meetings of the board of directors and cause to have made a record as to the proceedings thereof.

(2) Keep such records and reports and in such form as the district board of directors require or as otherwise required by law or rule or regulation of higher administrative agencies and turn the same over to his or her successor.

(3) Keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the superintendent must present his or her record book of board proceedings for public inspection, and shall make a statement of the financial condition of the district and such record book must always be open for public inspection.

(4) ~~((Take annually in May of each year a census of all persons between the ages of four and twenty who were bona fide residents of the district on the first day of May of that year. The superintendent shall designate the name and sex of each child, and the date of its birth, the number of weeks it has attended school during the school year, its post office address, and such other information as the superintendent of public instruction shall desire. Parents or guardians may be required to verify as to the correctness of this report. The superintendent shall also list separately all persons with handicapping conditions between the ages of three and twenty and give such information concerning them as may be required by the superintendent of public instruction. The board of directors may employ additional persons and compensate the same to aid the superintendent in carrying out such census.~~

~~(5) Make to the educational service district superintendent on or before the fifteenth day of October his or her annual report verified by affidavit upon forms to be furnished by the superintendent of public instruction. It shall contain such items of information as said superintendent of public instruction shall require, including the following: A full and complete report of all children enumerated under subsection (4) of this section; the number of schools or departments taught during the year; the number of children, male and female, enrolled in the school, and the average daily attendance; the number of teachers employed, and their compensation per month; the number of days school was taught during the past school year, and by whom; and the number of volumes, if any, in the school district library; the number of school houses in the district, and the value of them; and the aggregate value of all school furniture and apparatus belonging to the district. The superintendent shall keep on file a duplicate copy of said report.~~

(6)) Give such notice of all annual or special elections as otherwise required by law; also give notice of the regular and special meetings of the board of directors.

((7)) (5) Sign all orders for warrants ordered to be issued by the board of directors.

((8)) (6) Carry out all orders of the board of directors made at any regular or special meeting.

Sec. 15. RCW 28A.405.460 and 1969 ex.s. c 223 s 28A.58.275 are each amended to read as follows:

All certificated employees of school districts shall be allowed a reasonable lunch period of not less than thirty continuous minutes per day during the regular school lunch periods and during which they shall have no assigned duties.

~~((Any school district may employ noncertificated personnel to supervise school children in noninstructional activities during regular school lunch periods:))~~

NEW SECTION. Sec. 16. A new section is added to chapter 28A.405 RCW to read as follows:

Any school district may employ noncertificated personnel to supervise school children in noninstructional activities, and in instructional activities while under the supervision of a certificated employee.

Sec. 17. RCW 28A.330.100 and 1990 c 33 s 348 are each amended to read as follows:

Every board of directors of a school district of the first class, in addition to the general powers for directors enumerated in this title, shall have the power:

(1) To employ for a term of not exceeding three years a superintendent of schools of the district, and for cause to dismiss him or her; and to fix his or her duties and compensation.

(2) To employ, and for cause dismiss one or more assistant superintendents and to define their duties and fix their compensation.

(3) To employ a business manager, attorneys, architects, inspectors of construction, superintendents of buildings and a superintendent of supplies, all of whom shall serve at the board's pleasure, and to prescribe their duties and fix their compensation.

(4) To employ, and for cause dismiss, supervisors of instruction and to define their duties and fix their compensation.

(5) To prescribe a course of study and a program of exercises which shall be consistent with the course of study prepared by the state board of education for the use of the common schools of this state.

(6) To, in addition to the minimum requirements imposed by this title establish and maintain such grades and departments, including night, high, kindergarten, vocational training and, except as otherwise provided by law, industrial schools, and schools and departments for the education and training of any class or classes of handicapped youth, as in the judgment of the board, best shall promote the interests of education in the district.

(7) To determine the length of time over and above one hundred eighty days that school shall be maintained: PROVIDED, That for purposes of apportionment no district shall be credited with more than one hundred and eighty-three days' attendance in any school year; and to fix the time for annual opening and closing of schools and for the daily dismissal of pupils before the regular time for closing schools.

(8) To maintain a shop and repair department, and to employ, and for cause dismiss, a foreman and the necessary help for the maintenance and conduct thereof.

(9) To provide free textbooks and supplies for all children attending school (~~(, when so ordered by a vote of the electors, or if the free textbooks are not voted by the electors, to provide books for children of indigent parents, on the written statement of the city superintendent that the parents of such children are not able to purchase them)~~).

(10) To require of the officers or employees of the district to give a bond for the honest performance of their duties in such penal sum as may be fixed by the board with good and sufficient surety, and to cause the premium for all bonds required of all such officers or employees to be paid by the district: PROVIDED, That the board may, by written policy, allow that such bonds may include a deductible proviso not to exceed two percent of the officer's or employee's annual salary.

(11) To prohibit all secret fraternities and sororities among the students in any of the schools of the said districts.

(12) To appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector, and whose duty it shall be to decide for the board of directors all questions of sanitation and health affecting the safety and welfare of the public schools of the district

who shall serve at the board's pleasure; the school district medical inspector or authorized deputies shall make monthly inspections of each school in the district and report the condition of the same to the board of education and board of health: PROVIDED, That children shall not be required to submit to vaccination against the will of their parents or guardian.

Sec. 18. RCW 28A.405.400 and 1972 ex.s. c 39 s 1 are each amended to read as follows:

In addition to other deductions permitted by law, any person authorized to disburse funds in payment of salaries or wages (~~(of certificated)~~) to employees of school districts, upon written request of at least ten percent of the (~~(certificated)~~) employees, shall make deductions as they authorize, subject to the limitations of district equipment or personnel. Any person authorized to disburse funds shall not be required to make other deductions for (~~(certificated)~~) employees if fewer than ten percent of the (~~(certificated)~~) employees make the request for the same payee. Moneys so deducted shall be paid or applied monthly by the school district for the purposes specified by the employee. The employer may not derive any financial benefit from such deductions. A deduction authorized before the effective date of this section shall be subject to the law in effect at the time the deduction was authorized.

Sec. 19. RCW 28A.405.450 and 1990 c 33 s 403 are each amended to read as follows:

The superintendent of public instruction shall adopt rules to establish and operate a teacher assistance program. For the purposes of this section, the terms "mentor teachers," "beginning teachers," and "experienced teachers" may include any person possessing any one of the various certificates issued by the superintendent of public instruction under RCW 28A.410.010. The program shall provide for:

(1) Assistance by mentor teachers who will provide a source of continuing and sustained support to beginning teachers, or experienced teachers, or both, both in and outside the classroom. A mentor teacher may not be involved in evaluations under RCW 28A.405.100 of a teacher who receives assistance from said mentor teacher under the teacher assistance program established under this section. The mentor teachers shall also periodically inform their principals respecting the contents of training sessions and other program activities;

(2) Stipends for mentor teachers and beginning teachers which shall not be deemed compensation for the purposes of salary lid compliance under RCW 28A.58.095: PROVIDED, That stipends shall not be subject to the continuing contract provisions of this title;

(3) Workshops for the training of mentor and beginning teachers;

(4) The use of substitutes to give mentor teachers, beginning teachers, and experienced teachers opportunities to jointly observe and evaluate

teaching situations and to give mentor teachers opportunities to observe and assist beginning and experienced teachers in the classroom;

(5) Mentor teachers who are superior teachers based on their evaluations, pursuant to RCW 28A.405.010 through 28A.405.240, and who hold valid continuing certificates;

(6) Mentor teachers shall be selected by the district. If a bargaining unit, certified pursuant to RCW 41.59.090 exists within the district, classroom teachers representing the bargaining unit shall participate in the mentor teacher selection process; and

(7) Periodic consultation by the superintendent of public instruction or the superintendent's designee with representatives of educational organizations and associations, including educational service districts and public and private institutions of higher education, for the purposes of improving communication and cooperation and program review(~~(; and~~

~~(8) A report to the legislature describing the results of the program to be delivered not later than December 31, 1987)).~~

Sec. 20. RCW 28A.410.020 and 1988 c 251 s 4 are each amended to read as follows:

(1) No person may be admitted to a professional teacher preparation program within Washington state without first demonstrating that he or she is competent in the basic skills required for oral and written communication and computation. This requirement shall be waived for persons who have completed a baccalaureate degree; or graduate degree program; or who have completed two or more years of college level course work, demonstrated competency through college level course work and a written essay, and are over the age of twenty-one.

(2) After June 30, 1989, no person shall be admitted to a teacher preparation program who has a combined score of less than the state-wide median score for the prior school year scored by all persons taking ~~((the Washington precollege test or who has achieved an equivalent standard score on comparable portions of other standardized))~~ tests of general achievement selected by the state board of education. The state board of education shall develop criteria and adopt rules for exemptions from this subsection.

(3) The state board of education shall adopt rules to implement this section.

Sec. 21. RCW 28A.410.030 and 1987 c 525 s 203 are each amended to read as follows:

The state board of education shall require a uniform state ~~((exit))~~ admission to practice examination for teacher certification candidates. Commencing August 31, 1993, teacher certification candidates completing a teacher preparation program shall be required to pass an ~~((exit))~~ admission to practice examination before being granted an initial certificate. The examination shall test knowledge and competence in subjects including, but

not limited to, instructional skills, classroom management, and student behavior and development. The examination shall consist primarily of essay questions. The state board of education shall adopt such rules as may be necessary to implement this section.

Sec. 22. RCW 28A.600.060 and 1985 c 62 s 2 are each amended to read as follows:

~~((The Washington state honors awards program shall include student achievement in both verbal and quantitative areas, as measured by the Washington precollege test))~~ The recipients of the Washington state honors awards shall be selected based on student achievement in both verbal and quantitative areas, as measured by a test or tests of general achievement selected by the superintendent of public instruction, and shall include student performance in the academic core areas of English, mathematics, science, social studies, and foreign language. The performance level in such academic core subjects shall be determined by grade point averages, numbers of credits earned, and courses enrolled in during the beginning of the senior year.

Sec. 23. RCW 28A.600.070 and 1985 c 62 s 3 are each amended to read as follows:

The superintendent of public instruction shall adopt rules for the establishment and administration of the Washington state honors awards program. The rules shall establish: (1) ~~((Minimum achievement scores))~~ The test or tests of general achievement that are used to measure verbal and quantitative achievement, (2) academic subject performance levels, (3) timelines for participating school districts to notify students of the opportunity to participate, (4) procedures for the administration of the program, and (5) the procedures for providing the appropriate honors award designation.

Sec. 24. RCW 28A.170.100 and 1990 c 33 s 159 are each amended to read as follows:

(1) School districts are encouraged to promote parent and community involvement in drug and alcohol abuse prevention and intervention programs, through parent visits under RCW 28A.605.020 and through any school involvement program established by the district ~~((under RCW 28A.615.010 through 28A.615.050))~~.

(2) Districts are further encouraged to review drug and alcohol prevention and intervention programs as part of the self-study procedures required under RCW 28A.320.200 and as part of any annual goal-setting process the district may have established under RCW 28A.320.220.

Sec. 25. RCW 28A.315.230 and 1990 c 33 s 306 are each amended to read as follows:

Any school district in the state having a student enrollment within the public schools of such district of two thousand pupils or more, as shown by

~~((any regular census as required under RCW 28A.400.030(4) or by any other))~~ evidence acceptable to the educational service district superintendent and the superintendent of public instruction, shall be a school district of the first class. Any other school district shall be a school district of the second class.

Whenever the educational service district superintendent finds that the classification of a school district should be changed, and upon the approval of the superintendent of public instruction, he or she shall make an order in conformity with his or her findings and alter the records of his or her office accordingly. Thereafter the board of directors of the district shall organize in the manner provided by law for the organization of the board of a district of the class to which said district then belongs.

NEW SECTION. Sec. 26. The following acts or parts of acts are each repealed:

- (1) RCW 28A.26.010 and 1979 c 4 s 1;
- (2) RCW 28A.26.020 and 1979 c 4 s 2;
- (3) RCW 28A.26.030 and 1979 c 4 s 3;
- (4) RCW 28A.26.040 and 1979 c 4 s 4;
- (5) RCW 28A.26.050 and 1979 c 4 s 5;
- (6) RCW 28A.26.060 and 1979 c 4 s 6;
- (7) RCW 28A.26.900 and 1979 c 4 s 8;
- (8) RCW 28A.150.090 and 1969 ex.s. c 223 s 28A.01.110;
- (9) RCW 28A.150.430 and 1990 c 33 s 119 & 1972 ex.s. c 146 s 2;
- (10) RCW 28A.155.110 and 1990 c 33 s 129 & 1975 1st ex.s. c 78 s 1;
- (11) RCW 28A.155.120 and 1985 c 341 s 2 & 1975 1st ex.s. c 78 s 2;
- (12) RCW 28A.155.130 and 1990 c 33 s 130 & 1975 1st ex.s. c 78 s 3;
- (13) RCW 28A.230.200 and 1984 c 278 s 10;
- (14) RCW 28A.305.180 and 1985 c 341 s 3 & 1975 1st ex.s. c 127 s 1;
- (15) RCW 28A.310.450 and 1975 1st ex.s. c 275 s 38 & 1974 ex.s. c 91 s 5;
- (16) RCW 28A.310.900 and 1975 1st ex.s. c 275 s 155;
- (17) RCW 28A.320.220 and 1984 c 278 s 1;
- (18) RCW 28A.410.130 and 1969 ex.s. c 223 s 28A.87.020;
- (19) RCW 28A.410.900 and 1987 c 525 s 218;
- (20) RCW 28A.505.190 and 1975-'76 2nd ex.s. c 118 s 19;
- (21) RCW 28A.525.100 and 1969 ex.s. c 223 s 28A.47.775;
- (22) RCW 28A.525.102 and 1990 c 33 s 432 & 1969 ex.s. c 223 s 28A.47.776;
- (23) RCW 28A.525.104 and 1990 c 33 s 433 & 1969 ex.s. c 223 s 28A.47.777;
- (24) RCW 28A.525.106 and 1990 c 33 s 434 & 1969 ex.s. c 223 s 28A.47.778;
- (25) RCW 28A.525.108 and 1990 c 33 s 435 & 1969 ex.s. c 223 s 28A.47.779;

- (26) RCW 28A.525.110 and 1990 c 33 s 436 & 1969 ex.s. c 223 s 28A.47.780;
- (27) RCW 28A.525.112 and 1990 c 33 s 437 & 1969 ex.s. c 223 s 28A.47.781;
- (28) RCW 28A.525.114 and 1990 c 33 s 438 & 1969 ex.s. c 223 s 28A.47.782;
- (29) RCW 28A.525.116 and 1990 c 33 s 439 & 1969 ex.s. c 223 s 28A.47.783;
- (30) RCW 28A.550.010 and 1985 c 57 s 9 & 1969 ex.s. c 223 s 28A.46.010;
- (31) RCW 28A.615.010 and 1987 c 518 s 301;
- (32) RCW 28A.615.020 and 1990 c 33 s 508 & 1987 c 518 s 302;
- (33) RCW 28A.615.030 and 1990 c 33 s 509 & 1987 c 518 s 303;
- (34) RCW 28A.615.040 and 1987 c 518 s 304;
- (35) RCW 28A.630.310 and 1990 c 33 s 533 & 1987 c 349 s 2; and
- (36) RCW 28A.630.340 and 1987 c 349 s 5.

Passed the House March 6, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 117

[House Bill 1339]

UNEMPLOYMENT COMPENSATION—REVISED PROVISIONS

Effective Date: 7/28/91 – Except Sections 1 & 4 which become effective on 7/1/91 and Section 3 which becomes effective on 7/7/91, for new claims filed on or after 7/7/91.

AN ACT Relating to unemployment compensation; amending RCW 50.04.030, 50.20-.085, and 50.20.190; adding a new section to chapter 50.24 RCW; creating a new section; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 50.04.030 and 1990 c 245 s 1 are each amended to read as follows:

"Benefit year" with respect to each individual, means the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: PROVIDED, HOWEVER, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits

nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty-three weeks when at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: PROVIDED, HOWEVER, That a benefit year cannot be established if the base year wages include wages earned prior to the establishment of a prior benefit year unless the individual worked and earned wages since the ~~((initial))~~ last separation from employment immediately before the application for initial determination in the previous benefit year if the applicant was an unemployed individual at the time of application, or since the initial separation in the previous benefit year if the applicant was not an unemployed individual at the time of filing an application for initial determination for the previous benefit year, of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If an individual's prior benefit year was based on the last four completed calendar quarters, a new benefit year shall not be established until the new base year does not include any hours used in the establishment of the prior benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals.

Sec. 2. RCW 50.20.085 and 1986 c 75 s 1 are each amended to read as follows:

An individual is disqualified from benefits with respect to any day or days ~~((in))~~ for which he or she is receiving, has received, or will receive compensation under RCW 51.32.060 or 51.32.090.

Sec. 3. RCW 50.20.190 and 1990 c 245 s 5 are each amended to read as follows:

(1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not

collected, may be deducted from any future benefits payable to the individual: **PROVIDED**, That in the absence of fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of the individual's benefit year in which the purported overpayment was made unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that said overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: **PROVIDED, HOWEVER**, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: **PROVIDED**, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, said determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee of five dollars. The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office

of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) ~~((When an individual has been awarded or receives back pay, the amount of the back pay shall constitute wages paid in the period for which it was awarded. No person is liable for the amount of benefits if the amount of the back pay award or settlement was reduced by the amount of benefits received. When the amount of the back pay award or settlement was reduced by the amount of benefits received, the employer shall pay to the unemployment compensation fund an amount equal to the amount of such reduction. An employer who is a party to any back pay award or settlement shall, within thirty days of the settlement, report to the department the amount of benefits by which the award or settlement was reduced, if any, and the name and social security number of the person who received the award or settlement))~~ Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or

settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent of the outstanding balance for each month that payments are not made in a timely fashion. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070. For any other overpayment, interest shall accrue when the individual has missed two or more of their monthly payments either partially or in full. The interest penalty shall be used to fund detection and recovery of overpayment and collection activities.

NEW SECTION. Sec. 4. A new section is added to chapter 50.24 RCW to read as follows:

Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any contributions payable under this title shall become immediately due and payable, and the employer shall, within ten days, make a return and pay the contributions due; and any person who becomes a successor to such business shall become liable for the full amount of the contributions and withhold from the purchase price a sum sufficient to pay any contributions due from the employer until such time as the employer produces a receipt from the employment security department showing payment in full of any contributions due or a certificate that no contribution is due and, if such contribution is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of contributions, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price,

and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any contributions due from the person from whom that person has acquired a business or stock of goods if that person gives written notice to the employment security department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor.

NEW SECTION. Sec. 5. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 7. 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 sections 1 and 4 shall take effect July 1, 1991, and section 3 shall take effect July 7, 1991, for new claims filed on or after July 7, 1991.

Passed the House March 12, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 118

[House Bill 1431]

MODEL TRAFFIC ORDINANCE—REVISED PROVISIONS

Effective Date: Sections 1 & 3 become effective on 5/9/91. Section 2 becomes effective on 4/1/92.

AN ACT Relating to the Model Traffic Ordinance; amending RCW 46.90.300, 46.90-.300, and 46.90.406; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.90.300 and 1990 c 250 s 78 are each amended to read as follows:

The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.260, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, 46.12.380, 46.16.010, 46.16.011, 46.16.025, 46.16.028, 46.16.030, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.316, 46.16.381, 46.16.390, 46.16.500, 46.16.505, 46.16.710, 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, 46.20.336, 46.20.338, 46.20.342, 46.20.343, 46.20.344, 46.20.391, 46.20.394, 46.20.410, 46.20.420, 46.20.430, 46.20.435, 46.20.440, 46.20.500, 46.20.510, 46.20.550, 46.20.750, 46.25.010, 46.25.020, 46.25.030, 46.25.040, 46.25.050, 46.25.110, 46.25.120, 46.25.170, 46.29.605, 46.29.625, 46.30.010, 46.30.020, 46.30.030, 46.30.040, 46.32.060, 46.32.070, 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.100, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, 46.48.170, 46.52.010, 46.52.020, 46.52.030, 46.52.040, 46.52.070, 46.52.080, 46.52.088, 46.52.090, 46.52.100, 46.65.090, 46.79.120, and 46.80.010.

Sec. 2. RCW 46.90.300 and 1989 c 178 s 28 are each amended to read as follows:

The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.260, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, 46.12.380, 46.16.010, 46.16.011, 46.16.025, 46.16.028, 46.16.030, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290,

46.16.316, 46.16.381, 46.16.390, 46.16.500, 46.16.505, 46.16.710, 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, 46.20.336, 46.20.338, 46.20.342, 46.20.343, 46.20.344, 46.20.391, 46.20.394, 46.20.410, ~~((46.20.416;))~~ 46.20.420, 46.20.430, 46.20.435, 46.20.500, 46.20.510, 46.20.550, ~~((46.20.599;))~~ 46.20.750, 46.25.010, 46.25.020, 46.25.030, 46.25.040, 46.25.050, 46.25.110, 46.25.120, 46.25.170, 46.29.605, 46.29.625, 46.30.010, 46.30.020, 46.30.030, 46.30.040, 46.32.060, 46.32.070, 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.100, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, 46.48.170, 46.52.010, 46.52.020, 46.52.030, 46.52.040, 46.52.070, 46.52.080, 46.52.088, 46.52.090, 46.52.100, 46.65.090, 46.79.120, and 46.80.010.

Sec. 3. RCW 46.90.406 and 1988 c 24 s 2 are each amended to read as follows:

The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.55.010, 46.55.020, 46.55.030, 46.55.035, 46.55.040, 46.55.050, 46.55.060, 46.55.063, 46.55.070, 46.55.080, 46.55.085, 46.55.090, 46.55.100, 46.55.110, 46.55.113, 46.55.120, 46.55.130, 46.55.140, 46.55.150, 46.55.160, 46.55.170, 46.55.230, 46.55.240, 46.55.910, 46.61.015, 46.61.020, 46.61.021, 46.61.022, 46.61.025, 46.61.030, 46.61.035, 46.61.050, 46.61.055, 46.61.060, 46.61.065, 46.61.070, 46.61.072, 46.61.075, and 46.61.080.

NEW SECTION. Sec. 4. Sections 1 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support

of the state government and its existing public institutions, and shall take effect immediately. Section 2 of this act shall take effect April 1, 1992.

Passed the House March 19, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 119

[House Bill 1536]

HOSPICE SERVICES—EXTENSION

Effective Date: 5/9/91

AN ACT Relating to hospice benefits; reenacting and amending RCW 74.09.520; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 74.09.520 and 1990 c 33 s 594 and 1990 c 25 s 1 are each reenacted and amended to read as follows:

(1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) skilled nursing home services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a handicapped child by a school district as part of an individualized education program established pursuant to RCW 28A.155.010 through 28A.155.100. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services. Services included in an individualized education program for a handicapped child under RCW 28A.155.010 through 28A.155.100 shall not qualify as medical assistance prior to the implementation of the funding process developed under RCW 74.09.524.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care

services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care must be approved by a physician and reviewed by a nurse every ninety days.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) The department shall report to the appropriate fiscal committees of the legislature on the utilization and associated costs of the personal care option under Title XIX of the federal social security act, as defined in 42 C.F.R. 440.170(f), in the categorically needy program. This report shall be submitted by January 1, 1990, and submitted on a yearly basis thereafter.

(6) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds. (~~The department shall provide a complete accounting of the costs of providing hospice services under this section by December 20, 1990. The report shall include an assessment of cost savings which may result by providing hospice to persons who otherwise would use hospitals, nursing homes, or more expensive care.~~) The hospice benefit under this section shall terminate on June 30, ~~((1994))~~ 1993, unless extended by the legislature.

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 shall take effect immediately.

Passed the House March 14, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 120

[House Bill 1910]

MEDICARE SUPPLEMENTAL INSURANCE—CONFORMANCE TO FEDERAL
LAW REQUIRED

Effective Date: 7/28/91

AN ACT Relating to making medicare supplemental insurance conform to federal laws; and adding a new section to chapter 48.66 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 48.66 RCW to read as follows:

The commissioner may adopt, from time-to-time, such rules as are necessary with respect to medicare supplemental insurance to conform Washington policies, contracts, certificates, standards, and practices to the requirements of federal law, specifically including 42 U.S.C. Sec. 1395ss, and federal regulations adopted thereunder.

Passed the House March 18, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 121

[Substitute Senate Bill 5536]

TELECOMMUNICATIONS DEVICES FOR THE DEAF TASK FORCE

Effective Date: 7/28/91

AN ACT Relating to establishing the telecommunications devices for the deaf task force; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

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

(1) Operation of the state-wide telecommunications devices for the deaf (TDD) relay service has become an integral and important part of the state's telecommunications network;

(2) The Washington state TDD relay service (WSTRS) has, since it began twenty-four-hour operation in November 1989, provided pioneering service to the deaf, hearing-impaired, and speech-impaired citizens of this state by utilizing the best available technology;

(3) In its report to the legislature in December 1990, the department of social and health services identified a number of major issues and alternative approaches for the continued operation of theWSTRS, including blockage rate, limitations on demand for system usage, funding, operational structure, toll call billing, regional systems with other states, and technological changes;

(4) The federal Americans with disabilities act (ADA), enacted in July 1990, requires that state-wide TDD relay services must be available in every state by July 1993, and must comply with the requirements of the federal legislation and with regulations to be adopted by the federal communications commission by July 1991; and

(5) It is in the best interests of the citizens of this state that the provision of state-wide TDD relay services in Washington be assessed in light of the new federal requirements, the ongoing problems and issues identified in the department of social and health services report, and potentially cost-effective technological improvements.

NEW SECTION. Sec. 2. (1) The telecommunications devices for the deaf (TDD) task force is created, consisting of the secretary of the department of social and health services and the director of the department of information services, or their designees, and the chair of the utilities and transportation commission, or his or her designee. The department of information services shall serve as the lead agency of the task force.

(2) The task force shall create a working group that includes representatives of a broad range of affected interests, including telecommunications companies engaged in both interstate and intrastate communications, the hearing-impaired communities and agencies, and the speech-impaired community and agencies. To the extent possible, the members of the working group should be persons that have been or are members of the TDD advisory committee established under RCW 43.20A.730. The working group shall provide information, advice, and technical assistance to the task force.

(3) The task force shall report to the energy and utilities committees of the house of representatives and the senate by December 15, 1991, on its findings and recommendations. The report shall, at a minimum, address the following:

(a) The requirements of the Americans with disabilities act, and the regulations promulgated by the federal communications commission to implement the act, including federal requirements as to funding mechanisms, blockage rate, and confidentiality;

(b) The issues identified in the December 1990 report of the department of social and health services with regard to the operation of the Washington state TDD relay service, and particularly alternative operation and management structures, the utility of new cost-effective technology, regional cooperation with other states, competition and access to a variety of local carriers, utilization of the state's SCAN lines, and line blockage;

(c) The advantages and disadvantages of allowing carriers to determine how they should meet the requirements of the Americans with disabilities act, or whether the state should take the lead in devising or maintaining a state-wide TDD relay system that would meet those requirements; and

(d) Whether the task force should continue its work on issues that are complex, where there appears to be no consensus on any proposed direction or solution, or where the requirements of federal law have not been made clear.

The report shall contain recommendations or alternatives for legislative action.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 122

[Engrossed Substitute Senate Bill 5770]

ELECTRIC UTILITIES—ENERGY CODE AND RATEMAKING—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to obtaining additional electricity supplies through conservation and generation; amending RCW 80.04.250; adding a new section to chapter 19.27A RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the state is facing an energy shortage as growth occurs and that inadequate supplies of energy will cause harmful impacts on the entire range of state citizens. The legislature further finds that energy efficiency improvement is the single most effective near term measure to lessen the risk of energy shortage. In the area of electricity, the legislature additionally finds that the Northwest power planning council has made several recommendations, including an update of the commercial building energy code and granting flexible rate-making alternatives for utility commissions to encourage prudent acquisition of new electric resources.

Sec. 2. RCW 80.04.250 and 1961 c 14 s 80.04.250 are each amended to read as follows:

The commission shall have power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company used and useful for service in this state and shall exercise such power whenever it shall deem such valuation or determination necessary or proper under any of the provisions of this title. In determining what property is used and useful for providing electric, gas, or water service, the commission may include the reasonable costs of construction work in progress to the extent that the commission finds that inclusion is in the public interest.

The commission shall have the power to make revaluations of the property of any public service company from time to time.

The commission shall, before any hearing is had, notify the complainants and the public service company concerned of the time and place of such hearing by giving at least thirty days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of ascertaining the value of the company's property, used and useful as aforesaid, which notice shall be sufficient to authorize the commission to inquire into and pass upon the matters designated in this section.

NEW SECTION. Sec. 3. A new section is added to chapter 19.27A RCW to read as follows:

(1) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended. The state building code council may, by rule adopted pursuant to chapter 34.05 RCW, amend that code's requirements for new nonresidential buildings provided that:

(a) Such amendments increase the energy efficiency of typical newly constructed nonresidential buildings; and

(b) Any new measures, standards, or requirements adopted must be technically feasible, commercially available, and cost-effective to building owners and tenants.

(2) In considering amendments to the state energy code for nonresidential buildings, the state building code council shall establish and consult with a technical advisory committee including representatives of appropriate state agencies, local governments, general contractors, building owners and managers, design professionals, utilities, and other interested and affected parties.

(3) Decisions to amend the Washington state energy code for new nonresidential buildings shall be made prior to December 15th of any year and shall not take effect before the end of the regular legislative session in the next year. Any disputed provisions within an amendment presented to the legislature shall be approved by the legislature before going into effect. A disputed provision is one which was adopted by the state building code council with less than a two-thirds majority vote. Substantial amendments to the code shall be adopted no more frequently than every three years.

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.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 9, 1991.

Filed in Office of Secretary of State May 9, 1991.

CHAPTER 123

[Engrossed Substitute House Bill 1105]

JUDGMENT FOR OUT-OF-STATE INCOME TAX ON PENSION BENEFITS—
WASHINGTON PROPERTY EXEMPT FROM EXECUTION

Effective Date: 7/28/91

AN ACT Relating to exempting property from execution; amending RCW 6.13.030; adding a new section to chapter 6.15 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes that retired persons generally are financially dependent on fixed pension or retirement benefits and passive income from investment property. Because of this dependency, retired persons are more vulnerable than others to inflation and depletion of their assets. It is the purpose of this act to increase the protection of income of retired persons residing in the state of Washington from collection of income taxes imposed by other states.

Sec. 2. RCW 6.13.030 and 1987 c 442 s 203 are each amended to read as follows:

A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of ~~((†))~~ (1) the total net value of the lands, mobile home, and improvements as described in RCW 6.13.010, or ~~((†))~~ (2) the sum of thirty thousand dollars, except where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, in which event there shall be no dollar limit on the value of the exemption.

NEW SECTION. Sec. 3. A new section is added to chapter 6.15 RCW to read as follows:

Where a judgment is in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, all property in this state, real or personal, tangible or intangible, of a judgment debtor shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her spouse and dependents any property exempted by this section, the same shall be exempt to the surviving spouse and dependents.

Passed the House March 19, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 124

[Substitute House Bill 1771]

FIRST CLASS CITIES—TRANSPORTATION AUTHORITY REVISED

Effective Date: 7/28/91

AN ACT Relating to transportation facilities of first class cities; and amending RCW 35.92.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 35.92.060 and 1990 c 43 s 49 are each amended to read as follows:

A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain, operate, or lease cable, electric, and other railways, automobiles, motor cars, motor buses, auto trucks, and any and all other forms or methods of transportation of freight or passengers within the corporate limits of the city or town, and a first class city may also construct, purchase, acquire, add to, alter, maintain, operate (~~((such forms or methods of transportation))~~), or lease cable, electric, and other railways beyond ~~((the))~~ those corporate limits ~~((of the city but not beyond))~~ only within the boundaries of the county in which the city is located and of any adjoining county that has a population of at least forty thousand and fewer than one hundred twenty-five thousand and that is intersected by an interstate highway, for the transportation of freight and passengers above, upon, or underneath the ground. It may also fix, alter, regulate, and control the fares and rates to be charged therefor; and fares or rates may be adjusted or eliminated for any distinguishable class of users including, but not limited to, senior citizens, handicapped persons, and students. Without the payment of any license fee or tax, or the filing of a bond with, or the securing of a permit from, the state, or any department thereof, the city or town may engage in, carry on, and operate the business of transporting and carrying passengers or freight for hire by any method or combination of methods that the legislative authority of any city or town may by ordinance provide, with full authority to regulate and control the use and operation of vehicles or other agencies of transportation used for such business.

Passed the House March 18, 1991.

Passed the Senate April 5, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 125

[Senate Bill 5821]

AIR POLLUTION CONTROL AUTHORITIES—WITHDRAWAL BY COUNTY FROM
MULTICOUNTY AUTHORITY

Effective Date: 7/28/91

AN ACT Relating to the creation of air pollution control authorities; reenacting and amending RCW 70.94.053; and adding a new section to chapter 70.94 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.94.053 and 1987 c 505 s 60 and 1987 c 109 s 34 are each reenacted and amended to read as follows:

(1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) Except as provided in section 2 of this act, all authorities which are presently or may hereafter be within counties of the first class, class A or class AA, are hereby designated as activated authorities and shall carry out the duties and exercise the powers provided in this chapter. Those authorities hereby activated which encompass contiguous counties located in one or the other of the two major areas determined in RCW 70.94.011 are declared to be and directed to function as a multicounty authority.

(3) Except as provided in RCW 70.94.232, all other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such appointees and/or county commissioners or other officers as is provided in RCW 70.94.100. The first meeting of the boards of those authorities designated as activated authorities by this chapter shall be on or before sixty days after June 8, 1967.

(5) The department is directed to conduct the necessary evaluations and delineate appropriate air pollution regions throughout the state, taking into consideration:

(a) The natural climatic and topographic features affecting the potential for buildup of air contaminant concentrations.

(b) The degree of urbanization and industrialization and the existence of activities which are likely to cause air pollution.

(c) The county boundaries as related to the air pollution regions and the practicality of administering air pollution control programs.

NEW SECTION. Sec. 2. A new section is added to chapter 70.94 RCW to read as follows:

(1) Any county that is part of a multicounty authority, pursuant to RCW 70.94.053, may withdraw from the multicounty authority after January 1, 1992, if the county wishes to provide for air quality protection and regulation by an alternate air quality authority. A withdrawing county shall:

- (a) Create its own single county authority;
- (b) Join another existing multicounty authority with which its boundaries are contiguous;
- (c) Join with one or more contiguous inactive authorities to operate as a new multicounty authority; or
- (d) Become an inactive authority and subject to regulation by the department of ecology.

(2) In order to withdraw from an existing multicounty authority, a county shall make arrangements, by interlocal agreement, for division of assets and liabilities and the appropriate release of any and all interest in assets of the multicounty authority.

(3) In order to effectuate any of the alternate arrangements in subsection (1) of this section, the procedures of this chapter to create an air pollution control authority shall be met and the actions must be taken at least six months prior to the effective date of withdrawal. The rules of the original multicounty authority shall continue in force for the withdrawing county until such time as all conditions to create an air pollution control authority have been met.

(4) At the effective date of a county's withdrawal, the remaining counties shall reorganize and reconstitute the legislative authority pursuant to this chapter. The air pollution control regulations of the existing multicounty authority shall remain in force and effect after the reorganization.

(5) If a county elects to withdraw from an existing multicounty authority, the air pollution control regulations shall remain in effect for the withdrawing county until suspended by the adoption of rules, regulations, or ordinances adopted under one of the alternatives of subsection (1) of this section. A county shall initiate proceedings to adopt such rules, regulations, or ordinances on or before the effective date of the county's withdrawal.

Passed the Senate April 25, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 126

[Substitute House Bill 1052]

PUBLIC ASSISTANCE STATUTES—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to clarification of existing public assistance statutes; amending RCW 74.04.005, 74.04.055, 74.04.500, and 74.04.515; adding a new chapter to Title 74 RCW; creating a new section; and repealing RCW 74.04.390, 74.04.400, 74.04.410, 74.04.420, 74.04.430, 74.04.440, 74.04.450, 74.04.460, 74.04.470, 74.04.473, 74.04.477, 74.04.505, 74.22.010, 74.22.020, 74.22.030, 74.22.040, 74.22.050, 74.22.060, 74.22.070, 74.22.080, 74.22.090, 74.22.100, 74.22.110, 74.22.120, 74.23.005, 74.23.010, 74.23.020, 74.23.030, 74.23.040, 74.23.050, 74.23.060, 74.23.070, 74.23.080, 74.23.090, 74.23.100, 74.23.110, 74.23.120, and 74.23.900.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 74.04.005 and 1990 c 285 s 2 are each amended to read as follows:

For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, general assistance and federal-aid assistance.

(2) "Department"—The department of social and health services.

(3) "County or local office"—The administrative office for one or more counties or designated service areas.

(4) "Director" or "secretary" means the secretary of social and health services.

(5) "Federal-aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(6)(a) "General assistance"—Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) Are either:

(A) Pregnant: PROVIDED, That need is based on the current income and resource requirements of the federal aid to families with dependent children program: PROVIDED FURTHER, That during any period in which an aid for dependent children employable program is not in operation, only those pregnant women who are categorically eligible for medicaid are eligible for general assistance; or

(B) Incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of sixty days as determined by the department. Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under chapter 74.50 RCW. This subsection (6)(a)(ii)(B) shall not be construed to prohibit the department from granting general assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the general assistance program;

(iii) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law; and

(iv) Have furnished the department their social security account number. If the social security account number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of assistance, and the social security number shall be provided to the department upon receipt.

(b) Notwithstanding the provisions of subsection (6)(a)(i), (ii), and (c) of this section, general assistance shall be provided to the following recipients of federal-aid assistance:

(i) Recipients of supplemental security income whose need, as defined in this section, is not met by such supplemental security income grant because of separation from a spouse; or

(ii) To the extent authorized by the legislature in the biennial appropriations act, to recipients of aid to families with dependent children whose needs are not being met because of a temporary reduction in monthly income below the entitled benefit payment level caused by loss or reduction of wages or unemployment compensation benefits or some other unforeseen circumstances. The amount of general assistance authorized shall not exceed the difference between the entitled benefit payment level and the amount of income actually received.

(c) General assistance shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in subsection (6)(a)(ii)(A) and (b) of this section, and will accept available services which can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person

agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

- (i) First failure: One week;
- (ii) Second failure within six months: One month;
- (iii) Third and subsequent failure within one year: Two months.

(d) The department shall adopt by rule medical criteria for general assistance eligibility to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information.

(e) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(f) Recipients of general assistance based upon a finding of incapacity from gainful employment who remain otherwise eligible shall not have their benefits terminated absent a clear showing of material improvement in their medical or mental condition or specific error in the prior determination that found the recipient eligible by reason of incapacitation. Recipients of general assistance based upon pregnancy who relinquish their child for adoption, remain otherwise eligible, and ((who)) are not eligible to receive benefits under the federal aid to families with dependent children program shall not have their benefits terminated until the end of the month in which the period of six weeks following the birth of the recipient's child falls. Recipients of the federal aid to families with dependent children program who lose their eligibility solely because of the birth and relinquishment of the qualifying child may receive general assistance through the end of the month in which the period of six weeks following the birth of the child falls.

(7) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(8) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(9) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(10) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent: PROVIDED, That an applicant may retain the following described resources and not be ineligible for public assistance because of such resources.

(a) A home, which is defined as real property owned and used by an applicant or recipient as a place of residence, together with a reasonable amount of property surrounding and contiguous thereto, which is used by and useful to the applicant. Whenever a recipient shall cease to use such

property for residential purposes, either for himself or his dependents, the property shall be considered as a resource which can be made available to meet need, and if the recipient or his dependents absent themselves from the home for a period of ninety consecutive days such absence, unless due to hospitalization or health reasons or a natural disaster, shall raise a rebuttable presumption of abandonment: PROVIDED, That if in the opinion of three physicians the recipient will be unable to return to the home during his lifetime, and the home is not occupied by a spouse or dependent children or disabled sons or daughters, such property shall be considered as a resource which can be made available to meet need.

(b) Household furnishings and personal effects and other personal property having great sentimental value to the applicant or recipient, as limited by the department consistent with limitations on resources and exemptions for federal aid assistance.

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed one thousand five hundred dollars.

(d) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance.

(e) Applicants for or recipients of general assistance may retain the following described resources in addition to exemption for a motor vehicle or home and not be ineligible for public assistance because of such resources:

(i) Household furnishings, personal effects, and other personal property having great sentimental value to the applicant or recipient;

(ii) Term and burial insurance for use of the applicant or recipient;

(iii) Life insurance having a cash surrender value not exceeding one thousand five hundred dollars; and

(iv) Cash, marketable securities, and any excess of values above one thousand five hundred dollars equity in a vehicle and above one thousand five hundred dollars in cash surrender value of life insurance, not exceeding one thousand five hundred dollars for a single person or two thousand two hundred fifty dollars for a family unit of two or more. The one thousand dollar limit in subsection (10)(d) of this section does not apply to recipients of or applicants for general assistance.

(f) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period

not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property~~(; but the recipient must sign an agreement to dispose of the property and repay assistance payments made to the date of disposition of the property which would not have been made had the disposal occurred at the beginning of the period for which the payments of such assistance were made. In no event shall such amount due the state exceed the net proceeds otherwise available to the recipient from the disposition, unless after nine months from the date of the agreement the property has not been sold, or if the recipient's eligibility for financial assistance ceases for any other reason. In these two instances the entire amount of assistance paid during this period will be treated as an overpayment and a debt due the state, and may be recovered pursuant to RCW 43.20B.630))~~; PROVIDED, That:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(11) "Income"—(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him to decrease his need for public assistance or to aid in rehabilitating him or his dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In determining the amount of assistance to which an applicant or recipient of aid to families with dependent children is entitled, the department is hereby authorized to disregard as a resource or income the earned income exemptions consistent with federal requirements. The department may permit the above exemption of earnings of a child to be retained by such child to cover the cost of special future identifiable needs

even though the total exceeds the exemptions and resources granted to applicants and recipients of public assistance, but consistent with federal requirements. In formulating rules and regulations pursuant to this chapter, the department shall define income and resources and the availability thereof, consistent with federal requirements. All resources and income not specifically exempted, and any income or other economic benefit derived from the use of, or appreciation in value of, exempt resources, shall be considered in determining the need of an applicant or recipient of public assistance.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(12) "Need"—The difference between the applicant's or recipient's standards of assistance for himself and the dependent members of his family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his family.

(13) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(14) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary.

Sec. 2. RCW 74.04.055 and 1979 c 141 s 298 are each amended to read as follows:

In furtherance of the policy of this state to cooperate with the federal government in the programs included in this title the secretary shall issue such rules and regulations as may become necessary to entitle this state to participate in federal grants-in-aid, goods, commodities and services unless the same be expressly prohibited by this title. Any section or provision of this title which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal matching or other funds for the various programs of public assistance. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter is hereby inoperative solely to the extent of the conflict with respect to the

agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter.

Sec. 3. RCW 74.04.500 and 1979 c 141 s 322 are each amended to read as follows:

The department of social and health services is authorized to establish a food stamp program under the federal food stamp act of ~~((1964))~~ 1977, as amended.

Sec. 4. RCW 74.04.515 and 1969 ex.s. c 172 s 7 are each amended to read as follows:

In ~~((determining eligibility for purchase of))~~ administering the food stamp(s) program, there shall be no discrimination against any ~~((household))~~ applicant or recipient by reason of age, sex, handicap, religious creed, political beliefs, race, color, or national origin.

NEW SECTION. Sec. 5. The legislature establishes as state policy the goal of economic self-sufficiency for employable recipients of public assistance, through employment, training, and education. In furtherance of this policy, the legislature intends to comply with the requirements of the federal social security act, as amended, by creating a job opportunities and basic skills training program for applicants and recipients of aid to families with dependent children. The purpose of this program is to provide recipients of aid to families with dependent children the opportunity to obtain a full range of necessary education, training, skills, and supportive services, including child care, consistent with their needs, that will help them enter or reenter gainful employment, thereby avoiding long-term welfare dependence and achieving economic self-sufficiency. The program shall be operated by the department of social and health services in conformance with federal law and consistent with the following legislative findings:

(1) The legislature finds that the well-being of children depends not only on meeting their material needs, but also on the ability of parents to become economically self-sufficient. The job opportunities and basic skills training program is specifically directed at increasing the household earnings of aid to families with dependent children recipients, through the removal of barriers preventing them from achieving self-sufficiency. These barriers include, but are not limited to, the lack of supportive services such as affordable and reliable child care, adequate transportation, appropriate counseling, and necessary job-related tools, equipment, books, clothing, and supplies, the absence of basic literacy skills, the lack of educational attainment sufficient to meet labor market demands for career employees, and the nonavailability of useful labor market assessments.

(2) The legislature also recognizes that aid to families with dependent children recipients must be acknowledged as active participants in self-

sufficiency planning under the program. The legislature finds that the department of social and health services should communicate concepts of personal empowerment, self-motivation, and self-esteem to program participants. The legislature further recognizes that informed choice is consistent with individual responsibility, and that parents should be given a range of options for available child care while participating in the program.

(3) The legislature finds that education, including, but not limited to, literacy, high school equivalency, vocational, secondary, and postsecondary, is one of the most important tools an individual needs to achieve full independence, and that this should be an important component of the program.

(4) The legislature further finds that the objectives of this program are to assure that aid to families with dependent children recipients achieve financial stability and an adequate standard of living at wages that will meet family needs.

NEW SECTION. Sec. 6. (1) The department of social and health services is authorized to contract with public and private employment and training agencies and other public service entities to provide services prescribed or allowed under the federal social security act, as amended, to carry out the purposes of the jobs training program. The department of social and health services has sole authority and responsibility to carry out the job opportunities and basic skills training program. No contracting entity shall have the authority to review, change, or disapprove any administrative decision, or otherwise substitute its judgment for that of the department of social and health services as to the application of policies and rules adopted by the department of social and health services.

(2) To the extent feasible under federal law, the department of social and health services and all entities contracting with it shall give first priority of service to individuals volunteering for program participation.

(3) The department of social and health services shall adopt rules under chapter 34.05 RCW establishing criteria constituting circumstances of good cause for an individual failing or refusing to participate in an assigned program component, or failing or refusing to accept or retain employment. These criteria shall include, but not be limited to, the following circumstances: (a) If the individual is a parent or other relative personally providing care for a child under age six years, and the employment would require the individual to work more than twenty hours per week; (b) if child care, or day care for an incapacitated individual living in the same home as a dependent child, is necessary for an individual to participate or continue participation in the program or accept employment, and such care is not available, and the department of social and health services fails to provide such care; (c) the employment would result in the family of the participant experiencing a net loss of cash income; or (d) circumstances that are beyond the control of the individual's household, either on a short-term or on an ongoing basis.

(4) The department of social and health services shall adopt rules under chapter 34.05 RCW as necessary to effectuate the intent and purpose of this chapter.

NEW SECTION. Sec. 7. Any section or provision of law dealing with the job opportunities and basic skills training program that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling the state to receive federal funds.

NEW SECTION. Sec. 8. If any part of this chapter shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agency directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter and its application to the agency concerned.

NEW SECTION. Sec. 9. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 10. Sections 5 through 9 of this act shall constitute a new chapter in Title 74 RCW.

NEW SECTION. Sec. 11. The following acts or parts of acts are each repealed:

- (1) RCW 74.04.390 and 1979 c 141 s 315, 1963 c 228 s 6, & 1961 c 269 s 2;
- (2) RCW 74.04.400 and 1979 c 141 s 316, 1963 c 228 s 7, & 1961 c 269 s 3;
- (3) RCW 74.04.410 and 1979 c 141 s 317, 1963 c 228 s 8, & 1961 c 269 s 4;
- (4) RCW 74.04.420 and 1979 c 141 s 318, 1963 c 228 s 9, & 1961 c 269 s 5;
- (5) RCW 74.04.430 and 1987 c 185 s 39, 1979 c 141 s 319, 1963 c 228 s 10, & 1961 c 269 s 6;
- (6) RCW 74.04.440 and 1963 c 228 s 11 & 1961 c 269 s 7;
- (7) RCW 74.04.450 and 1963 c 228 s 12;
- (8) RCW 74.04.460 and 1963 c 228 s 13;
- (9) RCW 74.04.470 and 1979 c 141 s 320 & 1963 c 228 s 14;
- (10) RCW 74.04.473 and 1983 1st ex.s. c 41 s 41;
- (11) RCW 74.04.477 and 1983 1st ex.s. c 41 s 42;
- (12) RCW 74.04.505 and 1969 ex.s. c 172 s 5;
- (13) RCW 74.22.010 and 1969 c 14 s 1;
- (14) RCW 74.22.020 and 1979 c 141 s 372 & 1969 c 14 s 2;
- (15) RCW 74.22.030 and 1969 c 14 s 3;

- (16) RCW 74.22.040 and 1969 c 14 s 4;
- (17) RCW 74.22.050 and 1979 c 141 s 373 & 1969 c 14 s 5;
- (18) RCW 74.22.060 and 1969 c 14 s 6;
- (19) RCW 74.22.070 and 1979 c 141 s 374 & 1969 c 14 s 7;
- (20) RCW 74.22.080 and 1969 c 14 s 8;
- (21) RCW 74.22.090 and 1969 c 14 s 9;
- (22) RCW 74.22.100 and 1979 c 141 s 375 & 1969 c 14 s 10;
- (23) RCW 74.22.110 and 1979 c 141 s 376 & 1969 c 14 s 11;
- (24) RCW 74.22.120 and 1969 c 14 s 12;
- (25) RCW 74.23.005 and 1969 c 15 s 1;
- (26) RCW 74.23.010 and 1969 c 15 s 2;
- (27) RCW 74.23.020 and 1979 c 141 s 377 & 1969 c 15 s 3;
- (28) RCW 74.23.030 and 1969 c 15 s 4;
- (29) RCW 74.23.040 and 1979 c 141 s 378 & 1969 c 15 s 5;
- (30) RCW 74.23.050 and 1969 c 15 s 6;
- (31) RCW 74.23.060 and 1969 c 15 s 7;
- (32) RCW 74.23.070 and 1979 c 141 s 379 & 1969 c 15 s 8;
- (33) RCW 74.23.080 and 1969 c 15 s 9;
- (34) RCW 74.23.090 and 1969 c 15 s 10;
- (35) RCW 74.23.100 and 1969 c 15 s 11;
- (36) RCW 74.23.110 and 1979 c 141 s 380 & 1969 c 15 s 12;
- (37) RCW 74.23.120 and 1979 c 141 s 381 & 1969 c 15 s 13; and
- (38) RCW 74.23.900 and 1969 c 15 s 14.

****NEW SECTION. Sec. 12. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.***

*Sec. 12 was vetoed, see message at end of chapter.

Passed the House March 20, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 10, 1991 with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 10, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 12, Substitute House Bill No. 1052 entitled:

"AN ACT Relating to clarification of existing public assistance statutes."

This bill contains important state policy regarding implementation of new federal laws. It was amended by legislative committees after thoughtful review and receipt of public testimony.

The programs referenced are contained in the Essential Requirements Level of my proposed budget, as well as in the proposed budgets of the House and Senate.

I am vetoing section 12, the null and void clause, which would negate this bill if specific funding, referencing this bill by number, is not provided in the final budget. There is no need for a specific reference to this bill by number in the budget.

For this reason, I have vetoed section 12 of Substitute House Bill No. 1052.

With the exception of section 12, Substitute House Bill No. 1052 is approved.*

CHAPTER 127

[Second Substitute Senate Bill 5127]

FOSTER CARE CITIZEN REVIEW BOARDS

Effective Date: 5/10/91

AN ACT Relating to foster care citizen review boards; amending RCW 13.70.005, 13.70.010, 13.70.110, and 13.34.210; reenacting and amending RCW 13.34.130; adding a new section to chapter 13.70 RCW; creating a new section; repealing RCW 13.70.900; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 13.70 RCW to read as follows:

(1) If a case involves an Indian child, as defined by 25 U.S.C. Sec. 1903 or by department rule or policy, the court may appoint the local Indian child welfare advisory committee to serve as the citizen review board for the case unless otherwise requested by the child's tribe or by the local Indian child welfare advisory committee.

(2) The provisions of RCW 13.70.030, 13.70.040, 13.70.050, and 13.70.090(1) shall not apply to cases in which the court has appointed a committee to serve as a citizen review board. All other provisions of this chapter shall apply to such cases.

(3) Within ten days following court appointment of a committee to serve as a citizen review board for a particular case, the committee shall notify the court whether the committee will accept the case for review. If the committee accepts a case for review, the committee shall conduct the review in accordance with the requirements of this chapter except as otherwise provided in this section. If the committee does not accept a case for review, the court shall immediately reassign the case to an available board.

(4) The requirements of this chapter do not affect tribal sovereignty and shall not apply to cases involving Indian children who are under tribal court jurisdiction or wardship.

Sec. 2. RCW 13.70.005 and 1989 1st ex.s. c 17 s 2 are each amended to read as follows:

Periodic case review of all children in substitute care shall be provided in ~~in ((at least one class 1 or higher county))~~ counties designated by the office of the administrator for the courts, in accordance with this chapter and within funding provided by the legislature.

The administrator for the courts shall coordinate and assist in the administration of the local citizen review board pilot program created by this chapter.

Sec. 3. RCW 13.70.010 and 1989 1st ex.s. c 17 s 3 are each amended to read as follows:

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

(1) "Board" means the local citizen review board established pursuant to this chapter.

(2) "Child" means a person less than eighteen years of age.

(3) "Committee" means a local Indian child welfare advisory committee established pursuant to WAC 388-70-610, as now existing or hereafter amended by the department.

(4) "Conflict of interest" means that a person appointed to a board has a personal or pecuniary interest in a case being reviewed by that board.

~~((4))~~ (5) "Court" means the juvenile court.

~~((5))~~ (6) "Custodian" means that person who has legal custody of the child.

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

~~((7))~~ (8) "Mature child" means a child who is able to understand and participate in the decision-making process without excessive anxiety or fear. A child twelve years old or over shall be rebuttably presumed to be a mature child.

~~((8))~~ (9) "Parent" or "parents" means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings.

~~((9))~~ (10) "Placement episode" means the period of time that begins with the date the child was removed from the home of the parent or legal custodian for the purposes of placement in substitute care and continues until the child returns home or an adoption decree or guardianship order is entered.

~~((10))~~ (11) "Records" means any information in written form, pictures, photographs, charts, graphs, recordings, or documents pertaining to a case.

~~((11))~~ (12) "Resides" or "residence," when used in reference to the residence of a child, means the place where the child is actually living and not the legal residence or domicile of the parent or guardian.

~~((12))~~ (13) "Substitute care" means an out-of-home placement of a child for purposes related to the provision of child welfare services in accordance with chapter 74.13 RCW where the child is in the care, custody, and control of the department pursuant to a proceeding under chapter 13.34 RCW or pursuant to the written consent of the child's parent or parents or custodian.

Sec. 4. RCW 13.34.130 and 1990 c 284 s 32 and 1990 c 246 s 5 are each reenacted and amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, as now or hereafter amended, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030(2); after

consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

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

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that:

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

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

(iii) A manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or

(iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to RCW 13.34.130(1)(b), the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds it is recommended by the supervising agency, that it is in the best interests of the child and that it is not reasonable to provide further services to reunify the family because the existence of aggravated circumstances make it unlikely that services will effectuate the return of the child to the

child's parents in the near future. In determining whether aggravated circumstances exist, the court shall consider one or more of the following:

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

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

(c) Conviction of the parent of assault of the child in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021;

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

(e) A finding by a court that a parent is a sexually violent predator as defined in RCW (~~9A.88.010~~) 71.09.020;

(f) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim.

(3) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanent plan of care that may include one of the following: Return of the child to the home of the child's parent, adoption, guardianship, or long-term placement with a relative or in foster care with a written agreement.

(b) Unless the court has ordered, pursuant to RCW 13.34.130(2), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

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

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

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

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and

health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to RCW 13.34.130(2), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

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

(5) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

Sec. 5. RCW 13.70.110 and 1989 1st ex.s. c 17 s 13 are each amended to read as follows:

(1) This section shall apply to cases where a child has been placed in substitute care pursuant to a proceeding under chapter 13.34 RCW.

(2) Within forty-five days following commencement of the placement episode, the court shall assign the child's case to a board and forward to the board a copy of the dependency petition and any shelter care or dependency disposition orders which have been entered in the case by the court.

(3) The board shall review the case plan for each child whose case is assigned to the board by the court. The review shall take place at times set by the board. The first review shall occur within ninety days following commencement of the placement episode. The second review shall occur within six months following commencement of the placement episode. The next review shall occur within one year after commencement of the placement episode. Within eighteen months following commencement of the placement episode, a permanency planning hearing shall be held before the court in accordance with RCW 13.34.145. Thereafter, the court shall assign the child's case for a board review or a court review hearing pursuant to RCW 13.34.130((4)) (5). A board review or a court review hearing shall take place at least once every six months until the child is no longer within the jurisdiction of the court or no longer in substitute care or until a guardianship order or adoption decree is entered. After the permanency planning hearing, a court review hearing must occur at least once a year as provided in RCW 13.34.130. The board shall review any case where a petition to

terminate parental rights has been denied, and such review shall occur as soon as practical but no later than forty-five days after the denial.

(4) The board shall prepare written findings and recommendations with respect to:

(a) Whether reasonable efforts were made before the placement to prevent or eliminate the need for removal of the child from the home, including whether consideration was given to removing the alleged offender, rather than the child, from the home;

(b) Whether reasonable efforts have been made subsequent to the placement to make it possible for the child to be returned home;

(c) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration has been given to placement with the child's relatives;

(d) Whether there is a continuing need for placement and whether the placement is appropriate;

(e) Whether there has been compliance with the case plan;

(f) Whether progress has been made toward alleviating the need for placement;

(g) A likely date by which the child may be returned home or other permanent plan of care may be implemented; and

(h) Other problems, solutions, or alternatives the board determines should be explored.

(5) Within ten working days following the review, the board shall send a copy of its findings and recommendations to the parents and their attorneys, the child's custodians and their attorneys, mature children and their attorneys, other attorneys or guardians ad litem appointed by the court to represent children, the department and other child placement agencies directly responsible for supervising the child's placement, and any prosecuting attorney or attorney general actively involved in the case. If the child is an Indian as defined in the Indian child welfare act, 25 U.S.C. Sec. 1901 et seq., a copy of the board's findings and recommendations shall also be sent to the child's Indian tribe.

(6) If the department is unable or unwilling to implement the board recommendations, the department shall submit to the board, within ten working days after receipt of the findings and recommendations, an implementation report setting forth the reasons why the department is unable or unwilling to implement the board's recommendations. The report will also set forth the case plan which the department intends to implement.

(7) Within forty-five days following the review, the board shall either:

(a) Schedule the case for further review by the board; or

(b) ~~((File with the court a motion for a review hearing;~~

~~(c))~~ Submit to the court the board's findings and recommendations ~~((;))~~ and the department's implementation reports, if any ~~((; and a proposed amended court order agreed to by the parties to the action, if any))~~.

If the board's recommendations are different from the existing court-ordered case plan, the board shall also file with the court a motion for a review hearing.

(8) ~~((Upon))~~ Within ten days of receipt of the board's written findings and recommendations~~((:))~~ and the department's implementation report, if any, ~~((and the proposed amended court order, if any;))~~ the court shall ~~((either:~~

~~(a) Approve the recommendations; or~~

~~(b) Upon its own motion, schedule a review hearing))~~ review the findings and recommendations and implementation reports, if any. The court may on its own motion schedule a review hearing.

(9) Unless modified by subsequent court order, the court-ordered case plan and court orders that are in effect at the time that a board reviews a case shall remain in full force and effect. Board findings and recommendations are advisory only and do not in any way modify existing court orders or court-ordered case plans.

(10) The findings and recommendations of the board and the department's implementation report, if any, shall become part of the department's case file and the court social file pertaining to the child.

~~((+0))~~ (11) Nothing in this section shall limit or otherwise modify the rights of any party to a dependency proceeding to request and receive a court review hearing pursuant to the provisions of chapter 13.34 RCW or applicable court rules.

Sec. 6. RCW 13.34.210 and 1988 c 203 s 2 are each amended to read as follows:

If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department of social and health services or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption, or in the absence thereof in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child consistent with chapter 26.33 RCW, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

If a child has not been adopted within six months after the date of the order and a general guardian of the child has not been appointed by the court, the child shall be returned to the court for entry of further orders for his or her care, custody, and control, and, except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the court shall review the case every six months thereafter until a decree of adoption is entered.

NEW SECTION. Sec. 7. RCW 13.70.900 and 1989 1st ex.s. c 17 s 19 are each repealed.

NEW SECTION. Sec. 8. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 9. 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 shall take effect immediately.

Passed the Senate March 15, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 128

[Substitute House Bill 1051]

INTERNATIONAL STUDENT EXCHANGE PROGRAMS

Effective Date: 1/1/92

AN ACT Relating to international student exchange programs; amending RCW 28A.300.200 and 74.15.020; adding a new section to chapter 28A.300 RCW; adding a new chapter to Title 19 RCW; creating a new section; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature to:

(1) Promote the health, safety, and welfare of international student exchange visitors in Washington in accordance with uniform national standards;

(2) Promote quality education and living experiences for international student exchange visitors living in Washington;

(3) Promote international awareness among Washington residents, by encouraging Washington residents to interact with international student exchange visitors;

(4) Encourage public confidence in international student exchange visitor placement organizations operating in Washington;

(5) Encourage and assist with compliance with United States information agency regulations and nationally established standards; and

(6) Promote the existence and quality of international student visitor exchange programs operating in Washington.

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

(1) "International student exchange visitor placement organization" or "organization" means a person, partnership, corporation, or other entity

that regularly arranges the placement of international student exchange visitors for the purpose, in whole or in part, of allowing the student an opportunity to attend school in the United States.

(2) "International student exchange visitor" or "student" means any person eighteen years of age or under, or up to age twenty-one if enrolled or to be enrolled in high school in this state, placed by an international student exchange visitor placement organization, who enters the United States with a nonimmigrant visa.

NEW SECTION. Sec. 3. (1) All international student exchange visitor placement organizations that place students in public schools in the state shall register with the secretary of state.

(2) Failure to register is a violation of this chapter.

(3) Information provided to the secretary of state under this chapter is a public record.

(4) Registration shall not be considered or be represented as an endorsement of the organization by the secretary of state or the state of Washington.

NEW SECTION. Sec. 4. The secretary of state shall adopt standards for international student exchange visitor placement organizations. In adopting the standards, the secretary of state shall strive to adopt standards established by the United States Information Agency and the council on standards for international educational travel and strive to achieve uniformity with national standards. The secretary of state may incorporate standards established by the United States Information Agency or the council on standards for international educational travel by reference and may accept an organization's designation by the United States Information Agency or acceptance for listing by the council on standards for international educational travel as evidence of compliance with such standards.

NEW SECTION. Sec. 5. (1) An application for registration as an international student exchange visitor placement organization shall be submitted in the form prescribed by the secretary of state. The application shall include:

(a) Evidence that the organization meets the standards established by the secretary of state under section 4 of this act;

(b) The name, address, and telephone number of the organization, its chief executive officer, and the person within the organization who has primary responsibility for supervising placements within the state;

(c) The organization's unified business identification number, if any;

(d) The organization's United States Information Agency number, if any;

(e) Evidence of council on standards for international educational travel listing, if any;

(f) Whether the organization is exempt from federal income tax; and

(g) A list of the organization's placements in Washington for the previous academic year including the number of students placed, their home countries, the school districts in which they were placed, and the length of their placements.

(2) The application shall be signed by the chief executive officer of the organization and the person within the organization who has primary responsibility for supervising placements within Washington. If the secretary of state determines that the application is complete, the secretary of state shall file the application and the applicant is registered.

(3) International student exchange visitor placement organizations that have registered shall inform the secretary of state of any changes in the information required under subsection (1) of this section within thirty days of the change.

(4) Registration under this chapter is valid for one year. The registration may be renewed annually.

NEW SECTION. Sec. 6. The secretary of state may adopt rules as necessary to carry out its duties under this chapter. The rules may include providing for a reasonable registration fee, not to exceed fifty dollars, to defray the costs of processing registrations.

NEW SECTION. Sec. 7. International student exchange organizations that have agreed to provide services to place students in the state shall provide an informational document, in English, to each student, host family, and superintendent of the school district in which the student is being placed. The document shall be provided before placement and shall include the following:

(1) An explanation of the services to be performed by the organization for the student, host family, and school district;

(2) A summary of this chapter prepared by the secretary of state;

(3) Telephone numbers that the student, host family, and school district may call for assistance. The telephone numbers shall include, at minimum, an in-state telephone number for the organization, and the telephone numbers of the organization's national headquarters, if any, the United States Information Agency, and the office of the secretary of state.

NEW SECTION. Sec. 8. The secretary of state may, upon receipt of a complaint regarding an international student exchange organization, report the matter to the organization involved, the United States Information Agency, or the council on standards for international education travel, as he or she deems appropriate.

NEW SECTION. Sec. 9. Any person who violates any provision of this chapter or who willfully and knowingly gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or

report is verified, is guilty of a misdemeanor punishable under chapter 9A-.20 RCW.

NEW SECTION. Sec. 10. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. Sec. 11. A new section is added to chapter 28A.300 RCW to read as follows:

(1) The superintendent of public instruction shall annually make available to school districts and approved private schools, from data supplied by the secretary of state, the names of international student exchange visitor placement organizations registered under chapter 19.— RCW (sections 1 through 10 of this act) to place students in public schools in the state and a summary of the information the organizations have filed with the secretary of state under chapter 19.— RCW (sections 1 through 10 of this act).

(2) The superintendent shall provide general information and assistance to school districts regarding international student exchange visitors, including, to the extent feasible with available resources, information on the type of visa required for enrollment, how to promote positive educational experiences for visiting exchange students, and how to integrate exchange students into the school environment to benefit the education of both the exchange students and students in the state.

***NEW SECTION.** Sec. 12. (1) *The secretary of state shall create and chair a task force on international student exchange. The task force shall include representatives of the legislature, the office of the superintendent of public instruction, international student exchange visitor placement organizations operating in Washington, school districts, business, exchange students, and other representatives as the secretary deems appropriate. Members shall be selected by the secretary of state.*

(2) *The task force shall, within available resources:*

(a) *Estimate the number of foreign exchange students studying in Washington schools in a given year, and provide summary information about the countries they are from, the school districts in which they are placed, the type of organization placing them, and the students' average length of stay;*

(b) *Estimate the number of public school students from this state who are foreign exchange students in other nations in a given year, and provide summary information about the school districts they are from, the countries in which they are placed, the type of organization placing them, and the students' average length of stay;*

(c) Investigate ways to promote student and teacher exchanges with K-12 schools in other nations, with an emphasis on sending more Washington students to other nations;

(d) Examine reported problems in the international student exchange visitor placement industry operating in the public schools of the state and the effect of sections 1 through 10 of this act on these problems;

(e) Examine the adequacy of the fee structure established under section 6 of this act.

(3) The task force shall report findings and recommendations to the legislature by December 1, 1992.

(4) This section shall expire December 1, 1992.

*Sec. 12 was vetoed, see message at end of chapter.

Sec. 13. RCW 28A.300.200 and 1990 c 243 s 9 are each amended to read as follows:

To complement RCW 28A.630.230 and chapter 28B.107 RCW, the superintendent of public instruction shall ((encourage school districts to establish exchange programs for teachers with)), subject to available funding, coordinate and sponsor student and teacher exchanges between Washington schools and schools in Pacific Rim nations and other nations. The superintendent may solicit and accept grants and donations from public and private sources for the student and teacher exchange program.

Sec. 14. RCW 74.15.020 and 1988 c 176 s 912 are each amended to read as follows:

For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of social and health services;

(2) "Secretary" means the secretary of social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036.

(4) "Agency" shall not include the following:

(a) Persons related by blood or marriage to the child, expectant mother, or persons with developmental disabilities in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, and/or first cousin;

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person does not engage in such activity on a regular basis, or where parents on a mutually cooperative basis exchange care of one another's children, or persons who have the care of an exchange student in their own home;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors;

(e) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

((f)) (f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

((g)) (g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

((h)) (h) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

((i)) (i) Licensed physicians or lawyers;

~~((f))~~ (j) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

~~((f))~~ (k) Facilities approved and certified under chapter 71A.22 RCW;

~~((f))~~ (l) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

~~((f))~~ (m) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

~~((m))~~ (n) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

~~((n))~~ (o) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(5) "Requirement" means any rule, regulation or standard of care to be maintained by an agency.

NEW SECTION. Sec. 15. Sections 1 through 10 of this act shall constitute a new chapter in Title 19 RCW.

NEW SECTION. Sec. 16. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 17. Sections 1 through 11 and 13 through 16 of this act shall take effect January 1, 1992.

Passed the House March 8, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 10, 1991 with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 10, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 12, Substitute House Bill No. 1051 entitled:

"AN ACT Relating to international student exchange programs."

This bill takes a first step toward regulating organizations involved in international student exchange activities in Washington by requiring that these organizations register with the Office of the Secretary of State. In addition, the Superintendent of Public Instruction is required to notify school districts of the names of international student exchange organizations that have registered with the

state. I concur with the need to provide greater accountability by establishing standards and providing public access to certain basic information regarding such organizations.

Section 12 of the bill requires the Secretary of State to establish a task force on international student exchange and requires the task force to examine a list of specific issues related to international student exchange programs. No funding was provided for the task force in either the House or Senate proposed budgets. Both the Secretary of State and the Superintendent of Public Instruction have authority to establish ad-hoc committees to study issues under their respective jurisdictions. Should the task force actually receive funding in the coming biennium, either official has the capacity to respond by convening a group with the broad membership outlined in this section.

For the reasons stated above, I have vetoed section 12 of Substitute House Bill No. 1051.

With the exception of section 12, Substitute House Bill No. 1051 is approved.*

CHAPTER 129

[Substitute House Bill 2069]

UNEMPLOYMENT COMPENSATION—EMPLOYER RELIEF FROM BENEFIT CHARGES

Effective Date: 7/28/91

AN ACT Relating to employer relief from unemployment insurance charges; and amending RCW 50.29.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 50.29.020 and 1988 c 27 s 1 are each amended to read as follows:

(1) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(2) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual under the provisions of RCW 50.12-.050 shall not be charged to the account of any contribution paying employer if the wage credits earned in this state by the individual during his or her base year are less than the minimum amount necessary to qualify the individual for unemployment benefits.

(c) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer.

(d) Benefits paid which represent the state's share of benefits payable under chapter 50.22 RCW shall not be charged to the experience rating account of any contribution paying employer.

(e) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(f)(i) Benefits paid to an individual as the result of a determination by the commissioner that no stoppage of work exists, pursuant to RCW 50.20-.090, shall not be charged to the experience rating account of any contribution paying employer.

(ii) Benefits paid to an individual under RCW 50.20.090(1) for weeks of unemployment ending before February 20, 1987, shall not be charged to the experience rating account of any base year employer.

(g) In the case of individuals identified under RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

(h) Beginning July 1, 1985, a contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if:

(i) The benefit charges result from payment to an individual who last left the employ of such employer voluntarily for reasons not attributable to the employer, or was discharged for misconduct connected with his or her work; and

(ii) The employer requests relief of charges in writing within thirty days following mailing to the last known address of the notification of the initial determination of such a claim, stating the date and reason for the last leaving; and

(iii) Upon investigation of the separation, the commissioner rules that the relief should be granted.

(i) An employer who employed a claimant during the claimant's base year, and who continues to employ the claimant, is eligible for relief of benefit charges if relief is requested in writing within thirty days of notification by the department of the claimant's application for initial determination of eligibility. Relief of benefit charges shall cease when the employment relationship with the claimant ends. This subsection shall not apply to shared work employers under chapter 50.60 RCW.

(j) Benefits paid to an individual who does not successfully complete an approved on-the-job training program under RCW 50.12.240 shall not be charged to the experience rating account of the contribution paying employer who provided the approved on-the-job training.

((j)) (k) Benefits paid resulting from a closure or severe curtailment of operations at the employer's plant, building, work site, or facility due to damage caused by fire, flood, or other natural disaster shall not be charged to the experience rating account of the employer if:

- (i) The employer petitions for relief of charges; and
- (ii) The commissioner approves granting relief of charges.

Passed the House March 13, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 130

[Engrossed Substitute House Bill 1777]

PRISON CONSTRUCTION—ALTERNATIVE METHODS OF PUBLIC WORKS CONTRACTING AUTHORIZED

Effective Date: 5/10/91

AN ACT Relating to expedited prison construction; adding new sections to chapter 39.04 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes that fair and open competition is a basic tenet of public works procurement, that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically, and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which contractual services are procured. The legislature finds that there exists an urgent need for additional correctional facilities due to the inadequate capacity of existing correctional facilities to accommodate the present size and predicted growth of offender populations. The legislature further finds that

both the need and the urgency to construct additional state correctional facilities requires the temporary use of more expedient methods for awarding state construction contracts for correctional facilities.

NEW SECTION. Sec. 2. A new section is added to chapter 39.04 RCW to read as follows:

(1) In addition to currently authorized methods of public works contracting, and in lieu of the requirements of RCW 39.04.010 and 39.04.020 through 39.04.060, capital projects funded for over ten million dollars appropriated and authorized by the legislature for the department of corrections in the 1989-91 biennium at the McNeil Island corrections center, the Clallam Bay corrections center, the construction of new correctional facilities under the authority of the secretary of corrections including drug camps; work camps; a new medium security prison and such other correctional facilities as may be authorized by the legislature during the biennium ending June 30, 1993, may be accomplished under contract using the general contractor/construction manager method described in this section. For the purposes of this section, "general contractor/construction manager" means a firm with which the department of general administration has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through a formal advertisement, and competitive bids to provide services that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the general contractor during the construction phase. The department of general administration shall establish an independent oversight advisory committee with representatives of interest groups with an interest in this subject area, the department of corrections, and the private sector, to review selection and contracting procedures. The general contractor/construction manager method is limited to contracts signed before July 1, 1996.

(2) Contracts for the services of a general contractor/construction manager awarded under the authority of this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. Minority and women enterprise total project goals shall be specified in the bid instructions to the general contractor/construction manager finalists. The director of general administration is authorized to include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted shall exceed five percent of the maximum allowable construction cost. The director of general administration or his or her designee shall establish a committee to evaluate the proposals considering such factors as ability of professional personnel; past performance in negotiated and complex projects; ability to meet time and budget requirements; location; recent, current, and projected work loads of

the firm; and the concept of their proposal. After the committee has selected the most qualified finalists, these finalists shall submit sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The maximum allowable construction cost may be negotiated between the department of general administration and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the department of general administration is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the department of general administration determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the department of general administration shall negotiate with the next low bidder and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the state, the percent fee shall be renegotiated. All subcontract work shall be competitively bid with public bid openings. Specific goals for women and minority enterprises shall be specified in each subcontract bid package that responsive bidders will have to meet or exceed. All subcontractors who bid work over one hundred thousand dollars shall post a bid bond and the awarded subcontractor shall provide a performance and payment bond for their contract amount if required by the general contractor/construction manager. The bidding of subcontract work by the general contractor/construction manager or its subsidiaries is prohibited but it may negotiate with the low-responsive bidder in accordance with RCW 39.04-.015 or rebid if authorized by the director of general administration in the event no bids are received, the bids received are over the budget amount, or the subcontractor fails to perform.

(3) If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the state. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the state, the additional cost shall be the responsibility of the general contractor/construction manager.

(4) The powers and authority conferred by this section shall be construed as in addition and supplemental to powers or authority conferred by

any other law, and nothing contained herein shall be construed as limiting any other powers or authority of the department of general administration.

NEW SECTION. Sec. 3. A new section is added to chapter 39.04 RCW to read as follows:

Methods of public works contracting authorized by sections 1 and 2 of this act shall remain in full force and effect until completion of contracts signed on or before June 30, 1996.

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.

NEW SECTION. Sec. 5. 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 shall take effect immediately.

Passed the House March 19, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 131

[Substitute House Bill 1208]

INTERSTATE FOREST FIRE SUPPRESSION COMPACT

Effective Date: 7/28/91

AN ACT Relating to authorizing a compact with adjacent states concerning jurisdiction over inmates while outside the state of conviction; and adding new sections to chapter 72.64 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 72.64 RCW to read as follows:

The Interstate Forest Fire Suppression Compact as set forth in this section is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

INTERSTATE FOREST FIRE SUPPRESSION COMPACT

ARTICLE I—Purpose

The purpose of this compact is to provide for the development and execution of programs to facilitate the use of offenders in the forest fire suppression efforts of the party states for the ultimate protection of life, property, and natural resources in the party states. The purpose of this compact is also to, in emergent situations, allow a sending state to cross

state lines with an inmate when, due to weather or road conditions, it is necessary to cross state lines to facilitate the transport of an inmate.

ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "Sending state" means a state party to this compact from which a fire suppression unit is traveling.

(b) "Receiving state" means a state party to this compact to which a fire suppression unit is traveling.

(c) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(d) "Institution" means any prison, reformatory, honor camp, or other correctional facility, except facilities for the mentally ill or mentally handicapped, in which inmates may lawfully be confined.

(e) "Fire suppression unit" means a group of inmates selected by the sending states, corrections personnel, and any other persons deemed necessary for the transportation, supervision, care, security, and discipline of inmates to be used in forest fire suppression efforts in the receiving state.

(f) "Forest fire" means any fire burning in any land designated by a party state or federal land management agencies as forest land.

ARTICLE III—Contracts

Each party state may make one or more contracts with any one or more of the other party states for the assistance of one or more fire suppression units in forest fire suppression efforts. Any such contract shall provide for matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving state.

The terms and provisions of this compact shall be part of any contract entered into by the authority of, or pursuant to, this compact. Nothing in any such contract may be inconsistent with this compact.

ARTICLE IV—Procedures and Rights

(a) Each party state shall appoint a liaison for the coordination and deployment of the fire suppression units of each party state.

(b) Whenever the duly constituted judicial or administrative authorities in a state party to this compact that has entered into a contract pursuant to this compact decides that the assistance of a fire suppression unit of a party state is required for forest fire suppression efforts, such authorities may request the assistance of one or more fire suppression units of any state party to this compact through an appointed liaison.

(c) Inmates who are members of a fire suppression unit shall at all times be subject to the jurisdiction of the sending state, and at all times shall be under the ultimate custody of corrections officers duly accredited by the sending state.

(d) The receiving state shall make adequate arrangements for the confinement of inmates who are members of a fire suppression unit of a sending state in the event corrections officers duly accredited by the sending state make a discretionary determination that an inmate requires institutional confinement.

(e) Cooperative efforts shall be made by corrections officers and personnel of the receiving state located at a fire camp with the corrections officers and other personnel of the sending state in the establishment and maintenance of fire suppression unit base camps.

(f) All inmates who are members of a fire suppression unit of a sending state shall be cared for and treated equally with such similar inmates of the receiving state.

(g) Further, in emergent situations a sending state shall be granted authority and all the protections of this compact to cross state lines with an inmate when, due to weather or road conditions, it is necessary to facilitate the transport of an inmate.

ARTICLE V—Acts Not Reviewable In Receiving State; Extradition

(a) If while located within the territory of a receiving state there occurs against the inmate within such state any criminal charge or if the inmate is suspected of committing within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate member of a fire suppression unit of the sending state who is deemed to have escaped by a duly accredited corrections officer of a sending state shall be under the jurisdiction of both the sending state and the receiving state. Nothing contained in this compact shall be construed to prevent or affect the activities of officers and guards of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI—Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states from among the states of Idaho, Oregon, and Washington.

ARTICLE VII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it has enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states.

ARTICLE VIII—Other Arrangements Unaffected

Nothing contained in this compact may be construed to abrogate or impair any agreement that a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE IX—Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

NEW SECTION. Sec. 2. A new section is added to chapter 72.64 RCW to read as follows:

For the purposes of section 1 of this act, inmate forest fire suppression crews may be considered a class I free venture industry, as defined in RCW 72.09.100, when fighting fires on federal lands.

NEW SECTION. Sec. 3. 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.

Passed the House March 15, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 132

[Substitute House Bill 1265]

EASEMENTS ESTABLISHED BY DEDICATION

Effective Date: 7/28/91

AN ACT Relating to dedications; adding a new section to chapter 64.04 RCW; and adding a new section to chapter 58.17 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 64.04 RCW to read as follows:

Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement.

NEW SECTION. Sec. 2. A new section is added to chapter 58.17 RCW to read as follows:

The alteration of a subdivision is subject to section 1 of this act.

Passed the House March 12, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 133

[Senate Bill 5111]

INMATE TESTIMONY—MONEYS RECEIVED TO GO TO CRIME VICTIMS COMPENSATION ACCOUNT

Effective Date: 7/28/91

AN ACT Relating to cost of corrections; and amending RCW 72.09.110.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 72.09.110 and 1989 c 185 s 9 are each amended to read as follows:

All inmates working in prison industries shall participate in the cost of corrections, including costs to develop and implement correctional industries programs. The secretary shall develop a formula which can be used to determine the extent to which the wages of these inmates will be deducted for this purpose. The amount so deducted shall be placed in the general fund and shall be a reasonable amount which will not unduly discourage the incentive to work. The secretary may direct the state treasurer to deposit a portion of these moneys in the crime victims compensation account. Except the secretary shall direct all moneys received by an inmate, for testifying in any judicial proceeding, go into the crime victims compensation account.

When the secretary finds it appropriate and not unduly destructive of the work incentive, the secretary shall also provide deductions for restitution, savings, and family support.

Passed the Senate February 18, 1991.

Passed the House April 24, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 134

[Substitute Senate Bill 5045]

DRINKING WATER QUALITY—INVESTIGATION OF CONSUMER COMPLAINTS

Effective Date: 7/28/91

AN ACT Relating to investigation of customer complaints regarding drinking water quality; and reenacting and amending RCW 80.04.110.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 80.04.110 and 1989 c 207 s 2 and 1989 c 101 s 17 are each reenacted and amended to read as follows:

(1) Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: PROVIDED, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service: PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into

consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

(2) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

(3) Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. The commission shall enter its final order with respect to a complaint filed by any entity or person other than the commission within ten months from the date of filing of the complaint, unless the date is extended for cause. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. Such rules may include the requirement that a complainant use informal processes before filing a formal complaint.

(4) The commission shall, as appropriate, exercise auditing and accounting supervision or initiate a complaint upon receipt of an administrative order from the department, or the city or county in which the water system is located, finding that the water delivered by a system does not meet state board of health standards adopted under RCW 43.20.050(2)(a) or standards adopted under chapter 70.116 RCW.

(5) Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW. The commission shall investigate such a complaint, and shall request that the state department of health or local health department of the county in which the system is located test the water for compliance with state drinking water standards, and provide the results of such testing to the commission. The commission may decide not to investigate the complaint if it determines that the complaint has been filed in bad faith, or for the purpose of harassment of the water system or company, or for other reasons has no substantial merit. The water system or company shall bear the expense for the testing. After the commission has received the complaint from the customer and during the pendency of the commission investigation, the water system or company shall not take any

steps to terminate service to the customer or to collect any amounts alleged to be owed to the company by the customer. The commission may issue an order or take any other action to ensure that no such steps are taken by the system or company. The customer may, at the customer's option and expense, obtain a water quality test by a licensed or otherwise qualified water testing laboratory, of the water delivered to the customer by the water system or company, and provide the results of such a test to the commission. If the commission determines that the water does not meet state drinking water standards, it shall exercise its authority over the system or company as provided in this title, and may, where appropriate, order a refund to the customer on a pro rata basis for the substandard water delivered to the customer, and shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test.

Passed the Senate February 22, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 135

[Substitute House Bill 1852]

FIRE SERVICES TRUST FUND

Effective Date: 7/1/91

AN ACT Relating to establishing and providing partial funding for the fire services trust fund; amending RCW 70.77.325 and 70.77.345; adding new sections to chapter 43.63A RCW; adding a new section to chapter 70.77 RCW; creating a new section; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is necessary for the health, safety, and welfare of the people of the state of Washington that fire code enforcement, public education on fire prevention, fire training for fire and emergency response personnel, and administration of these activities be funded in a dependable manner. It is therefore the intent of the legislature to establish a fund for these purposes.

NEW SECTION. Sec. 2. The fire services trust fund is created in the state treasury. All receipts designated by the legislature shall be deposited in the fund. Appropriations from the fund may be made exclusively for the purposes specified in section 3 of this act.

NEW SECTION. Sec. 3. Money from the fire services trust fund may be expended for the following purposes:

(1) Training of fire service personnel, including both classroom and hands-on training at the state fire training center or other locations approved by the director through the director of fire protection services;

(2) Maintenance and operation at the state's fire training center near North Bend. If in the future the state builds other fire training centers a portion of these moneys may be used for the maintenance and operation at these centers;

(3) Lease or purchase of equipment for use in the provisions of training to fire service personnel;

(4) Grants to local entities to allow them to perform their functions under this section;

(5) Costs of administering these programs under this section;

(6) Licensing and enforcement of state laws governing the sales of fireworks; and

(7) Development with the legal fireworks industry and funding of a state-wide public education program for fireworks safety.

Sec. 4. RCW 70.77.325 and 1986 c 266 s 103 are each amended to read as follows:

(1) Application for a license shall be made annually by every person holding an existing license who wishes to continue the activity requiring the license. The application shall be accompanied by the annual license fees as prescribed in section 6 of this act and RCW 70.77.340.

(2) A person applying for an annual license as a retailer under this chapter shall file an application by June 10 of the current year. The director of community development, through the director of fire protection, shall grant or deny the license within fifteen days of receipt of the application.

(3) A person applying for an annual license as a manufacturer, importer, or wholesaler under this chapter shall file an application by January 31 of the current year. The director of community development, through the director of fire protection, shall grant or deny the license within ninety days of receipt of the application.

Sec. 5. RCW 70.77.345 and 1982 c 230 s 25 are each amended to read as follows:

The license fees shall be for the calendar year from January 1st to December 31st or for the remaining portion thereof.

NEW SECTION. Sec. 6. A new section is added to chapter 70.77 RCW to read as follows:

License fees, in addition to the fees in RCW 70.77.340, shall be charged as follows:

| | |
|--|------------|
| Manufacturer | \$1,500.00 |
| Importer | 900.00 |
| Wholesaler | 1,000.00 |
| Retailer (for each separate outlet) | 30.00 |
| Public display for special fireworks | 40.00 |
| Pyrotechnic operator for special fireworks | 5.00 |

(2) All receipts from the license fees in this section shall be placed in the fire services trust fund.

NEW SECTION. Sec. 7. Sections 2 and 3 of this act are each added to chapter 43.63A RCW.

NEW SECTION. Sec. 8. This act is necessary for the preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991.

NEW SECTION. Sec. 9. 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.

Passed the House March 19, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 136

[Engrossed Substitute House Bill 1287]

ADOPTION—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to adoption; and amending RCW 26.33.040, 26.33.160, 26.33.190, 26.33.350, 26.33.390, and 26.33.400.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 26.33.040 and 1984 c 155 s 4 are each amended to read as follows:

(1) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq., applies to the proceeding. Every order or decree entered in any proceeding under this chapter shall contain a finding that the Indian Child Welfare Act does or does not apply. In proceedings under this chapter, the adoption facilitator shall file a sworn statement documenting efforts to determine whether the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq., applies.

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

Sec. 2. RCW 26.33.160 and 1990 c 146 s 2 are each amended to read as follows:

(1) Except as otherwise provided in RCW 26.33.170, consent to an adoption shall be required of the following if applicable:

- (a) The adoptee, if fourteen years of age or older;
- (b) The parents and any alleged father of an adoptee under eighteen years of age;
- (c) An agency or the department to whom the adoptee has been relinquished pursuant to RCW 26.33.080; and
- (d) The legal guardian of the adoptee.

(2) Except as otherwise provided in subsection (4)~~((f))~~ (h) of this section, consent to adoption is revocable by the consenting party at any time before the consent is approved by the court. The revocation may be made in either of the following ways:

- (a) Written revocation may be delivered or mailed to the clerk of the court before approval; or
- (b) Written revocation may be delivered or mailed to the clerk of the court after approval, but only if it is delivered or mailed within forty-eight hours after a prior notice of revocation that was given within forty-eight hours after the birth of the child. The prior notice of revocation shall be given to the agency or person who sought the consent and may be either oral or written.

(3) Except as provided in subsection~~((f))~~ (2)(b) and (4)~~((f))~~ (h) of this section and in this subsection, a consent to adoption may not be revoked after it has been approved by the court. Within one year after approval, a consent may be revoked for fraud or duress practiced by the person, department, or agency requesting the consent, or for lack of mental competency on the part of the person giving the consent at the time the consent was given. A written consent to adoption may not be revoked more than one year after it is approved by the court.

(4) Except as provided in ~~((f))~~ (h) of this subsection, the written consent to adoption shall be signed under penalty of perjury and shall state that:

- (a) It is given subject to approval of the court;
- (b) It has no force or effect until approved by the court;
- (c) The birth parent is or is not of Native American or Alaska native ancestry;

(d) The consent will not be presented to the court until forty-eight hours after it is signed or forty-eight hours after the birth of the child, whichever occurs later;

~~((d))~~ (e) It is revocable by the consenting party at any time before its approval by the court. It may be revoked in either of the following ways:

- (i) Written revocation may be delivered or mailed to the clerk of the court before approval of the consent by the court; or
- (ii) Written revocation may be delivered or mailed to the clerk of the court after approval, but only if it is delivered or mailed within forty-eight

hours after a prior notice of revocation that was given within forty-eight hours after the birth of the child. The prior notice of revocation shall be given to the agency or person who sought the consent and may be either oral or written;

~~((f))~~ (f) The address of the clerk of court where the consent will be presented is included;

~~((f))~~ (g) Except as provided in ~~((g))~~ (h) of this subsection, after it has been approved by the court, the consent is not revocable except for fraud or duress practiced by the person, department, or agency requesting the consent or for lack of mental competency on the part of the person giving the consent at the time the consent was given. A written consent to adoption may not be revoked more than one year after it is approved by the court;

~~((g))~~ (h) In the case of a consent to an adoption of an Indian child, no consent shall be valid unless the consent is executed in writing more than ten days after the birth of the child and unless the consent is recorded before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a). Consent may be withdrawn for any reason at any time prior to the entry of the final decree of adoption. Consent may be withdrawn for fraud or duress within two years of the entry of the final decree of adoption. Revocation of the consent prior to a final decree of adoption, may be delivered or mailed to the clerk of the court or made orally to the court which shall certify such revocation. Revocation of the consent is effective if received by the clerk of the court prior to the entry of the final decree of adoption or made orally to the court at any time prior to the entry of the final decree of adoption. Upon withdrawal of consent, the court shall return the child to the parent unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130; and

~~((h))~~ (i) The following statement has been read before signing the consent:

I understand that my decision to relinquish the child is an extremely important one, that the legal effect of this relinquishment will be to take from me all legal rights and obligations with respect to the child, and that an order permanently terminating all of my parental rights to the child will be entered. I also understand that there are social services and counseling services available in the community, and that there may be financial assistance available through state and local governmental agencies.

(5) A written consent to adoption which meets all the requirements of this chapter but which does not name or otherwise identify the adopting parent is valid if it contains a statement that it is voluntarily executed

without disclosure of the name or other identification of the adopting parent.

(6) There must be a witness to the consent of the parent or alleged father. The witness must be at least eighteen years of age and selected by the parent or alleged father. The consent document shall contain a statement identifying by name, address, and relationship the witness selected by the parent or alleged father.

Sec. 3. RCW 26.33.190 and 1990 c 146 s 3 are each amended to read as follows:

(1) Any person may at any time request an agency, the department, an individual approved by the court, or a qualified salaried court employee to prepare a preplacement report. A certificate signed under penalty of perjury by the person preparing the report specifying his or her qualifications as required in this chapter shall be attached to or filed with each preplacement report and shall include a statement of training or experience that qualifies the person preparing the report to discuss relevant adoption issues. A person may have more than one preplacement report prepared. All preplacement reports shall be filed with the court in which the petition for adoption is filed.

(2) The preplacement report shall be a written document setting forth all relevant information relating to the fitness of the person requesting the report as an adoptive parent. The report shall be based on a study which shall include an investigation of the home environment, family life, health, facilities, and resources of the person requesting the report. The report shall include a list of the sources of information on which the report is based. The report shall include a recommendation as to the fitness of the person requesting the report to be an adoptive parent. The report shall also verify that the following issues were discussed with the prospective adoptive parents:

(a) The concept of adoption as a lifelong developmental process and commitment;

(b) The potential for the child to have feelings of identity confusion and loss regarding separation from the birth parents;

(c) Disclosure of the fact of adoption to the child;

(d) The child's possible questions about birth parents and relatives; and

(e) The relevance of the child's racial, ethnic, and cultural heritage.

(3) All preplacement reports shall include an investigation of the conviction record, pending charges, or disciplinary board final decisions of prospective adoptive parents. The investigation shall include an examination of state and national criminal identification data provided by ~~((the))~~ the Washington state patrol criminal identification system as described in chapter 43.43 RCW.

(4) An agency, the department, or a court approved individual may charge a reasonable fee based on the time spent in conducting the study and

preparing the preplacement report. The court may set a reasonable fee for conducting the study and preparing the report when a court employee has prepared the report. An agency, the department, a court approved individual, or the court may reduce or waive the fee if the financial condition of the person requesting the report so warrants. An agency's, the department's, or court approved individual's, fee is subject to review by the court upon request of the person requesting the report.

(5) The person requesting the report shall designate to the agency, the department, the court approved individual, or the court in writing the county in which the preplacement report is to be filed. If the person requesting the report has not filed a petition for adoption, the report shall be indexed in the name of the person requesting the report and a cause number shall be assigned. A fee shall not be charged for filing the report. The applicable filing fee may be charged at the time a petition governed by this chapter is filed. Any subsequent preplacement reports shall be filed together with the original report.

(6) A copy of the completed preplacement report shall be delivered to the person requesting the report.

(7) A person may request that a report not be completed. A reasonable fee may be charged for the value of work done.

Sec. 4. RCW 26.33.350 and 1990 c 146 s 6 are each amended to read as follows:

(1) Every person, firm, society, association, or corporation receiving, securing a home for, or otherwise caring for a minor child shall transmit to the prospective adopting parent prior to placement and shall make available to all persons with whom a child has been placed by adoption a complete medical report containing all available information concerning the mental, physical, and sensory handicaps of the child. The report shall not reveal the identity of the natural parent of the child but shall include any available mental or physical health history of the natural parent that needs to be known by the adoptive parent to facilitate proper health care for the child or that will assist the adoptive parent in maximizing the developmental potential of the child.

(2) Where available, the information provided shall include:

(a) A review of the birth family's and the child's previous medical history, if available, including the child's x-rays, examinations, hospitalizations, and immunizations. After July 1, 1992, medical histories shall be given on a standardized reporting form developed by the department;

(b) A physical exam of the child by a licensed physician with appropriate laboratory tests and x-rays;

(c) A referral to a specialist if indicated; and

(d) A written copy of the evaluation with recommendations to the adoptive family receiving the report.

Sec. 5. RCW 26.33.390 and 1990 c 146 s 7 are each amended to read as follows:

(1) All persons adopting a child through the department shall receive written information on the department's adoption-related services including, but not limited to, adoption support, family reconciliation services, archived records, mental health, and developmental disabilities.

(2) Any person adopting a child shall receive from the adoption facilitator written information on adoption-related services. This information may be that published by the department or any other social service provider~~(-)~~ and shall include information ~~((on))~~ about how to find and evaluate appropriate adoption therapists, and may include other resources for adoption-related issues.

(3) Any person involved in providing adoption-related services shall respond to requests for written information by providing materials explaining adoption procedures, practices, policies, fees, and services.

Sec. 6. RCW 26.33.400 and 1989 c 255 s 1 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, "advertisement" means communication by newspaper, radio, television, handbills, placards or other print, broadcast, or the electronic medium. This definition applies throughout this section.

(2) No person or entity shall cause to be published for circulation, or broadcast on a radio or television station, within the geographic borders of this state, an advertisement of a child or children offered or wanted for adoption, or shall hold himself or herself out through such advertisement as having the ability to place, locate, dispose, or receive a child or children for adoption unless such person or entity is:

(a) A duly authorized agent, contractee, or employee of the department or a children's agency or institution licensed by the department to care for and place children;

(b) ~~((An attorney licensed to practice in Washington state; or~~
~~(c))~~ A person who has a completed preplacement report as set forth in RCW 26.33.190 (1) and (2) or chapter 26.34 RCW with a favorable recommendation as to the fitness of the person to be an adoptive parent, or such person's duly authorized uncompensated agent, or ~~((an))~~ such person's attorney who is licensed to practice in the state. Verification of compliance with the requirements of this section shall consist of a written declaration by the person or entity who prepared the preplacement report.

Nothing in this section prohibits an attorney licensed to practice in Washington state from advertising his or her availability to practice or provide services related to the adoption of children.

~~(3) ((Any such person or entity who places or causes such advertisement as prohibited in subsection (2) of this section shall be guilty of a misdemeanor.))~~ A violation of subsection (2) of this section is a matter

affecting the public interest for the purpose of applying chapter 19.86 RCW. A violation of subsection (2) of this section is not reasonable in relation to the development and preservation of business. A violation of subsection (2) of this section constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW.

Passed the House March 11, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 137

[Substitute House Bill 1957]

FOOD PROCESSING PLANTS—LICENSING REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to food processing; amending RCW 69.07.010, 69.07.040, 69.07.050, 69.07.060, and 69.07.150; adding new sections to chapter 69.07 RCW; repealing RCW 69.07-.090 and 69.07.130; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 69.07 RCW to read as follows:

The processing of food intended for public consumption is important and vital to the health and welfare both immediate and future and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted to safeguard the consuming public from unsafe, adulterated, or misbranded food by requiring licensing of all food processing plants as defined in this chapter and setting forth the requirements for such licensing.

Sec. 2. RCW 69.07.010 and 1967 ex.s. c 121 s 1 are each amended to read as follows:

For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means the director of the department;

(3) "Food" means any substance used for food or drink by ~~((man))~~ any person, including ice, and any ingredient used for components of any such substance regardless of the quantity of such component;

(4) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media;

(5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: **PROVIDED**, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;

(6) "Food processing plant" includes but is not limited to any premises, plant, establishment, building, room, area, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for ~~((resale or))~~ distribution ~~((to))~~ or sale for resale by retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: PROVIDED, That ~~((retail outlets))~~, as set forth herein, establishments processing foods in any manner for resale shall be considered a food processing plant as to such processing;

(7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants((-);

(8) "Person" means an individual, partnership, corporation, or association.

Sec. 3. RCW 69.07.040 and 1988 c 5 s 1 are each amended to read as follows:

It shall be unlawful for any person to operate a food processing plant or process foods without first having obtained an annual license from the department, which shall expire on ~~((the 31st day of March following issuance. A separate license shall be required for each food processing plant))~~ a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by a twenty-five dollar annual license fee. Such application shall include the full name of the applicant for the license and the location of the food processing plant he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant ~~((, and any other necessary information prescribed by the director))~~. The application shall also specify the type of food to be processed and

the method or nature of processing operation or preservation of that food and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. Wherever a license holder wishes to engage in processing a type of food product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities or has a high potential for harm, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of food product only after the amendment has been approved by the department.

If upon investigation by the director, it is determined that a person is processing food for retail sale and is not under permit, license, or inspection by a local health authority, then that person may be considered a food processor and subject to the provisions of this chapter.

Sec. 4. RCW 69.07.050 and 1988 c 5 s 2 are each amended to read as follows:

If the application for renewal of any license provided for under this chapter is not filed prior to ~~((April 1st in any year))~~ the expiration date as established by rule by the director, an additional fee of fifteen dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he or she has not operated a food processing plant or processed foods subsequent to the expiration of his or her license.

Sec. 5. RCW 69.07.060 and 1979 c 154 s 19 are each amended to read as follows:

The director may, subsequent to a hearing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter.

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington Food, Drug, and Cosmetic Act, or any regulations adopted thereunder.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under section 6 of this act.

NEW SECTION. Sec. 6. A new section is added to chapter 69.07 RCW to read as follows:

(1) Whenever the director finds an establishment operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an onsite inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food processing operations shall immediately cease. However, the director may reinstate the license when the condition that caused the suspension has been abated to the director's satisfaction.

NEW SECTION. Sec. 7. A new section is added to chapter 69.07 RCW to read as follows:

The director or the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement.

NEW SECTION. Sec. 8. A new section is added to chapter 69.07 RCW to read as follows:

It shall be unlawful to resell, to offer for resale, or to distribute for resale in intrastate commerce any food processed in a food processing plant, which has not obtained a license, as provided for in this chapter, once notification by the director has been given to the person or persons reselling, offering, or distributing food for resale, that said food is from an unlicensed processing operation.

Sec. 9. RCW 69.07.150 and 1967 ex.s. c 121 s 15 are each amended to read as follows:

(1) Any person violating any provision of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and guilty of

a gross misdemeanor for any second and subsequent violation: **PROVIDED**, That any offense committed more than five years after a previous conviction shall be considered a first offense. A misdemeanor under this section is punishable to the same extent that a misdemeanor is punishable under RCW 9A.20.021 and a gross misdemeanor under this section is punishable to the same extent that a gross misdemeanor is punishable under RCW 9A.20.021.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

- (1) RCW 69.07.090 and 1967 ex.s. c 121 s 9; and
- (2) RCW 69.07.130 and 1967 ex.s. c 121 s 13.

Passed the House March 12 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 138

[Substitute House Bill 1050]

EMERGENCY MEDICAL SERVICES DISTRICTS—EXCESS LEVIES

Effective Date: 7/28/91

AN ACT Relating to emergency medical services districts excess levies; and amending RCW 84.52.052.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.52.052 and 1989 c 53 s 4 are each amended to read as follows:

The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of additional taxes by any taxing district except school districts in which a larger levy is necessary in order to prevent the impairment of the obligation of contracts. As used in this section, the term "taxing district" means any county, metropolitan park district, park and recreation service area, park and recreation district, sewer district, water district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, intercounty rural library district, fire protection district, cemetery district, city, town, transportation benefit district, emergency medical service district

with a population density of less than one thousand per square mile, or cultural arts, stadium, (~~(transportation benefit district)~~) and convention district.

Any such taxing district may levy taxes at a rate in excess of the rate specified in RCW 84.52.050 through 84.52.056 and 84.52.043, or RCW 84.55.010 through 84.55.050, when authorized so to do by the (~~(electors of such county, metropolitan park district, park and recreation service area, park and recreation district, sewer district, water district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, intercounty rural library district, fire protection district, cemetery district, city, town, or cultural arts, stadium, transportation benefit district, and convention district)~~) voters of such taxing district in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 64 and as thereafter amended, at a special or general election to be held in the year in which the levy is made.

A special election may be called and the time therefor fixed by the county legislative authority, or council, board of commissioners, or other governing body of any (~~(metropolitan park district, park and recreation service area, park and recreation district, sewer district, water district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, intercounty rural library district, fire protection district, cemetery district, transportation benefit district, city, town, or cultural arts, stadium, and convention district)~~) such taxing district, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no."

Passed the House March 12, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 139

[Substitute Senate Bill 5322]

HOUSING FOR INDIGENTS—EMERGENCY EXEMPTIONS FROM BUILDING CODES AND CONSTRUCTION STANDARDS

Effective Date: 7/28/91

AN ACT Relating to emergency exemptions from building codes and construction standards for housing for indigent persons; and adding a new section to chapter 19.27 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 19.27 RCW to read as follows:

(1) Effective January 1, 1992, the legislative authorities of cities and counties may adopt an ordinance or resolution to exempt from state building code requirements buildings whose character of use or occupancy has been changed in order to provide housing for indigent persons. The ordinance or resolution allowing the exemption shall include the following conditions:

(a) The exemption is limited to existing buildings located in this state;

(b) Any code deficiencies to be exempted pose no threat to human life, health, or safety;

(c) The building or buildings exempted under this section are owned or administered by a public agency or nonprofit corporation; and

(d) The exemption is authorized for no more than five years on any given building. An exemption for a building may be renewed if the requirements of this section are met for each renewal.

(2) By January 1, 1992, the state building code council shall adopt by rule, guidelines for cities and counties exempting buildings under subsection (1) of this section.

Passed the Senate March 11, 1991.

Passed the House April 11, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 140

[House Bill 1878]

MOTOR VEHICLE DEALER LICENSE PLATES

Effective Date: 7/28/91

AN ACT Relating to motor vehicle dealer license plates; and amending RCW 46.70.090, 46.70.083, and 46.70.101.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.70.090 and 1983 c 3 s 123 are each amended to read as follows:

(1) The department shall issue a vehicle dealer license plate which shall be attached to the rear of the vehicle only and which is capable of distinguishing the classification of the dealer, to vehicle dealers properly licensed pursuant to this chapter and shall, upon application, issue manufacturer's license plates to manufacturers properly licensed pursuant to this chapter.

(2) The department shall not issue a vehicle dealer license plate to any vehicle dealer selling fewer than five vehicles annually. After the first dealer

plate is issued, the department shall limit the number of dealer plates to six percent of the vehicles sold during the preceding license period. For an original license the vehicle dealer license applicant shall estimate the first year's sales.

(3) Motor vehicle dealer license plates may be used:

(a) To demonstrate motor vehicles held for sale when operated by an individual holding a valid operator's license, if a dated demonstration permit, valid for no more than seventy-two hours, is carried in the vehicle at all times it is operated by any such individual.

(b) On motor vehicles owned, held for sale, and which are in fact available for sale by the firm when operated by an officer of the corporation, partnership, or proprietorship or by their spouses, or by a bona fide full-time employee of the firm, if a card so identifying any such individual is carried in the vehicle at all times it is operated by such individual. Any such vehicle so operated may be used to transport the dealer's own tools, parts, and equipment of a total weight not to exceed five hundred pounds.

(c) On motor vehicles being tested for repair.

(d) On motor vehicles being moved to or from a motor vehicle dealer's place of business for sale.

(e) On motor vehicles being moved to or from motor vehicle service and repair facilities before sale.

(f) On motor vehicles being moved to or from motor vehicle exhibitions within the state of Washington, if any such exhibition does not exceed a period of twenty days.

~~((3))~~ (4) Mobile home and travel trailer dealer license plates may be used:

(a) On units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer.

(b) On mobile homes hauled to a customer's location for set-up after sale.

(c) On travel trailers held for sale to demonstrate the towing capability of the vehicle if a dated demonstration permit, valid for not more than seventy-two hours, is carried with the vehicle at all times.

(d) On mobile homes being hauled from a customer's location if the requirements of RCW 46.44.170 and 46.44.175 are met.

(e) On any motor vehicle owned by the dealer which is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer so owning any such motor vehicle.

(f) On vehicles being moved to or from vehicle exhibitions within the state of Washington, if any such exhibition does not exceed a period of twenty days.

~~((4))~~ (5) Miscellaneous vehicle dealer license plates may be used:

(a) To demonstrate any miscellaneous vehicle: PROVIDED, That:

(i) No such vehicle may be demonstrated on a public highway unless the customer has an appropriate endorsement on his driver's license, if such endorsement is required to operate such vehicle; and

(ii) A dated demonstration permit, valid for no more than seventy-two hours, is carried with the vehicle at all times it is operated by any such individual.

(b) On vehicles owned, held for sale, and which are in fact available for sale, by the firm when operated by an officer of the corporation, partnership, or proprietorship or by a bona fide full-time employee of the firm, if a card so identifying such individual is carried in the vehicle at all times it is operated by him.

(c) On vehicles being tested for repair.

(d) On vehicles being transported to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer.

(e) On vehicles on which any other item sold or to be sold by the dealer is transported from the place of business of the manufacturer to the place of business of the dealer or to and from places of business of the dealer if such vehicle and such item are purchased or sold as one package.

~~((5))~~ (6) Manufacturers properly licensed pursuant to this chapter may apply for and obtain manufacturer license plates and may be used:

(a) On vehicles being moved to or from the place of business of a manufacturer to a vehicle dealer within this state who is properly licensed pursuant to this chapter.

(b) To test vehicles for repair.

~~((6))~~ (7) Vehicle dealer license plates and manufacturer license plates shall not be used for any purpose other than set forth in this section and specifically shall not be:

(a) Used on any vehicle not within the class for which the vehicle dealer or manufacturer license plates are issued unless specifically provided for in this section.

(b) Loaned to any person for any reason not specifically provided for in this section.

(c) Used on any vehicles for the transportation of any person, produce, freight, or commodities unless specifically provided for in this section, except there shall be permitted the use of such vehicle dealer license plates on a vehicle transporting commodities in the course of a demonstration over a period not to exceed seventy-two consecutive hours from the commencement of such demonstration, if a representative of the dealer is present and accompanies such vehicle during the course of the demonstration.

(d) Used on any vehicle sold to a resident of another state to transport such vehicle to that other state in lieu of a trip permit or in lieu of vehicle license plates obtained from that other state.

~~((7))~~ (e) Used on any new vehicle unless the vehicle dealer has provided the department a current service agreement with the manufacturer or distributor of that vehicle as provided in RCW 46.70.041(1)(k).

(8) In addition to or in lieu of any sanction imposed by the director pursuant to RCW 46.70.101 for unauthorized use of vehicle dealer license plates or manufacturer license plates, the director may order that any or all vehicle dealer license plates or manufacturer license plates issued pursuant to this chapter be confiscated for such period as he deems appropriate.

Sec. 2. RCW 46.70.083 and 1990 c 250 s 66 are each amended to read as follows:

The license of a vehicle dealer or a vehicle manufacturer expires on the date that is twelve consecutive months from the date of issuance. The license may be renewed by filing with the department prior to the expiration of the license, a renewal application containing such information as the department may require to indicate the number of vehicle sales transacted during the past year, and any material change in the information contained in the original application. Failure by the dealer to comply is grounds for denial of the renewal application or dealer license plate renewal.

The dealer's established place of business shall be certified by a representative of the department at least once every thirty-two months, or more frequently as determined necessary by the department. The certification will verify compliance with the requirements of this chapter for an established place of business. Failure by the dealer to comply at any time is grounds for license suspension or revocation, denial of the renewal application, or monetary assessment.

Sec. 3. RCW 46.70.101 and 1989 c 337 s 16 are each amended to read as follows:

The director may by order deny, suspend, or revoke the license of any vehicle dealer or vehicle manufacturer or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if the director finds that the order is in the public interest and that the applicant or licensee:

(1) In the case of a vehicle dealer:

(a) The applicant or licensee, or any partner, officer, director, owner of ten percent or more of the assets of the firm, or managing employee:

(i) Was the holder of a license issued pursuant to this chapter, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled or which license was assessed a civil penalty and the assessed amount has not been paid;

(ii) Has been adjudged guilty of a crime which directly relates to the business of a vehicle dealer and the time elapsed since the adjudication is less than ten years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion.

For the purposes of this section, adjudged guilty shall mean in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended;

(iii) Has knowingly or with reason to know made a false statement of a material fact in his application for license or any data attached thereto, or in any matter under investigation by the department;

(iv) Has knowingly, or with reason to know, provided the department with false information relating to the number of vehicle sales transacted during the past one year in order to obtain a vehicle dealer license plate;

(v) Does not have an established place of business as required in this chapter;

~~((v))~~ (vi) Refuses to allow representatives or agents of the department to inspect during normal business hours all books, records, and files maintained within this state;

~~((vi))~~ (vii) Sells, exchanges, offers, brokers, auctions, solicits, or advertises a new or current model vehicle to which a factory new vehicle warranty attaches and fails to have a valid, written service agreement as required by this chapter, or having such agreement refuses to honor the terms of such agreement within a reasonable time or repudiates the same;

~~((vii))~~ (viii) Is insolvent, either in the sense that their liabilities exceed their assets, or in the sense that they cannot meet their obligations as they mature;

~~((viii))~~ (ix) Fails to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after such assessment becomes final;

~~((ix))~~ (x) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183;

~~((x))~~ (xi) Knowingly, or with reason to know, allows a salesperson employed by the dealer, or acting as their agent, to commit any of the prohibited practices set forth in subsection (1)(a) of this section and RCW 46.70.180.

(b) The applicant or licensee, or any partner, officer, director, owner of ten percent of the assets of the firm, or any employee or agent:

(i) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(ii) Has defrauded or attempted to defraud the state, or a political subdivision thereof of any taxes or fees in connection with the sale or transfer of a vehicle;

(iii) Has forged the signature of the registered or legal owner on a certificate of title;

(iv) Has purchased, sold, disposed of, or has in his or her possession any vehicle which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(v) Has willfully failed to deliver to a purchaser a certificate of ownership to a vehicle which he has sold;

(vi) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates or manufacturer license plates;

(vii) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(viii) Has engaged in practices inimical to the health or safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction or safety of vehicles;

(ix) Has aided or assisted an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, allowing use of facilities, dealer license number, or by any other means;

(x) Converts or appropriates, whether temporarily or permanently, property or funds belonging to a customer, dealer, or manufacturer, without the consent of the owner of the property or funds; or

(xi) Has sold any vehicle with knowledge that it has "REBUILT" on the title or has been declared totaled out by an insurance carrier and then rebuilt without clearly disclosing that fact in writing.

(c) The licensee or any partner, officer, director, or owner of ten percent or more of the assets of the firm holds or has held any such position in any other vehicle dealership licensed pursuant to this chapter which is subject to final proceedings under this section.

(2) In the case of a manufacturer, or any partner, officer, director, or majority shareholder:

(a) Was or is the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid;

(b) Has knowingly or with reason to know, made a false statement of a material fact in his application for license, or any data attached thereto, or in any matter under investigation by the department;

(c) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(d) Has defrauded or attempted to defraud the state or a political subdivision thereof, of any taxes or fees in connection with the sale or transfer of a vehicle;

(e) Has purchased, sold, disposed of, or has in his possession, any vehicle which he knows or has reason to know has been stolen or appropriated without the consent of the owner;

(f) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates and manufacturer license plates;

(g) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(h) Sells or distributes in this state or transfers into this state for resale, any new or unused vehicle to which a warranty attaches or has attached and refuses to honor the terms of such warranty within a reasonable time or repudiates the same;

(i) Fails to maintain one or more resident employees or agents to provide service or repairs to vehicles located within the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured and which are or have been sold or distributed in this state or transferred into this state for resale unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(j) Fails to reimburse within a reasonable time any vehicle dealer within the state of Washington who in good faith incurs reasonable obligations in giving effect to warranties that attach or have attached to any new or unused vehicle sold or distributed in this state or transferred into this state for resale by any such manufacturer;

(k) Engaged in practices inimical to the health and safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles;

(l) Is insolvent either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature;

(m) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183.

Passed the House March 12, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 141

[Substitute House Bill 1274]

STREET UTILITIES—REVISED PROVISIONS

Effective Date: 5/10/91

AN ACT Relating to street utilities; reenacting and amending RCW 82.80.040, 82.80.050, and 82.80.060; reenacting RCW 82.80.070; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.80.040 and 1990 c 42 s 209 are each reenacted and amended to read as follows:

A city or town may elect by action of its legislative authority to own, construct, maintain, operate, and preserve all or any described portion of its streets as a separate enterprise and facility, known as a street utility, and from time to time add other existing or new streets to that street utility, with full power to own, construct, maintain, operate, and preserve such streets. The legislative authority of the city or town may include as a part of the street utility, street lighting, traffic control devices, sidewalks, curbs, gutters, parking facilities, and drainage facilities. The legislative authority of the city or town is the governing body of the street utility.

Sec. 2. RCW 82.80.050 and 1990 c 42 s 210 are each reenacted and amended to read as follows:

A city or town electing to own, construct, maintain, operate, and preserve its streets as a separate street utility may levy periodic charges for the use or availability of the streets in ~~((order to meet))~~ a total annual amount of up to fifty percent of the actual costs for maintenance, operation, and preservation of facilities under the jurisdiction of the street utility. The rates charged for the use must be uniform for the same class of service and all ((classes of service)) business and residential properties must be subject to the utility charge. Charges imposed on businesses shall be measured solely by the number of employees and shall not exceed the equivalent of two dollars per full-time equivalent employee per month. Charges imposed against owners or occupants of residential property shall not exceed two dollars per month per housing unit as defined in RCW 35.95.040. ((Charges against owners of property that is exempt from property tax under chapter 84.36 RCW or leasehold tax under chapter 82.29A RCW shall be based solely on the number of employees of the tax exempt body associated with the property. Provided that in recognition of the benefits accruing to the city or town from the service provided by such tax exempt entities, the charges authorized herein shall be paid by the city or town.)) Charges authorized in this section shall not be imposed against owners of property: (1) Exempt under RCW 84.36.010; (2) exempt from the leasehold tax under chapter 82.29A RCW; or (3) used for nonprofit or sectarian purposes, which if said property were owned by such organization would qualify for exemption under chapter 84.36 RCW. The charges shall not be computed on the basis of an ad valorem charge on the underlying real property and improvements. This section shall not be used as a basis to directly or indirectly charge transportation impact fees or mitigation fees of any kind against new development. A city or town may contract with any other utility or local government to provide for billing and collection of the street utility charges.

In classifying service furnished within the general categories of business and residential, the city or town legislative authority may in its discretion consider any or all of the following factors: The difference in cost of service to the various users or traffic generators; location of the various users or traffic generators within the city or town; the difference in cost of maintenance, operation, construction, repair, and replacement of the various parts of the enterprise and facility; the different character of the service furnished to various users or traffic generators within the city or town; the size and quality of the street service furnished; the time of use or traffic generation; capital contributions made to the facility including but not limited to special assessments; and any other matters that present a reasonable difference as a ground for distinction, or the entire category of business or residential may be established as a single class. The city or town may reduce or exempt charges on residential properties to the extent of their occupancy by low-income senior citizens and low-income disabled citizens as provided in RCW 74.38.070(1), or to the extent of their occupancy by the needy or infirm.

The charges shall be charges against the property and the use thereof and shall become liens and be enforced in the same manner as rates and charges for the use of systems of sewerage under chapter 35.67 RCW.

Any city or town ordinance or resolution creating a street utility must contain a provision granting to any business a credit against any street utility charge the full amount of any commuter or employer tax paid for transportation purposes by that business.

Sec. 3. RCW 82.80.060 and 1990 c 42 s 211 are each reenacted and amended to read as follows:

The city or town electing to own, construct, maintain, operate, and preserve its streets and related facilities as a utility under this chapter may finance the construction, operation, maintenance, and preservation through local improvement districts, utility local improvement districts, or with proceeds from general obligation bonds and revenue bonds payable from the charges issued in accordance with chapter 35.41 ((σ)), 35.92, or 39.46 RCW, or any combination thereof. The city or town may use, in addition to the charges authorized by RCW 82.80.050, funds from general taxation, money received from the federal, state, or other local governments, and other funds made available to it. The proceeds of the charges authorized by RCW 82.80.050 shall be used strictly for transportation purposes in accordance with this chapter and RCW 82.80.070.

Sec. 4. RCW 82.80.070 and 1990 c 42 s 212 are each reenacted to read as follows:

(1) The proceeds collected pursuant to the exercise of the local option authority of RCW 82.80.010, 82.80.020, 82.80.030, and 82.80.050 (hereafter called "local option transportation revenues") shall be used for transportation purposes only, including but not limited to the following: The

operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high-capacity transit improvements and programs; and planning, design, and acquisition of right of way and sites for such transportation purposes. The proceeds collected from excise taxes on the sale, distribution, or use of motor vehicle fuel and special fuel under RCW 82.80.010 shall be used exclusively for "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(2) The local option transportation revenues shall be expended for transportation uses consistent with the adopted transportation and land use plans of the jurisdiction expending the funds and consistent with any applicable and adopted regional transportation plan for metropolitan planning areas.

(3) Each local government with a population greater than eight thousand that levies or expends local option transportation funds, is also required to develop and adopt a specific transportation program that contains the following elements:

(a) The program shall identify the geographic boundaries of the entire area or areas within which local option transportation revenues will be levied and expended.

(b) The program shall be based on an adopted transportation plan for the geographic areas covered and shall identify the proposed operation and construction of transportation improvements and services in the designated plan area intended to be funded in whole or in part by local option transportation revenues and shall identify the annual costs applicable to the program.

(c) The program shall indicate how the local transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions.

(d) The program shall include at least a six-year funding plan, updated annually, identifying the specific public and private sources and amounts of revenue necessary to fund the program. The program shall include a proposed schedule for construction of projects and expenditure of revenues. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for transportation improvements in the program.

(4) Local governments with a population greater than eight thousand exercising the authority for local option transportation funds shall periodically review and update their transportation program to ensure that it is consistent with applicable local and regional transportation and land use

plans and within the means of estimated public and private revenue available.

(5) In the case of expenditure for new or expanded transportation facilities, improvements, and services, priorities in the use of local option transportation revenues shall be identified in the transportation program and expenditures shall be made based upon the following criteria, which are stated in descending order of weight to be attributed:

(a) First, the project serves a multijurisdictional function;

(b) Second, it is necessitated by existing or reasonably foreseeable congestion;

(c) Third, it has the greatest person-carrying capacity;

(d) Fourth, it is partially funded by other government funds, such as from the state transportation improvement board, or by private sector contributions, such as those from the local transportation act, chapter 39.92 RCW; and

(e) Fifth, it meets such other criteria as the local government determines is appropriate.

(6) It is the intent of the legislature that as a condition of levying, receiving, and expending local option transportation revenues, no local government agency use the revenues to replace, divert, or loan any revenues currently being used for transportation purposes to nontransportation purposes. The association of Washington cities and the Washington state association of counties, in consultation with the legislative transportation committee, shall study the issue of nondiversion and make recommendations to the legislative transportation committee for language implementing the intent of this section by December 1, 1990.

(7) Local governments are encouraged to enter into interlocal agreements to jointly develop and adopt with other local governments the transportation programs required by this section for the purpose of accomplishing regional transportation planning and development.

(8) Local governments may use all or a part of the local option transportation revenues for the amortization of local government general obligation and revenue bonds issued for transportation purposes consistent with the requirements of this section.

NEW SECTION. Sec. 5. 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 shall take effect immediately.

Passed the House March 20, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 142

[Substitute House Bill 1401]

TAXPAYER RIGHTS AND RESPONSIBILITIES

Effective Date: 7/28/91 – Except Sections 9 through 11 which become effective on 1/1/92.

AN ACT Relating to taxpayer rights and responsibilities; amending RCW 82.32.050, 82.32.060, and 82.32.090; adding a new chapter to Title 82 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. This chapter shall be known and cited as "Washington taxpayers' rights and responsibilities."

NEW SECTION. Sec. 2. (1) The legislature finds that taxes are one of the most sensitive points of contact between citizens and their government, and that there is a delicate balance between revenue collection and taxpayers' rights and responsibilities. The rights, privacy, and property of Washington taxpayers should be protected adequately during the process of the assessment and collection of taxes.

(2) The legislature further finds that the Washington tax system is based largely on voluntary compliance and that taxpayers have a responsibility to inform themselves about applicable tax laws. The legislature also finds that the rights of the taxpayers and their attendant responsibilities are best implemented where the department of revenue provides accurate tax information, instructions, forms, administrative policies, and procedures to assist taxpayers to voluntarily comply with the provisions of the revenue act, Title 82 RCW, and where taxpayers cooperate in the administration of these provisions.

NEW SECTION. Sec. 3. The department of revenue shall administer this chapter. The department of revenue shall adopt or amend rules as may be necessary to fully implement this chapter and the rights established under this chapter.

NEW SECTION. Sec. 4. The taxpayers of the state of Washington have:

(1) The right to a written explanation of the basis for any tax deficiency assessment, interest, and penalties at the time the assessments are issued;

(2) The right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment;

(3) The right to redress and relief where tax laws or rules are found to be unconstitutional by the final decision of a court of record and the right to prompt administrative remedies in such cases;

(4) The right to confidentiality and protection from public inquiry regarding financial and business information in the possession of the department of revenue in accordance with the requirements of RCW 82.32.330;

(5) The right to receive, upon request, clear and current tax instructions, rules, procedures, forms, and other tax information; and

(6) The right to a prompt and independent administrative review by the department of revenue of a decision to revoke a tax registration, and to a written determination that either sustains the revocation or reinstates the registration.

NEW SECTION. Sec. 5. To ensure consistent application of the revenue laws, taxpayers have certain responsibilities under chapter 82.32 RCW, including, but not limited to, the responsibility to:

- (1) Register with the department of revenue;
- (2) Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue;
- (3) Keep accurate and complete business records;
- (4) File accurate returns and pay taxes in a timely manner;
- (5) Ensure the accuracy of the information entered on their tax returns;
- (6) Substantiate claims for refund;
- (7) Timely pay all taxes after closing a business and request cancellation of registration number; and
- (8) Timely respond to communications from the department of revenue.

NEW SECTION. Sec. 6. The director of revenue shall appoint a taxpayer rights advocate. The advocate shall be responsible for directly assisting taxpayers and their representatives to assure their understanding and utilization of the policies, processes, and procedures available to them in the resolution of problems.

NEW SECTION. Sec. 7. The department of revenue shall maintain a taxpayer services program consisting of, but not limited to:

- (1) Providing taxpayer assistance in the form of information, education, and instruction in person, by telephone, or by correspondence;
- (2) Conducting tax workshops at locations most conveniently accessible to the majority of taxpayers affected; and
- (3) Publishing written bulletins, instructions, current revenue laws, rules, court decisions, and interpretive rulings of the department of revenue.

NEW SECTION. Sec. 8. Sections 1 through 7 of this act shall constitute a new chapter in Title 82 RCW.

Sec. 9. RCW 82.32.050 and 1989 c 378 s 19 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment for tax liabilities arising before January 1, 1992. For tax liabilities arising after December 31, 1991, until the date of payment, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide. ~~((If payment is not received by the department by the due date specified in the notice, or any extension thereof, the department shall add a penalty of ten percent of the amount of the additional tax found due. If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.))~~

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States secretary of the treasury.

(3) No assessment or correction of an assessment for additional taxes due may be made by the department more than four years after the close of the tax year, except ~~((1))~~ (a) against a taxpayer who has not registered as required by this chapter, ~~((2))~~ (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or ~~((3))~~ (c) where a taxpayer has executed a written waiver of such limitation.

Sec. 10. RCW 82.32.060 and 1990 c 69 s 1 are each amended to read as follows:

If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes prescribed by RCW 82.32.050 a tax has been paid in excess of that properly due, the excess amount paid within such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. No refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

Notwithstanding the foregoing limitations there shall be refunded or credited to taxpayers engaged in the performance of United States government contracts or subcontracts the amount of any tax paid, measured by that portion of the amounts received from the United States, which the taxpayer is required by contract or applicable federal statute to refund or credit to the United States, if claim for such refund is filed by the taxpayer with the department within one year of the date that the amount of the refund or credit due to the United States is finally determined and filed within four years of the date on which the tax was paid: PROVIDED, That no interest shall be allowed on such refund.

Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in like manner, upon the filing with the department of a certified copy of the order or judgment of the court. Except as to the credits in computing tax authorized by RCW 82.04.435, interest at the rate of three percent per annum shall be allowed by the department and by any court on the amount of any refund or recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. For refunds of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest shall be the rate as computed for assessments under RCW 82.32.050(2), less one percentage point.

Sec. 11. RCW 82.32.090 and 1987 c 502 s 9 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than ~~((two))~~ five dollars.

(2) If payment of any tax assessed by the department of revenue is not received by the department by the due date specified in the notice, or any extension thereof, the department shall add a penalty of ten percent of the amount of the additional tax found due. No penalty so added shall be less than five dollars.

(3) If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty

of five percent of the amount of the tax, but not less than ~~((five))~~ ten dollars.

~~((Notwithstanding the foregoing,))~~ (4) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department shall add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department of revenue has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department of revenue shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(5) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

(6) The aggregate of penalties imposed under this ~~((chapter))~~ section for failure to ~~((five))~~ pay a tax due on a return, late payment of any tax, increase, or penalty, or issuance of a warrant shall not exceed ~~((twenty=~~ five)) thirty-five percent of the tax due, or ~~((seven))~~ twenty dollars, whichever is greater.

(7) The department of revenue may not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

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.

NEW SECTION. Sec. 13. Sections 9 through 11 of this act shall take effect January 1, 1992.

Passed the House April 28, 1991.

Passed the Senate April 28, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 143

[House Bill 1991]

VEHICLE SIZE AND WEIGHT RESTRICTIONS—EXEMPTION FROM

Effective Date: 7/28/91

AN ACT Relating to vehicle size and weight restrictions; and amending RCW 46.44.034 and 46.44.037.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.44.034 and 1961 c 12 s 46.44.034 are each amended to read as follows:

(1) The load, or any portion of any vehicle, operated alone upon the public highway of this state, or the load, or any portion of the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle, or the front bumper, if equipped with front bumper.

(2) No vehicle shall be operated upon the public highways with any part of the permanent structure or load extending in excess of fifteen feet beyond the center of the last axle of such vehicle. This subsection does not apply to "specialized equipment" designated under 49 U.S.C. [Sec.] 2311 that is operated on the interstate highway system, those designated portions of the federal-aid primary system, and routes constituting reasonable access from such highways to terminals and facilities for food, fuel, repairs, and rest.

Sec. 2. RCW 46.44.037 and 1985 c 351 s 2 are each amended to read as follows:

Notwithstanding the provisions of RCW 46.44.036 and subject to such rules and regulations governing their operation as may be adopted by the state department of transportation, operation of the following combinations is lawful:

(1) A combination consisting of a truck tractor, a semitrailer, and another semitrailer or a full trailer. In this combination a converter gear used to convert a semitrailer into a full trailer shall be considered to be a part of the full trailer and not a separate vehicle. A converter gear being pulled without load and not used to convert a semitrailer into a full trailer may be substituted in lieu of a full trailer or a semitrailer in any lawful combination;

(2) A combination not exceeding seventy-five feet in overall length consisting of ~~((three))~~ four trucks or truck tractors used in driveaway service where ~~((two))~~ three of the vehicles are towed by the ~~((third))~~ fourth in ~~((double))~~ triple saddle mount position;

(3) A combination consisting of a truck tractor carrying a freight compartment no longer than eight feet, a semitrailer, and another semitrailer or full trailer that meets the legal length requirement for a truck and trailer combination set forth in RCW 46.44.030.

Passed the House March 13, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 144

[Substitute Senate Bill 5501]

COMMERCIAL SALMON FISHING LICENSES—EVALUATION OF NUMBER TO BE ISSUED

Effective Date: 7/28/91

AN ACT Relating to commercial salmon fishing licenses; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The fishing capacity of the non-treaty salmon industry in the state of Washington may exceed that required to harvest non-treaty salmon allocations. This overcapacity can negatively impact the economic stability of the salmon fishing industry and in some instances impedes orderly fisheries. The legislature finds that it is in the best interest of the long term economic stability of the salmon industry to determine the optimum number of commercial salmon licenses that should be available.

NEW SECTION. Sec. 2. The director of the department of fisheries shall, in close cooperation with the salmon fishing industry, investigate the requirements for issuance, retention, and transfer of commercial salmon licenses, shall determine the optimum number of such licenses for each existing gear type and licensing area, and shall determine the best means for attaining that optimum number. The director shall, in making this determination, consider the impacts of all non-treaty fisheries on weak stocks of salmon including those originating in Hood Canal. The director shall also consider possible environmental factors contributing to the declining fishery in Hood Canal. The director shall specifically evaluate the following issues in Hood Canal:

(1) Whether commercial salmon fisheries in Hood Canal should be restricted to certain areas;

(2) Whether guidelines pertaining to depth of nets and distance from the shoreline for vessels or skiffs are necessary; and

(3) Whether more effective methods of minimizing incidental catch in Hood Canal of blackmouth during commercial net fisheries and of coho salmon during the chum salmon fishery are needed.

Based on this evaluation, the director shall determine whether fishing regulations for Hood Canal commercial salmon fisheries should be modified, and how to minimize environmental damage to the bottom and aquatic plant life of Hood Canal.

NEW SECTION. Sec. 3. The director of the department of fisheries shall, in determining the number of licenses that should be issued, consider the impact of commercial incidental catch of fish on the recreational fishery. The director shall evaluate the need for a study for observing and documenting incidental catch of fish in non-treaty commercial fisheries. If a study is determined to be necessary, the director shall develop a study plan for observing and documenting incidental catch. The director shall initiate discussions with tribal representatives concerning evaluation of the incidental catch in tribal fisheries. The department shall present its findings and recommendations under sections 2 and 3 of this act to the legislature on or before December 1, 1991.

The director shall invite members of the house fisheries and wildlife committee and the senate committee on environment and natural resources to attend meetings in which these recommendations are being developed.

Passed the Senate April 22, 1991.

Passed the House April 11, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 145

[Engrossed House Bill 1883]

GASOHOL USE ENCOURAGED

Effective Date: 7/28/91

AN ACT Relating to gasohol; amending RCW 19.112.010 and 82.36.225; and adding a new section to chapter 19.112 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 19.112.010 and 1990 c 102 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Motor fuel" means any liquid product used for the generation of power in an internal combustion engine used for the propulsion of a motor vehicle upon the highways of this state. Motor fuels containing ethanol may be marketed (~~as long as~~) if either (a) the base motor fuel meets the applicable standards before the addition of the ethanol or (b) the resultant blend meets the applicable standards after the addition of the ethanol.

(2) "Director" means the director of agriculture.

Sec. 2. RCW 82.36.225 and 1985 c 371 s 4 are each amended to read as follows:

Alcohol of any proof that is sold in this state for use as fuel in motor vehicles, farm implements and machines, or implements of husbandry is exempt from the motor vehicle fuel tax under this chapter. In addition, a tax credit of sixty percent of the tax rate imposed by RCW 82.36.025 shall be given for every gallon of alcohol used in an alcohol-gasoline blend which contains at least nine and one-half percent or more by volume of alcohol: PROVIDED, That in no case may the tax credit claimed be greater than the tax due on the gasoline portion of the blended fuel.

This section shall expire on December 31, ((1992)) 1999.

***NEW SECTION. Sec. 3. A new section is added to chapter 19.112 RCW to read as follows:**

The director may, with the concurrence of the department of ecology, grant a variance from the ASTM standards if necessary to produce a lower emission motor fuel.

***Sec. 3 was vetoed, see message at end of chapter.**

Passed the House March 20, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 10, 1991 with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 10, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 3, Engrossed House Bill No. 1883 entitled:

"AN ACT Relating to gasohol."

This bill extends the tax exemption for alcohol blended fuels. By so doing, this legislation serves to promote the use of gasohol. Its enactment will reduce dependency on imported oil, strengthen relevant agricultural markets, and reduce air pollution.

Section 3 of this bill, however, is duplicative of language referenced in the Clean Air Bill, Engrossed Substitute House Bill No. 1028, section 231. For this reason, I have vetoed section 3 of Engrossed House Bill No. 1883.

With the exception of section 3, Engrossed House Bill No. 1883 is approved."

CHAPTER 146

[Substitute House Bill 2005]

FREIGHT BROKERS AND FORWARDERS—PROOF OF FINANCIAL RESPONSIBILITY

Effective Date: 7/28/91

AN ACT Relating to freight brokers and forwarders; and amending RCW 81.80.430.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 81.80.430 and 1990 c 109 s 1 are each amended to read as follows:

(1) ~~((After June 30, 1991, each broker or forwarder))~~ A person who provides brokering or forwarding services for the transportation of property in intrastate commerce shall file with the commission and keep in effect, a surety bond or deposit of satisfactory security, in a sum to be determined by

the commission, but not less than five thousand dollars, conditioned upon such broker or forwarder making compensation to shippers, consignees, and carriers for all moneys belonging to them and coming into the broker's or forwarder's possession in connection with the transportation service.

(2) ~~((After June 30, 1991;))~~ It is unlawful for a broker or forwarder to conduct business ((as such)) in this state without first securing appropriate authority from the Interstate Commerce Commission, if such authority is required, and registering with and providing satisfactory evidence of financial responsibility to the Washington utilities and transportation commission. Satisfactory evidence of financial responsibility shall consist of a surety bond or deposit of security. Compliance with this requirement may be met by filing a copy of a surety bond or trust fund approved by the Interstate Commerce Commission. The commission shall grant such registration without hearing, upon application and payment of ((the appropriate filing)) a one-time registration fee as prescribed by ((this chapter for other applications for operating authority)) the commission. For purposes of this subsection, a broker or forwarder conducts business in this state when the broker or forwarder, its employees, or agents is physically present in the state and is acting as a broker or forwarder.

(3) Failure to file the bond ((or)), deposit ((the)) security, or provide satisfactory evidence of financial responsibility is sufficient cause for refusal of the commission to grant the application for a permit or registration. Failure to maintain the bond or the deposit of security is sufficient cause for cancellation of a permit or registration.

Passed the House March 20, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 147

[Substitute Senate Bill 5128]

DRUG OFFENDERS—NOTICE OF RELEASE

Effective Date: 7/28/91

AN ACT Relating to notification of release of serious drug offenders; adding a new section to chapter 9.94A RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 9.94A RCW to read as follows:

(1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community placement, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the

following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

(a) Any witnesses who testified against the inmate in any court proceedings involving the serious drug offense; and

(b) Any person specified in writing by the prosecuting attorney.

Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department of corrections shall send the notices required by this section to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401 (a)(1)(i) or (b)(1)(i).

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the Senate March 18, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 148

[Senate Bill 5367]

RECOVERED MATERIALS—TRANSPORTATION OF

Effective Date: 7/28/91

AN ACT Relating to transporting recovered materials; and amending RCW 81.80.440.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 81.80.440 and 1990 c 123 s 1 are each amended to read as follows:

(1) It is unlawful for a motor vehicle transporting recovered materials to perform a transportation service for compensation upon the public highways of this state without first having received a permit from the commission. The permits shall be granted upon a finding that the motor carrier is fit, willing, and able to provide transportation of recovered materials, and upon payment of the appropriate filing fee authorized by this chapter for other applications for operating authority, including payment of the annual regulatory fee imposed by RCW 81.80.320. The carriers are subject to the safety of operations and insurance requirements of the commission, but are not subject to rate regulation by the commission.

(2) The provisions of this section apply to motor vehicles when:

(a) Transporting recovered materials for a person from ((α)) one or more sites generating ten thousand or more tons of recovered materials per year to a reprocessing facility or an end-use manufacturing site;

(b) Transporting recovered materials from a reprocessing facility to another reprocessing facility or to an end-use manufacturing site; or

(c) Transporting recovered mixed waste paper from a reprocessing facility to an energy recovery facility.

(3) For the purposes of this section, the following definitions shall apply:

(a) "Recovered materials" means those commodities collected for recycling or reuse, such as papers, glass, plastics, used wood, metals, yard waste, used oil, and tires, that if not collected for recycling would otherwise be destined for disposal or incineration. "Recovered materials" shall not include any wood waste or wood byproduct generated from a logging, milling, or chipping activity;

(b) "Reprocessing facility" means a business registered under chapter 82.32 RCW or a nonprofit corporation identified under chapter 24.03 RCW that accepts or purchases recovered materials and prepares those materials for resale;

(c) "Mixed waste paper" means assorted low-value grades of paper that have not been separated into individual grades of paper at the point of collection; and

(d) "Energy recovery facility" means a facility designed to burn mixed waste paper as a fuel, except that such term does not include mass burn incinerators.

Passed the Senate March 7, 1991.

Passed the House April 10, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 149

[Substitute Senate Bill 5520]

OUT-OF-STATE WINE SHIPMENTS INTO STATE

Effective Date: 7/28/91

AN ACT Relating to shipments of wine; adding new sections to chapter 66.12 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Notwithstanding any other provision of Title 66 RCW, the holder of a license to manufacture wine in a state which affords holders of a Washington license issued under RCW 66.24.170 an equal reciprocal shipping privilege, may ship for personal use and not for resale not more than two cases of wine of its own manufacture per year, with each case containing not more than nine liters, to any state resident twenty-one years of age or older. Out-of-state wine manufacturers that are authorized to ship wine pursuant to sections 1 through 4 of this act shall first obtain a license from the Washington state liquor control board under procedures prescribed by rule of the board, before shipping wine into Washington. Delivery of a shipment under this section shall not be deemed to constitute a sale in this state.

NEW SECTION. Sec. 2. The shipping container of any wine sent into or out of this state under section 1 of this act shall be clearly labeled to indicate that the package cannot be delivered to a person under twenty-one years of age or to an intoxicated person.

NEW SECTION. Sec. 3. Pickup, delivery, or acceptance of any container of wine, by a person, that is shipped into this state to a person from a person who is not licensed as provided in section 1 of this act, shall constitute a civil violation and be subject to the penalties imposed by chapter 66.44 RCW.

NEW SECTION. Sec. 4. A license issued under section 1 of this act to a wine manufacturer, shipper, or person located outside this state who, within this state, advertises for or solicits consumers to engage in interstate reciprocal wine shipment under sections 1 through 4 of this act shall be revoked.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act are each added to chapter 66.12 RCW.

Passed the Senate March 11, 1991.

Passed the House April 9, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 150

[Substitute Senate Bill 5762]

WATER COMPANIES—FINANCING OF SAFETY FACILITIES

Effective Date: 7/28/91

AN ACT Relating to the financing of safety improvements by regulated water companies; and amending RCW 80.28.022.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 80.28.022 and 1990 c 132 s 6 are each amended to read as follows:

In determining the rates to be charged by each water company subject to its jurisdiction, the commission may provide for the funding of a reserve account exclusively for the purpose of making capital improvements approved by the department of health as a part of a long-range plan, or required by the department to assure compliance with federal or state drinking water regulations, or to perform construction or maintenance required by the department of ecology to secure safety to life and property under RCW 43.21A.064(2). Expenditures from the fund shall be subject to prior approval by the commission, and shall be treated for rate-making purposes as customer contributions.

Passed the Senate March 13, 1991.

Passed the House April 11, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 151

[Substitute House Bill 1019]

AQUIFER PROTECTION AREAS—IMPOSITION AND USE OF FEES

Effective Date: 7/28/91

AN ACT Relating to aquifer protection areas; and amending RCW 36.36.010 and 36.36.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.36.010 and 1985 c 425 s 1 are each amended to read as follows:

The protection of subterranean water from pollution or degradation is of great concern. The depletion of subterranean water is of great concern. The purpose of this chapter is to allow the creation of aquifer protection areas to finance the protection, preservation, and rehabilitation of subterranean water, and to reduce special assessments imposed upon households to finance facilities for such purposes. Pollution and degradation of subterranean drinking water supplies, and the depletion of subterranean drinking

water supplies, pose immediate threats to the safety and welfare of the citizens of this state.

Sec. 2. RCW 36.36.040 and 1988 c 258 s 1 are each amended to read as follows:

Aquifer protection areas may impose fees to fund:

(1) The preparation of a comprehensive plan to protect, preserve, and rehabilitate subterranean water, including ground water management programs adopted under chapter 90.44 RCW. This plan may be prepared as a portion of a county sewerage and/or water general plan pursuant to RCW 36.94.030;

(2) The construction of facilities for: (a) The removal of water-borne pollution; (b) water quality improvement; (c) sanitary sewage collection, disposal, and treatment; ~~((and))~~ (d) storm water or surface water drainage collection, disposal, and treatment; and (e) the construction of public water systems;

(3) The proportionate reduction of special assessments imposed by a county, city, town, or special district in the aquifer protection area for any of the facilities described in subsection (2) of this section; ~~((and))~~

(4) The costs of monitoring and inspecting on-site sewage disposal systems or community sewage disposal systems for compliance with applicable standards and rules, and for enforcing compliance with these applicable standards and rules in aquifer protection areas created after June 9, 1988; and

(5) The costs of: (a) Monitoring the quality and quantity of subterranean water and analyzing data that is collected; (b) ongoing implementation of the comprehensive plan developed under subsection (1) of this section; (c) enforcing compliance with standards and rules relating to the quality and quantity of subterranean waters; and (d) public education relating to protecting, preserving, and enhancing subterranean waters.

Passed the House March 6, 1991.

Passed the Senate April 17, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 152

[House Bill 1040]

MUNICIPAL UTILITIES—ADMINISTRATION COSTS—PAYMENT TO CITY

Effective Date: 7/28/91

AN ACT Relating to administration costs for municipal utilities; adding a new section to chapter 35.33 RCW; adding a new section to chapter 35.34 RCW; adding a new section to chapter 35A.33 RCW; and adding a new section to chapter 35A.34 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 35.33 RCW to read as follows:

Whenever any city or town apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city or town, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's or town's current expense fund for the value of such services.

NEW SECTION. Sec. 2. A new section is added to chapter 35.34 RCW to read as follows:

Whenever any city or town apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city or town, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's or town's current expense fund for the value of such services.

NEW SECTION. Sec. 3. A new section is added to chapter 35A.33 RCW to read as follows:

Whenever any code city apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's current expense fund for the value of such services.

NEW SECTION. Sec. 4. A new section is added to chapter 35A.34 RCW to read as follows:

Whenever any code city apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's current expense fund for the value of such services.

Passed the House March 8, 1991.

Passed the Senate April 16, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 153

[House Bill 1091]

UNIFORM FOREIGN-MONEY CLAIMS ACT

Effective Date: 1/1/92

AN ACT Relating to uniform foreign-money claims; adding a new chapter to Title 6 RCW; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this chapter, is:

(a) Paid to a claimant in an action or distribution proceeding;

(b) Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(c) Used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to section 4 of this act.

(9) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial

market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) "Spot-rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.

(12) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

NEW SECTION. Sec. 2. (1) This chapter applies only to a foreign-money claim in an action or distribution proceeding.

(2) This chapter applies to foreign-money issues even if other law under the conflict of laws rules of this state applies to other issues in the action or distribution proceeding.

NEW SECTION. Sec. 3. (1) The effect of this chapter may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(2) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

NEW SECTION. Sec. 4. (1) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(2) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(a) Regularly used between the parties as a matter of usage or course of dealing;

(b) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(c) In which the loss was ultimately felt or will be incurred by the party claimant.

NEW SECTION. Sec. 5. (1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(2) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within

a reasonable time after default, not exceeding thirty days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(3) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

NEW SECTION. Sec. 6. (1) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

(2) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(3) A person may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.

(4) The determination of the proper money of the claim is a question of law.

NEW SECTION. Sec. 7. (1) Except as provided in subsection (3) of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in United States dollars.

(4) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(5) A judgment or award made in an action or distribution proceeding on both (a) a defense, set-off, recoupment, or counterclaim, and (b) the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and specify the rates of exchange used.

(6) A judgment substantially in the following form complies with subsection (1) of this section:

IT IS ADJUDGED AND ORDERED, that defendant (insert name) pay to plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate—see section 9 of this act) percent a year or, at the option of the judgment debtor, the number of United States dollars

which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.

(7) If a contract claim is of the type covered by section 5 (a) or (b) [(1) or (2)] of this act, the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment must be filed or docketed and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment.

NEW SECTION. Sec. 8. The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

NEW SECTION. Sec. 9. (1) With respect to a foreign-money claim, recovery of prejudgment or preaward interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (2) of this section, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this state.

(2) The court or arbitrator shall increase or decrease the amount of prejudgment or preaward interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(3) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

NEW SECTION. Sec. 10. (1) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in section 7 of this act, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(2) A foreign judgment may be filed or docketed in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.

(3) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money

specified in the judgment, notwithstanding the entry of judgment in this state.

(4) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

NEW SECTION. Sec. 11. (1) Computations under this section are for the limited purposes of this section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(2) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections (3) and (4) of this section.

(3) A party seeking process, costs, bond, or other undertaking under subsection (2) of this section, shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(4) A party seeking the process, costs, bond, or other undertaking under subsection (2) of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

NEW SECTION. Sec. 12. (1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under subsection (1) of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

NEW SECTION. Sec. 13. Unless displaced by particular provisions of this chapter, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel,

fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions.

NEW SECTION. Sec. 14. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

NEW SECTION. Sec. 15. This chapter may be cited as the uniform foreign-money claims act.

NEW SECTION. Sec. 16. This act shall take effect January 1, 1992.

NEW SECTION. Sec. 17. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 18. This act applies prospectively only and not retroactively. It applies only to causes of action which are commenced on or after the effective date of this act.

NEW SECTION. Sec. 19. Sections 1 through 15 of this act shall constitute a new chapter in Title 6 RCW.

Passed the House March 12, 1991.

Passed the Senate April 9, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 154

[Engrossed House Bill 1096]

SMOKE DETECTORS—LANDLORD AND TENANT DUTIES

Effective Date: 7/28/91

AN ACT Relating to smoke detection devices; amending RCW 48.48.140, 59.18.060, and 59.18.130; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.48.140 and 1986 c 266 s 89 are each amended to read as follows:

- (1) Smoke detection devices shall be installed inside all dwelling units:
 - (a) Occupied by persons other than the owner on and after December 31, 1981; or
 - (b) Built or manufactured in this state after December 31, 1980.
- (2) The smoke detection devices shall be designed, manufactured, and installed inside dwelling units in conformance with:
 - (a) Nationally accepted standards; and
 - (b) As provided by the administrative procedure act, chapter 34.05 RCW, rules and regulations promulgated by the director of community development, through the director of fire protection.

(3) Installation of smoke detection devices shall be the responsibility of the owner. Maintenance of smoke detection devices, including the replacement of batteries where required for the proper operation of the smoke detection device, shall be the responsibility of the tenant, who shall maintain the device as specified by the manufacturer. At the time of a vacancy, the owner shall insure that the smoke detection device is operational prior to the reoccupancy of the dwelling unit.

(4) Any owner or tenant failing to comply with this section shall be punished by a fine of not more than ~~((fifty))~~ two hundred dollars.

(5) For the purposes of this section:

(a) "Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) "Smoke detection device" means an assembly incorporating in one unit a device which detects visible or invisible particles of combustion, the control equipment, and the alarm-sounding device, operated from a power supply either in the unit or obtained at the point of installation.

Sec. 2. RCW 59.18.060 and 1973 1st ex.s. c 207 s 6 are each amended to read as follows:

The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weathertight condition;

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11) Provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in RCW 48.48.140. The notice shall inform the tenant of the tenant's responsibility to maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of RCW 48.48.140(3). The notice must be signed by the landlord or the landlord's authorized agent and tenant with copies provided to both parties.

(12) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent.

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section.

Sec. 3. RCW 59.18.130 and 1988 c 150 s 2 are each amended to read as follows:

Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so. Violations may be prosecuted under chapter 9A-.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW; ((and))

(7) Maintain the smoke detection device in accordance with the manufacturer's recommendations, including the replacement of batteries where required for the proper operation of the smoke detection device, as required in RCW 48.48.140(3); and

(8) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his obligations under this chapter: **PROVIDED**, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee.

Passed the House February 8, 1991.

Passed the Senate April 8, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 155

[Engrossed House Bill 1139]

EDUCATIONAL STAFF ASSOCIATES—CONTINUING EDUCATION REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to continuing education credit requirements; and adding a new section to chapter 28A.415 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28A.415 RCW to read as follows:

The state board of education rules for continuing education shall provide that educational staff associates may use credits or clock hours that satisfy the continuing education requirements for their state professional licensure, if any, to fulfill the continuing education requirements established by the state board of education.

Passed the House March 12, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 156

[Substitute House Bill 1196]

WASHINGTON STATE CENTER FOR ENVIRONMENTAL AND MOLECULAR
SCIENCES

Effective Date: 7/28/91

AN ACT Relating to the Washington state center for environmental and molecular sciences; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

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

(1) The technology and associated sciences that are necessary to clean up hazardous waste are not sufficiently advanced to make many waste management and environmental restoration efforts efficient and cost-effective.

(2) A lack of personnel trained in waste management and environmental restoration technologies will significantly impede future clean-up efforts.

(3) Research and development in molecular science may result in scientific breakthroughs that will assist future waste management and environmental restoration efforts, and lead to the design and development of new materials and processes that will advance scientific knowledge and technology.

(4) Research and development in the environmental and molecular sciences will require expertise that cuts across traditional areas of research, research efforts that require highly interdisciplinary approaches in the biological and physical sciences, and interdisciplinary education and training programs. Accordingly, the research and education in this area will require a blending of molecular science and technology and interdisciplinary education and training.

(5) Hanford has been cited as a centerpiece in the federal government's research and development efforts in molecular science and waste management and environmental restoration.

(6) The state of Washington and its institutions of higher education could benefit greatly from the technical and scientific expertise available at Hanford.

(7) The Washington State University branch campus in the Tri-Cities has a unique opportunity to help the state capitalize on this opportunity due to its close physical proximity to the department of energy's center for environmental excellence and its molecular science center situated at the Pacific Northwest laboratory.

NEW SECTION. Sec. 2. By November 1, 1991, Washington State University shall submit to the higher education coordinating board for approval a proposal for the long-term development of a center for environmental and molecular sciences at Washington State University/Tri-Cities.

A number of purposes are envisioned for the center and are delineated in this section. It is to be understood that the accomplishment of these purposes will require the active support of Washington State University/Pullman and, where clearly appropriate, the cooperative involvement of other educational, governmental, and industrial partners, such as the Pacific Northwest laboratory.

The center shall be designed to accomplish the following purposes:

(1) Coordinate the relationship of Washington State University with the federal government's waste management and environmental restoration efforts at the Hanford site, the Pacific Northwest laboratory's molecular science center and center for environmental excellence, and other environmental and molecular science research and technology efforts at the Hanford site, to ensure that all available expertise is utilized in aiding these programs, as well as ensuring that Washington State University is able to participate in these efforts.

(2) Develop upper-division and graduate instructional programs in environmental assessment and remediation technology and molecular sciences, as approved by the higher education coordinating board.

(3) Enhance research capabilities at Washington State University/Tri-Cities and Washington State University/Pullman in molecular science and hazardous waste management and environmental restoration technology by blending forefront molecular science research and waste management and environmental restoration educational efforts.

(4) Ensure that the state of Washington and its institutions of higher education benefit from the technical and scientific expertise at Hanford and the Tri-Cities.

(5) Develop the expertise necessary to assist in technology transfer of molecular science and hazardous waste research and development efforts to private industry, institutions of higher education, and other governmental agencies.

(6) Foster strong cooperative relationships among the federal government, the state, and businesses and industries interested in hazardous waste and molecular science research and development.

(7) Initiate collaborative research programs with Hanford contractors, staff, facilities, and equipment in support of instructional programs.

(8) Ensure that the molecular science and hazardous waste expertise of all Washington universities and colleges is made available to aid the federal research efforts.

Funding for education and research programs offered through the center shall supplement and not supplant funding for other education and research programs offered at Washington State University/Tri-Cities and Washington State University/Pullman. Moreover, the activities and programs of the Washington state center for environmental and molecular sciences shall be integrated with related activities and programs at Washington State University/Pullman.

NEW SECTION. Sec. 3. The proposal provided for in section 2 of this act shall include:

(1) A review of existing relationships among federal entities and principal contractors at Hanford with Washington's institutions of higher education;

(2) A description of methods for coordinating with and utilizing the resources of the other institutions of higher education in the state with expertise in this area;

(3) A description of methods for coordinating relationships between Washington State University and the Pacific Northwest laboratory's molecular science center and center for environmental excellence, as well as other research efforts at the Hanford site;

(4) A description of the upper-division and graduate program curricula necessary at Washington State University to educate and train professionals needed to enhance Washington's efforts in molecular science and hazardous waste science and technology;

(5) An assessment of the research capabilities needed at Washington State University in molecular science and hazardous waste management and environmental restoration technology to improve the efficiency of clean-up efforts in the Tri-Cities and other areas in Washington;

(6) An estimate of the expertise and support necessary to assist in technology transfer of molecular science and hazardous waste research and development efforts;

(7) Recommendations on ways to provide maximum benefit to the citizens of Washington from the research at Hanford and the Tri-Cities;

(8) Estimated operating and facilities costs of the center; and

(9) Additional information as determined by the higher education coordinating board.

The higher education coordinating board shall review the proposal. In making its review, the higher education coordinating board shall evaluate both policy and fiscal aspects of the proposal and shall specifically review the center's proposed role and mission within the context of the development plan for branch campuses of Washington State University. The higher education coordinating board shall make recommendations to the governor and

the legislature by February 1, 1992, on: (a) Whether to establish a Washington state center for environmental and molecular sciences, and, if so, (b) the long-term development of the center.

Passed the House March 6, 1991.

Passed the Senate April 17, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 157

[House Bill 1312]

CAMPAIGN CONTRIBUTION REPORTING—SPECIAL REPORTS

Effective Date: 7/28/91

AN ACT Relating to special reports for campaign contributions; amending RCW 42.17.105 and 42.17.175; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 42.17.105 and 1989 c 280 s 11 are each amended to read as follows:

(1) Campaign treasurers shall prepare and deliver to the commission a special report regarding any contribution or aggregate of contributions which: ~~((a)) Exceeds five hundred dollars; ((b)) is from a single person or entity; ((c)) and is received ((before a primary or general election, and (d) Is received: (i) After the period covered by the last report required by RCW 42.17.080 and 42.17.090 to be filed before that primary, or (ii) within twenty-one days preceding that general election))~~ during a special reporting period.

~~((2))~~ Any political committee making a contribution or an aggregate of contributions to a single entity which exceeds five hundred dollars shall also prepare and deliver to the commission the special report if the contribution or aggregate of contributions is made ~~((before a primary or general election and: (a))~~ during a special reporting period.

For the purposes of subsections (1) through (7) of this section:

(a) Each of the following intervals is a special reporting period: (i) The interval beginning after the period covered by the last report required by RCW 42.17.080 and 42.17.090 to be filed before ((that)) a primary and concluding on the end of the day before that primary; ((or (b) within)) and (ii) the interval composed of the twenty-one days preceding ((that)) a general election; and

(b) An aggregate of contributions includes only those contributions received from a single entity during any one special reporting period or made by the contributing political committee to a single entity during any one special reporting period.

(2) If a campaign treasurer files a special report under this section for one or more contributions received from a single entity during a special reporting period, the treasurer shall also file a special report under this section for each subsequent contribution of any size which is received from that entity during the special reporting period. If a political committee files a special report under this section for a contribution or contributions made to a single entity during a special reporting period, the political committee shall also file a special report for each subsequent contribution of any size which is made to that entity during the special reporting period.

(3) Except as provided in subsection (4) of this section, the special report required by this section shall be delivered in written form, including but not limited to mailgram, telegram, or nightletter. The special report required of a contribution recipient by subsection (1) of this section shall be delivered to the commission within forty-eight hours of the time, or on the first working day after(;;): The contribution exceeding five hundred dollars is received by the candidate or ((campaign)) treasurer; the aggregate received by the candidate or treasurer first exceeds five hundred dollars; or the subsequent contribution that must be reported under subsection (2) of this section is received by the candidate or treasurer. The special report required of a contributor by subsection ((f2)) (1) of this section ((and)) or RCW 42.17.175 shall be delivered to the commission, and the candidate or political committee to whom the contribution ((is)) or contributions are made, within twenty-four hours of the time, or on the first working day after(;;): The contribution is made; the aggregate of contributions made first exceeds five hundred dollars; or the subsequent contribution that must be reported under subsection (2) of this section is made.

(4) The special report may be transmitted orally by telephone to the commission to satisfy the delivery period required by subsection (3) of this section if the written form of the report is also mailed to the commission and postmarked within the delivery period established in subsection (3) of this section.

(5) The special report shall include at least:

(a) The amount of the contribution or contributions;

(b) The date or dates of receipt;

(c) The name and address of the donor;

(d) The name and address of the recipient; and

(e) Any other information the commission may by rule require.

(6) Contributions reported under this section shall also be reported as required by other provisions of this chapter.

(7) The commission shall publish daily a summary of the special reports made under this section and RCW 42.17.175.

(8) It is a violation of this chapter for any person to make, or for any candidate or political committee to accept from any one person, contributions reportable under RCW 42.17.090 in the aggregate exceeding fifty

thousand dollars for any campaign for state-wide office or exceeding five thousand dollars for any other campaign subject to the provisions of this chapter within twenty-one days of a general election. This subsection does not apply to contributions made by, or accepted from, a major Washington state political party as defined in RCW 29.01.090.

(9) Contributions governed by this section include, but are not limited to, contributions made or received indirectly through a third party or entity whether the contributions are or are not reported to the commission as earmarked contributions under RCW 42.17.135.

Sec. 2. RCW 42.17.175 and 1985 c 359 s 2 are each amended to read as follows:

Any lobbyist registered under RCW 42.17.150, any person who lobbies, and any lobbyist's employer making a contribution or an aggregate of contributions to a single entity that exceeds five hundred dollars during a special reporting period before a primary or general election, as such period is specified in RCW 42.17.105(1), shall file ((a)) one or more special reports for the contribution or aggregate of contributions and for subsequent contributions made during that period under the same circumstances and to the same extent that a contributing political committee must file such a report or reports under RCW 42.17.105. Such a special report shall be filed in the same manner provided under RCW 42.17.105 ((if the contribution is made before a primary or general election and: (1) After the period covered by the last report required by RCW 42.17.080 and 42.17.090 to be filed before that primary; or (2) within twenty-one days preceding that general election)) for a special report of a contributing political committee.

Passed the House March 11, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 158

[Substitute House Bill 1586]

NURSING HOMES OWNED BY CONTINUING CARE COMMUNITIES— EXEMPTION FROM CERTIFICATE OF NEED REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to continuing care retirement communities; and amending RCW 70.38.025 and 70.38.111.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.38.025 and 1989 1st ex.s. c 9 s 602 are each amended to read as follows:

When used in this chapter, the terms defined in this section shall have the meanings indicated.

(1) "Board of health" means the state board of health created pursuant to chapter 43.20 RCW.

(2) "Capital expenditure" is an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor) which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been made by purchase, such expenditure shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility which if acquired directly by such facility would be subject to certificate of need review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure.

(3) "Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service. A "continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

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

(5) "Expenditure minimum" means, for the purposes of the certificate of need program, one million dollars adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule.

(6) "Health care facility" means hospices, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, (~~continuing care retirement communities;~~) and home health agencies, and includes such facilities when owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include Christian Science sanatoriums operated, listed, or certified by the First Church of Christ Scientist, Boston, Massachusetts. In addition, the term

does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not charge fees for such services; and (c) if not contrary to federal law as necessary to the receipt of federal funds by the state. ~~((In addition, the term does not include a continuing care retirement community which: (i) Offers services only to contractual members; and (ii) provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some form of assistance with activities of daily living, and (iii) contractually assumes responsibility for costs of services exceeding the member's financial responsibility as stated in contract, so that, with the exception of insurance purchased by the retirement community or its members, no third party, including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources; and (iv) has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home; and (v) maintains a binding agreement with the department of social and health services assuring that financial liability for services to members, including nursing home services, shall not fall upon the department of social and health services; and (vi) does not operate, and has not undertaken, a project which would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and (vii) has undertaken no increase in the total number of nursing home beds after January 1, 1988, unless a professional review of pricing and long-term solvency was obtained by the retirement community within the prior five years and fully disclosed to members:))~~

(7) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, section 1310(d) of the Public Health Services Act; or

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services, and out-of-area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in (b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(8) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services and as defined in federal law.

(9) "Health service area" means a geographic region appropriate for effective health planning which includes a broad range of health services.

(10) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(11) "Provider" generally means a health care professional or an organization, institution, or other entity providing health care but the precise definition for this term shall be established by rule of the department, consistent with federal law.

(12) "Public health" means the level of well-being of the general population; those actions in a community necessary to preserve, protect, and promote the health of the people for which government is responsible; and the governmental system developed to guarantee the preservation of the health of the people.

(13) "Secretary" means the secretary of health or the secretary's designee.

(14) "Tertiary health service" means a specialized service that meets complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

(15) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW.

Sec. 2. RCW 70.38.111 and 1989 1st ex.s. c 9 s 604 are each amended to read as follows:

(1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination

of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization;

if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application

submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a) (ii) or (iii) or the requirements of (1)(b) (i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements only to the offering of inpatient tertiary health services and then only to the extent that such offering is not exempt under the provisions of this section.

(5)(a) The department shall not require a certificate of need for the construction, development, or other establishment of a nursing home, or the addition of beds to an existing nursing home, that is owned and operated by a continuing care retirement community that:

(i) Offers services only to contractual members;

(ii) Provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some assistance with daily living activities;

(iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;

(iv) Has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;

(vi) Does not operate, and has not undertaken a project that would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has obtained a professional review of pricing and long-term solvency within the prior five years which was fully disclosed to members.

(b) A continuing care retirement community shall not be exempt under this subsection from obtaining a certificate of need unless:

(i) It has submitted an application for exemption at least thirty days prior to commencing construction of, is submitting an application for the licensure of, or is commencing operation of a nursing home, whichever comes first; and

(ii) The application documents to the department that the continuing care retirement community qualifies for exemption.

(c) The sale, lease, acquisition, or use of part or all of a continuing care retirement community nursing home that qualifies for exemption under this subsection shall require prior certificate of need approval to qualify for licensure as a nursing home unless the department determines such sale, lease, acquisition, or use is by a continuing care retirement community that meets the conditions of (a) of this subsection.

Passed the House March 12, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 159

[Substitute House Bill 1721]

JUDICIAL RETIREMENT SYSTEM—REFUND OF CONTRIBUTIONS

Effective Date: 7/28/91

AN ACT Relating to refunding contributions to the judicial retirement system; adding a new section to chapter 2.10 RCW; adding a new section to chapter 2.12 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 2.10 RCW to read as follows:

If a judge who was a member of this system left the system before July 1, 1988, and neither the judge nor the judge's surviving spouse: (1) Was eligible at that time to receive a benefit under this chapter; or (2) has received an amount under a sundry claims appropriation from the state legislature intended as a refund of the judge's contributions paid under RCW 2.10.090(1); then the judge or the judge's surviving spouse may apply to the department for and receive a refund of such contributions.

NEW SECTION. Sec. 2. A new section is added to chapter 2.12 RCW to read as follows:

If a judge who was a member of this system left the system before July 1, 1988, and neither the judge nor the judge's surviving spouse: (1) Was eligible at that time to receive a benefit under this chapter; or (2) has received an amount under a sundry claims appropriation from the state legislature intended as a refund of the judge's contributions paid under RCW 2.12.060; then the judge or the judge's surviving spouse may apply to the department for and receive a refund of such contributions.

NEW SECTION. Sec. 3. If by June 30, 1991, the omnibus operating budget appropriations act for the 1991-93 biennium does not provide specific funding for this act, referencing this act by bill number, this act is null and void.

Passed the House March 18, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 160

[Substitute House Bill 1861]

OSTEOPATHIC MEDICINE AND SURGERY—STATE BOARD AND LICENSING PROVISIONS REVISED

Effective Date: 7/28/91

AN ACT Relating to administrative requirements for osteopathic medicine and surgery; amending RCW 18.57.001, 18.57.003, 18.57.020, 18.57.040, 18.57.050, 18.57.080, 18.57.145, and 18.57.130; adding new sections to chapter 18.57 RCW; and repealing RCW 18.57.085.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.57.001 and 1979 c 117 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Board" means the Washington state board of osteopathic medicine and surgery;

(2) "Department" means the department of ((licensing)) health;

(3) ((~~"Director" means the director of licensing~~)) "Secretary" means the secretary of health; and

(4) "Osteopathic medicine and surgery" means the use of any and all methods in the treatment of disease, injuries, deformities, and all other physical and mental conditions in and of human beings, including the use of osteopathic manipulative therapy. The term means the same as "osteopathy and surgery".

Sec. 2. RCW 18.57.003 and 1984 c 287 s 42 are each amended to read as follows:

There is hereby created an agency of the state of Washington, consisting of seven individuals appointed by the governor to be known as the Washington state board of osteopathic medicine and surgery.

~~((The members of the first board shall be appointed to serve the following terms from the date of their appointment: Two members for two years, two members for three years, and three members for five years, or until their successors are appointed and fully qualified. The respective terms of office of such initial appointees shall be designated by the governor at the time of appointment.))~~ On expiration of the term of any member, the governor shall appoint for a period of five years ~~((an individual of similar qualifications))~~ a qualified individual to take the place of such member. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been appointed and shall have qualified. Initial appointments shall be made and vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor.

Each member of the board shall be a citizen of the United States and must be an actual resident of this state. One member shall be a consumer who has neither a financial nor a fiduciary relationship to a health care delivery system, and every other member must have been in active practice as a licensed osteopathic physician and surgeon in this state for at least five years immediately preceding appointment.

The board shall ~~((meet as soon as practicable after appointment and))~~ elect a ~~((chairman and))~~ chairperson, a secretary, and a vice-chairperson from its members. Meetings of the board shall be held at least four times a year and at such place as the board shall determine and at such other times and places as the board deems necessary.

~~((It shall require the))~~ An affirmative vote of a simple majority of ((~~at~~)) the members ((~~of~~)) present at a meeting or hearing shall be required for the board to take any official action. The board may not take any action without a quorum of the board members present. A simple majority of the board members currently serving constitutes a quorum of the board.

Each member 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.

Any member of the board may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office, or upon written request of two-thirds of the physicians licensed under this chapter and in active practice in this state.

Sec. 3. RCW 18.57.020 and 1979 c 117 s 11 are each amended to read as follows:

A license shall be issued by the ~~((director))~~ secretary authorizing the holder ~~((thereof))~~ to practice ~~((osteopathy or))~~ osteopathic medicine and surgery~~((, including the use of internal medicine and drugs, and shall be the~~

~~only type of license issued. All licenses to practice osteopathy or osteopathic medicine and surgery, including the use of internal medicine and drugs, heretofore issued shall remain in full force and effect. PROVIDED, That a license to practice osteopathy and surgery shall be deemed to be the same as a license to practice osteopathic medicine and surgery, and the former license may be exchanged for the latter license at the option of the license holder)).~~ In order to procure a license to practice osteopathic medicine and surgery, the applicant must ~~((file with))~~ provide the board ~~((satisfactory testimonials of good moral character and))~~ evidence that a diploma has been issued to the applicant by ((some legally chartered)) an accredited school of osteopathic medicine and surgery, approved by the board ((or satisfactory evidence of having possessed such diploma, and he must file with such diploma an application sworn to before some person authorized to administer oaths, and attested by the hand and seal of such officer, if he have a seal, stating that he is the person named in said diploma, that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination, without fraud or misrepresentation)). The ~~((said))~~ application shall be made upon a form prepared by the ~~((director))~~ secretary, with the approval of the board, and it shall contain such information concerning said osteopathic medical instruction and the preliminary education of the applicant as the board may by rule provide. Applicants who have failed to meet the requirements must be rejected.

An applicant for a license to practice osteopathic medicine and surgery must furnish evidence satisfactory to the board that he or she has served for not less than one year ~~((as intern or resident))~~ in a postgraduate training program ~~((acceptable to))~~ approved by the board.

In addition, the applicant may be required to furnish evidence satisfactory to the board that he or she is physically and mentally capable of safely carrying on the practice of osteopathic medicine and surgery. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice osteopathic medicine and surgery. The applicant ~~((must))~~ shall also show that he or she has not been guilty of any conduct which would constitute grounds for denial, suspension, or revocation of such license under the laws of the state of Washington.

Nothing in this section shall be construed as prohibiting the board from requiring such additional information from applicants as it deems necessary.

Nothing in this chapter shall be construed to require any applicant for licensure, or any licensee, as a requisite of retaining or renewing licensure under this chapter, to be a member of any political and/or professional organization.

NEW SECTION. Sec. 4. A new section is added to chapter 18.57 RCW to read as follows:

A licensed osteopathic physician and surgeon who desires to leave the active practice of osteopathic medicine and surgery in this state may secure from the secretary an inactive license. The initial and renewal fees for an inactive license shall be determined by the secretary as provided in RCW 43.70.250. The holder of an inactive license may reactivate his or her license to practice osteopathic medicine and surgery in accordance with rules adopted by the board.

Sec. 5. RCW 18.57.040 and 1919 c 4 s 19 are each amended to read as follows:

Nothing in this chapter shall be construed to prohibit:

(1) Service in the case of emergency(~~(, or)~~);

(2) The domestic administration of family remedies(~~(, or)~~);

(3) The practice of midwifery as permitted under chapter 18.50 RCW;
(~~nor shall this chapter apply to~~)

(4) The practice of osteopathic medicine and surgery by any commissioned medical officer in the United States (~~(army, navy, or marine hospital)~~) government or military service or by any osteopathic physician and surgeon employed by a federal agency, in the discharge of his or her official duties; (~~nor to any licensed~~)

(5) Practice by a dentist licensed under chapter 18.32 RCW when engaged exclusively in the practice of dentistry; (~~nor shall this chapter apply to~~)

(6) Practice by any (~~(practitioner)~~) osteopathic physician and surgeon from any other state or territory in which he or she resides: PROVIDED, That such practitioner shall not open an office or appoint a place of meeting patients or receive calls within the limits of this state;

(7) Practice by a person who is a student enrolled in an accredited school of osteopathic medicine and surgery approved by the board: PROVIDED, That the performance of such services be only pursuant to a course of instruction or assignments from his or her instructor or school, and such services are performed only under the supervision of a person licensed pursuant to this chapter or chapter 18.71 RCW;

(8) Practice by an osteopathic physician and surgeon serving a period of clinical postgraduate medical training in a postgraduate program approved by the board: PROVIDED, That the performance of such services be only pursuant to a course of instruction in said program, and said services are performed only under the supervision and control of a person licensed pursuant to this chapter or chapter 18.71 RCW; or

(9) Practice by a person who is enrolled in a physician assistant program approved by the board who is performing such services only pursuant to a course of instruction in said program: PROVIDED, That such services are performed only under the supervision and control of a person licensed pursuant to this chapter or chapter 18.71 RCW.

This chapter shall not be construed to apply in any manner to any other system or method of treating the sick or afflicted or to apply to or interfere in any way with the practice of religion or any kind of treatment by prayer.

Sec. 6. RCW 18.57.050 and 1985 c 7 s 55 are each amended to read as follows:

Each applicant on making application shall pay the ~~((director))~~ secretary a fee determined by the ~~((director))~~ secretary as provided in RCW ~~((43.24.086 which shall be paid to the state treasurer by said director and used to defray the expenses and compensation of said director. In case the applicant's credentials are insufficient, or in case he does not desire to take the examination, the sum of fifteen dollars shall be returned. All persons licensed to practice osteopathy or osteopathic medicine and surgery within this state who are engaged in active practice shall pay on or before the first day of May of each year to the director a renewal license fee determined by the director as provided in RCW 43.24.086))~~ 43.70.250. Application fees are nonrefundable. The board may establish rules and regulations governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. ~~((Licenses not so renewed will not be valid. The director shall thirty days or more before May 1st of each year mail to all active practitioners of osteopathy or osteopathic medicine and surgery in this state at their last known address a notice of the fact that the renewal fee will be due on or before the first of May. Nothing in this chapter shall be construed so as to require that the receipt shall be recorded as original licenses are required to be recorded.))~~ The secretary shall establish a renewal and late renewal penalty fee as provided in RCW 43.70.250. Failure to renew the license invalidates all privileges granted by the license. The board shall determine by rule when a license shall be canceled for failure to renew and shall establish prerequisites for relicensing.

Sec. 7. RCW 18.57.080 and 1979 c 117 s 13 are each amended to read as follows:

Applicants for a license ~~((must be personally examined by the board as to their qualifications))~~ to practice osteopathic medicine and surgery must successfully complete an examination prepared or approved by the board. The examination shall be conducted in the English language, shall ~~((be practical in character and designed to discover))~~ determine the applicant's fitness to practice osteopathic medicine and surgery, and ~~((shall))~~ may be in whole or in part in writing or by practical application on ~~((the following fundamental subjects, to wit: Anatomy, histology, gynecology, pathology, bacteriology, chemistry, toxicology, physiology, obstetrics, general diagnosis, hygiene, principles and practice of osteopathic medicine, surgery, and the management of surgical cases (including anesthetics) and any other subjects that the board shall deem advisable.))~~ those general subjects and topics of which knowledge is commonly and generally required of applicants who

have obtained the doctor of osteopathic medicine and surgery conferred by accredited schools of osteopathic medicine and surgery approved by the board. If an examination does not encompass the subject of osteopathic principles and practice, the applicant shall be required to complete the board-administered examination. The board may prepare and administer or approve preparation and administration of examinations on such subjects as the board deems advisable. The examination papers of any examination administered by the board shall form a part of the applicant's records ((of the director)) and shall be ((kept on file by the board for a period of one year after examination. In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret until final action by the board on such application)) retained as determined by the secretary for a period of not less than one year. All applicants for examination or reexamination shall pay a fee determined by the secretary as provided in RCW 43.70.250.

Sec. 8. RCW 18.57.145 and 1959 c 110 s 2 are each amended to read as follows:

No provision of this chapter or of any other law shall prevent any person who holds a valid, unrevoked certificate to practice ((osteopathy)) osteopathic medicine and surgery from using in combination with his or her name the designation "Osteopathic Physician and Surgeon" or the abbreviation of his or her professional degree, Doctor of Osteopathy (D.O.), provided he or she hold such professional degree, or any combination thereof upon his or her stationery, in any professional lists or directories or in other places where the same may properly appear as permitted within the canons of ethics ((now or hereafter promulgated)) approved by the ((Washington State Osteopathic Association or its successors)) board.

NEW SECTION. Sec. 9. A new section is added to chapter 18.57 RCW to read as follows:

The board may grant approval to issue without examination a license to an osteopathic physician and surgeon in a board-approved postgraduate training program in this state if the applicant files an application and meets all the requirements for licensure set forth in RCW 18.57.020 except for completion of one year of postgraduate training. The secretary shall issue a postgraduate osteopathic medicine and surgery license that permits the physician in postgraduate training to practice osteopathic medicine and surgery only in connection with his or her duties as a physician in postgraduate training and does not authorize the physician to engage in any other form of practice. Each physician in postgraduate training shall practice osteopathic medicine and surgery only under the supervision of a physician licensed in this state under this chapter or chapter 18.71 RCW, but such supervision shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

All persons licensed under this section shall be subject to the jurisdiction of the board of osteopathic medicine and surgery as set forth in this chapter and chapter 18.130 RCW.

Persons applying for licensure pursuant to this section shall pay an application and renewal fee determined by the secretary as provided in RCW 43.70.250. Licenses issued hereunder may be renewed annually. Any person who obtains a license pursuant to this section may, apply for licensure under this chapter, but shall submit a new application form and comply with all other licensing requirements of this chapter.

Sec. 10. RCW 18.57.130 and 1985 c 7 s 56 are each amended to read as follows:

Any person who meets the requirements of RCW 18.57.020 as now or hereafter amended and has been examined and licensed to practice osteopathic medicine and surgery by a state board of examiners of another state or the duly constituted authorities of another state authorized to issue licenses to practice osteopathic medicine and surgery upon examination, shall upon approval of the board be entitled to receive a license to practice osteopathic medicine and surgery in this state upon the payment of a fee determined by the director as provided in RCW 43.24.086 to the state treasurer and filing a copy of his license in such other state, duly certified by the authorities granting the license to be a full, true, and correct copy thereof, and certifying also that the standard of requirements adopted by such authorities as provided by the law of such state is substantially equal to that provided for by the provisions of this chapter: PROVIDED, That no license shall issue without examination to any person who has previously failed in an examination held in this state: PROVIDED, FURTHER, That all licenses herein mentioned may be revoked for unprofessional conduct, in the same manner and upon the same grounds as if issued under this chapter: PROVIDED, FURTHER, That no one shall be permitted to practice surgery under this chapter who has not a license to practice osteopathic medicine and surgery.

NEW SECTION. Sec. 11. RCW 18.57.085 and 1989 c 10 s 5, 1979 c 117 s 14, & 1971 ex.s. c 227 s 3 are each repealed.

Passed the House March 18, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 161

[Substitute House Bill 1931]

RAFFLES CONDUCTED BY NONPROFIT ORGANIZATIONS—LIMITS

Effective Date: 7/28/91

AN ACT Relating to limits on raffles conducted by nonprofit organizations; and amending RCW 9.46.110.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.46.110 and 1987 c 4 s 39 are each amended to read as follows:

The legislative authority of any county, city-county, city, or town, by local law and ordinance, and in accordance with the provisions of this chapter and rules and regulations promulgated hereunder, may provide for the taxing of any gambling activity authorized by this chapter within its jurisdiction, the tax receipts to go to the county, city-county, city, or town so taxing the same: PROVIDED, That any such tax imposed by a county alone shall not apply to any gambling activity within a city or town located therein but the tax rate established by a county, if any, shall constitute the tax rate throughout the unincorporated areas of such county: PROVIDED FURTHER, That (1) punch boards and pull-tabs, chances on which shall only be sold to adults, which shall have a fifty cent limit on a single chance thereon, shall be taxed on a basis which shall reflect only the gross receipts from such punch boards and pull-tabs; and (2) no punch board or pull-tab may award as a prize upon a winning number or symbol being drawn the opportunity of taking a chance upon any other punch board or pull-tab; and (3) all prizes for punch boards and pull-tabs must be on display within the immediate area of the premises wherein any such punch board or pull-tab is located and upon a winning number or symbol being drawn, such prize must be immediately removed therefrom, or such omission shall be deemed a fraud for the purposes of this chapter; and (4) when any person shall win over twenty dollars in money or merchandise from any punch board or pull-tab, every licensee hereunder shall keep a public record thereof for at least ninety days thereafter containing such information as the commission shall deem necessary: AND PROVIDED FURTHER, That taxation of bingo and raffles shall never be in an amount greater than ten percent of the gross revenue received therefrom less the amount paid for or as prizes. Taxation of amusement games shall only be in an amount sufficient to pay the actual costs of enforcement of the provisions of this chapter by the county, city or town law enforcement agency and in no event shall such taxation exceed two percent of the gross revenue therefrom less the amount paid for as prizes: PROVIDED FURTHER, That no tax shall be imposed under the authority of this chapter on bingo(~~(,-raffles)~~) or amusement games when such activities or any combination thereof are conducted by any bona fide

charitable or nonprofit organization as defined in this chapter, which organization has no paid operating or management personnel and has gross income from bingo(~~(,-raffles)~~) or amusement games, or ~~((any))~~ a combination thereof, not exceeding five thousand dollars per year, less the amount paid for as prizes. No tax shall be imposed on the first ten thousand dollars of net proceeds from raffles conducted by any bona fide charitable or nonprofit organization as defined in this chapter. Taxation of punch boards and pull-tabs shall not exceed five percent of gross receipts, nor shall taxation of social card games exceed twenty percent of the gross revenue from such games.

Passed the House March 19, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 162

[House Bill 1955]

WASHINGTON FOOD, DRUG, AND COSMETIC ACT—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to the uniform Washington food, drug, and cosmetic act; amending RCW 69.04.001, 69.04.110, 69.04.120, 69.04.398, and 69.04.780; adding a new section to chapter 69.04 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 69.04.001 and 1945 c 257 s 2 are each amended to read as follows:

This chapter is intended to enact state legislation (1) which safeguards the public health and promotes the public welfare by protecting the consuming public from ~~((injury by product use))~~ (a) potential injury by product use; (b) products that are adulterated; or (c) products that have been produced under unsanitary conditions, and the purchasing public from injury by merchandising deceit(~~(:))~~) flowing from intrastate commerce in food, drugs, devices, and cosmetics; and (2) which is uniform, as provided in this chapter, with the federal food, drug, and cosmetic act; and with the federal trade commission act, to the extent it expressly outlaws the false advertisement of food, drugs, devices, and cosmetics; and (3) which thus promotes uniformity of such law and its administration and enforcement, in and throughout the United States.

NEW SECTION. Sec. 2. A new section is added to chapter 69.04 RCW to read as follows:

Whenever the director finds that a person has committed a violation of a provision of this chapter, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation

per day. Each and every such violation shall be a separate and distinct offense. Imposition of the civil penalty shall be subject to a hearing in conformance with chapter 34.05 RCW.

Sec. 3. RCW 69.04.110 and 1975 1st ex.s. c 7 s 25 are each amended to read as follows:

Whenever the director shall find, or shall have probable cause to believe, that an article subject to this chapter is in intrastate commerce in violation of this chapter, and that its embargo under this section is required to protect the consuming or purchasing public, due to its being adulterated or misbranded, or to otherwise protect the public from injury, or possible injury, he or she is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate commerce, without permission given under this chapter. But if, after such article has been so embargoed, the director shall find that such article does not involve a violation of this chapter, such embargo shall be forthwith removed.

Sec. 4. RCW 69.04.120 and 1983 c 95 s 8 are each amended to read as follows:

When the director has embargoed an article, he or she shall, forthwith and without delay and in no event later than ~~((twenty))~~ thirty days after the affixing of notice of its embargo, petition the superior court for an order affirming the embargo. The court then has jurisdiction, for cause shown and after prompt hearing to any claimant of the embargoed article, to issue an order which directs the removal of the embargo or the destruction or the correction and release of the article. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for a bond as the court finds indicated in the circumstances.

Sec. 5. RCW 69.04.398 and 1986 c 203 s 18 are each amended to read as follows:

(1) The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 is to promote uniformity of state legislation and ~~((regulations))~~ rules with the Federal Food, Drug and Cosmetic Act 21 USC 301 et seq. and regulations adopted thereunder. In accord with such declared purpose any regulation adopted under said federal food, drug and cosmetic act concerning food in effect on July 1, 1975, and not adopted under any other specific provision of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 are hereby deemed to have been adopted under the provision hereof. Further, to promote such uniformity any regulation adopted hereafter under the provisions of the federal food, drug and cosmetic act concerning food and published in the federal register shall be deemed to have been adopted under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 in

accord with chapter 34.05 RCW as enacted or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal food, drug and cosmetic act give public notice that a hearing will be held to determine if such regulation shall not be applicable under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such hearing shall be in accord with the requirements of chapter 34.05 RCW as enacted or hereafter amended.

(2) The provisions of subsection (1) of this section do not apply to rules adopted by the director as necessary to permit the production of kosher food products as defined in RCW 69.90.010.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section the director may adopt rules necessary to carry out the provisions of this chapter.

Sec. 6. RCW 69.04.780 and 1945 c 257 s 96 are each amended to read as follows:

The director shall cause the investigation and examination of food, drugs, devices, and cosmetics subject to this chapter. The director shall have the right (1) to take a sample or specimen of any such article, for examination under this chapter, upon tendering the market price therefor to the person having such article in custody; and (2) to enter any place or establishment within this state, at reasonable times, for the purpose of taking a sample or specimen of any such article, for such examination.

The director and the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. Such department personnel are empowered to administer oaths of verification on the statements.

Passed the House March 19, 1991.

Passed the Senate April 9, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 163

[House Bill 1995]

CONVERTER GEARS—LICENSING EXEMPTIONS

Effective Date: 7/28/91

AN ACT Relating to license exemptions for certain specialized, nonpowered vehicle equipment; amending RCW 46.16.010, 46.16.030, 46.16.085, 46.87.020, and 46.87.070; and repealing RCW 46.16.083.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.16.010 and 1989 c 192 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. Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof shall be punished by a fine of no less than three hundred thirty dollars, no part of which may be suspended or deferred. Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(2) The licensing of a motor vehicle in another state by a resident of this state, as defined in RCW 46.16.028, with willful intent to evade 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 a fine equal to 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 a fine equal to three times the amount of delinquent taxes and fees, no part of which may be suspended or deferred.

(3) These provisions shall not apply to farm vehicle as defined in RCW 46.04.181 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: PROVIDED FURTHER, That these provisions shall not apply to 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: PROVIDED FURTHER, That these provisions shall not apply to 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 equipment defined as follows:

"Special highway construction equipment" is 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 (1) are in excess of the legal width or (2) 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 (3) 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.

(4) 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.

Sec. 2. RCW 46.16.030 and 1990 c 42 s 110 are each amended to read as follows:

Except as is herein provided for foreign businesses, the provisions relative to the licensing of vehicles and display of vehicle license number plates and license registration certificates shall not apply to any vehicles owned by nonresidents of this state if the owner thereof has complied with the law requiring the licensing of vehicles in the names of the owners thereof in force in the state, foreign country, territory or federal district of his or her residence; and the vehicle license number plate showing the initial or abbreviation of the name of such state, foreign country, territory or federal district,

is displayed on such vehicle substantially as is provided therefor in this state. The provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, foreign country, territory or federal district of his or her residence, like exemptions and privileges are granted to vehicles duly licensed under the laws of and owned by residents of this state. If under the laws of such state, foreign country, territory or federal district, vehicles owned by residents of this state, operating upon the highways of such state, foreign country, territory or federal district, are required to pay the license fee and carry the vehicle license number plates of such state, foreign country, territory or federal district, the vehicles owned by residents of such state, foreign country, territory or federal district, and operating upon the highways of this state, shall comply with the provisions of this state relating to the licensing of vehicles. Foreign businesses owning, maintaining, or operating places of business in this state and using vehicles in connection with such places of business, shall comply with the provisions relating to the licensing of vehicles insofar as vehicles used in connection with such places of business are concerned. Under provisions of the international registration plan, the non-motor vehicles of member and nonmember jurisdictions which are properly based and licensed in such jurisdictions are granted reciprocity in this state as provided in RCW 46.87.070(2). ~~((Converter gears (auxiliary axles) that are properly based in jurisdictions that do not register or provide license plates for such vehicles may be operated in this state without the need for registration or the display of license plates as applicable.))~~ The director is empowered to make and enforce rules and regulations for the licensing of nonresident vehicles upon a reciprocal basis and with respect to any character or class of operation.

Sec. 3. RCW 46.16.085 and 1989 c 156 s 2 are each amended to read as follows:

In lieu of all other licensing fees, an annual license fee of thirty-six dollars shall be collected in addition to the excise tax prescribed in chapter 82.44 RCW for: (1) Each trailer and semitrailer not subject to the license fee under RCW 46.16.065 or the capacity fees under RCW 46.16.080; (2) every pole trailer ~~((; (3) every converter gear or auxiliary axle not licensed as a combination under the provisions of RCW 46.16.083))~~. The proceeds from this fee shall be distributed in accordance with RCW 46.68.035. This section does not pertain to travel trailers or personal use trailers that are not used for commercial purposes or owned by commercial enterprises.

Sec. 4. RCW 46.87.020 and 1990 c 42 s 111 are each amended to read as follows:

Terms used in this chapter have the meaning given to them in the International Registration Plan (IRP), the Uniform Vehicle Registration, Proration, and Reciprocity Agreement (Western Compact), chapter 46.04 RCW, or as otherwise defined in this section. Definitions given to terms by

the IRP and the Western Compact, as applicable, shall prevail unless given a different meaning in this chapter or in rules adopted under authority of this chapter.

(1) "Apportionable vehicle" has the meaning given by the IRP, except that it does not include vehicles with a declared gross weight of twelve thousand pounds or less. Apportionable vehicles include trucks, tractors, truck tractors, road tractors, and buses, each as separate and licensable vehicles. For IRP jurisdictions that require the registration of nonmotor vehicles, this term may include (~~converter gears (auxiliary axes);~~) trailers, semitrailers, and pole trailers as applicable, each as separate and licensable vehicles.

(2) "Cab card" is a certificate of registration issued for a vehicle by the registering jurisdiction under the Western Compact. Under the IRP, it is a certificate of registration issued by the base jurisdiction for a vehicle upon which is disclosed the jurisdictions and registered gross weights in such jurisdictions for which the vehicle is registered.

(3) "Commercial vehicle" is a term used by the Western Compact and means any vehicle, except recreational vehicles, vehicles displaying restricted plates, and government owned or leased vehicles, that is operated and registered in more than one jurisdiction and is used or maintained for the transportation of persons for hire, compensation, or profit, or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a motor vehicle having a declared gross weight in excess of twenty-six thousand pounds; or

(b) Is a motor vehicle having three or more axles with a declared gross weight in excess of twelve thousand pounds; or

(c) Is a motor vehicle, trailer, pole trailer, (~~converter gear (auxiliary axle);~~) or semitrailer used in combination when the gross weight or declared gross weight of the combination exceeds twenty-six thousand pounds combined gross weight. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Although a two-axle motor vehicle, trailer, pole trailer, semitrailer, (~~converter gear (auxiliary axle);~~) or any combination of such vehicles with an actual or declared gross weight or declared combined gross weight exceeding twelve thousand pounds but not more than twenty-six thousand is not considered to be a commercial vehicle, at the option of the owner, such vehicles may be considered as "commercial vehicles" for the purpose of proportional registration. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Commercial vehicles include trucks, tractors, truck tractors, road tractors, and buses. (~~Converter gears (auxiliary axes);~~) Trailers, pole trailers, and semitrailers, will also be considered as commercial vehicles for those jurisdictions who require registration of such vehicles.

(4) "Credentials" means cab cards, apportioned plates (for Washington-based fleets), and validation tabs issued for proportionally registered vehicles.

(5) "Declared combined gross weight" means the total unladen weight of any combination of vehicles plus the weight of the maximum load to be carried on the combination of vehicles as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid.

(6) "Declared gross weight" means the total unladen weight of any vehicle plus the weight of the maximum load to be carried on the vehicle as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid. In the case of a bus, auto stage, or a passenger-carrying for hire vehicle with a seating capacity of more than six, the declared gross weight shall be determined by multiplying the average load factor of one hundred and fifty pounds by the number of seats in the vehicle, including the driver's seat, and add this amount to the unladen weight of the vehicle. If the resultant gross weight is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

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

(8) "Fleet" means one or more commercial vehicles in the Western Compact and one or more apportionable vehicles in the IRP.

(9) "In-jurisdiction miles" means the total miles accumulated in a jurisdiction during the preceding year by vehicles of the fleet while they were a part of the fleet.

(10) "IRP" means the International Registration Plan.

(11) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign county [country], and a state or province of a foreign country.

(12) "Owner" means a person or business firm who holds the legal title to a vehicle, or if a vehicle is the subject of an agreement for its conditional sale with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or if a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or if a mortgagor of a vehicle is entitled to possession, then the owner is deemed to be the person or business firm in whom is vested right of possession or control.

(13) "Preceding year" means the period of twelve consecutive months immediately prior to July 1st of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought.

(14) "Properly registered," as applied to the place of registration under the provisions of the Western Compact, means:

(a) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which the vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from that place of business, and the vehicle has been assigned to that place of business; or

(b) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by that jurisdiction.

In case of doubt or dispute as to the proper place of registration of a commercial vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected.

(15) "Prorate percentage" is the factor that is applied to the total proratable fees and taxes to determine the apportionable or prorate fees required for registration in a particular jurisdiction. It is determined by dividing the in-jurisdiction miles for a particular jurisdiction by the total miles. This term is synonymous with the term "mileage percentage."

(16) "Registrant" means a person, business firm, or corporation in whose name or names a vehicle or fleet of vehicles is registered.

(17) "Registration year" means the twelve-month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction. The "registration year" for Washington is the period from January 1st through December 31st of each calendar year.

(18) "Total miles" means the total number of miles accumulated in all jurisdictions during the preceding year by all vehicles of the fleet while they were a part of the fleet. Mileage accumulated by vehicles of the fleet that did not engage in interstate operations is not included in the fleet miles.

(19) "Western Compact" means the Uniform Vehicle Registration, Proration, and Reciprocity Agreement.

Sec. 5. RCW 46.87.070 and 1990 c 42 s 112 are each amended to read as follows:

(1) Washington-based trailers, semitrailers, (~~converter gears (auxiliary axles);~~) or pole trailers shall be fully licensed in this state except as herein provided. If these vehicles are being operated in jurisdictions that require the registration of such vehicles, the applicable vehicles may be considered as apportionable or commercial vehicles for the purpose of registration in those jurisdictions. The prorate percentage for which registration fees and taxes were paid to such jurisdictions for each nonmotor vehicle of the fleet may be credited toward the one hundred percent of

registration fees and taxes due this state for full licensing of each such vehicle.

(2) Trailers, semitrailers, (~~((converter gears (auxiliary axes);))~~) and pole trailers which are properly based in jurisdictions other than Washington, and which display currently registered license plates from such jurisdictions will be granted vehicle license reciprocity in this state without the need of further vehicle license registration. If (~~((converter gears (auxiliary axes) or))~~) pole trailers are not required to be licensed separately by a member jurisdiction, such vehicles may be operated in this state without displaying a current base license plate.

NEW SECTION. Sec. 6. RCW 46.16.083 and 1986 c 18 s 7, 1969 ex.s. c 170 s 4, & 1961 c 12 s 46.16.083 are each repealed.

Passed the House March 13, 1991.

Passed the Senate April 9, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 164

[Engrossed Substitute House Bill 2027]

COLLEGES AND UNIVERSITIES—FINANCIAL PROVISIONS FOR STUDENTS UNABLE TO FINISH TERM BECAUSE OF MILITARY SERVICE IN PERSIAN GULF

Effective Date: 5/10/91

AN ACT Relating to higher education; amending RCW 28B.10.808, 28B.15.600, 28B.102.060, 28B.104.060, 18.150.060, and 70.180.100; adding new sections to chapter 28B.10 RCW; adding a new section to chapter 28B.15 RCW; creating a new section; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28B.10 RCW to read as follows:

"Eligible student" means a student who (1) was enrolled in a Washington college, university, community college, or vocational-technical institute on or after August 2, 1990, and (2) is unable to complete the period of enrollment or academic term in which the student was enrolled because the student was deployed either in the Persian Gulf combat zone, as designated by the president of the United States by executive order, or in another location in support of the Persian Gulf combat zone. An eligible student is required to verify his or her inability to complete an academic term through military service records, movement orders, or a certified letter signed by the student's installation personnel officer.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.15 RCW to read as follows:

Institutions of higher education, as defined in RCW 28B.10.016, and state funded vocational-technical institutes shall provide eligible students as defined in section 1 of this act with two options. At the option of the eligible student, the institution shall either refund the total tuition and fees paid by the eligible student for the applicable academic term, or shall readmit the eligible student for one academic term under the following conditions:

(1) The eligible student shall be exempt from the payment of additional tuition and fees;

(2) No new course sections shall be created as a direct result of students receiving the waivers;

(3) Enrollment information on students receiving the waivers shall be maintained separately from other enrollment information and shall not be considered in any enrollment statistics that would affect budgetary determinations; and

(4) Institutions may apply to the legislature for a supplemental appropriation to cover the cost of serving any student who elects to exercise a reenrollment option under this section.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.10 RCW to read as follows:

Under rules adopted by the board, the provisions of RCW 28B.10.808(3) shall not apply to eligible students, as defined in section 1 of this act, and eligible students shall not be required to repay the unused portions of grants received under the state student financial aid program.

Sec. 4. RCW 28B.10.808 and 1989 c 254 s 4 are each amended to read as follows:

In awarding grants, the commission shall proceed substantially as follows: PROVIDED, That nothing contained herein shall be construed to prevent the commission, in the exercise of its sound discretion, from following another procedure when the best interest of the program so dictates:

(1) The commission shall annually select the financial aid award winners from among Washington residents applying for student financial aid who have been ranked according to financial need as determined by the amount of the family contribution and other considerations brought to the commission's attention.

(2) The financial need of the highest ranked students shall be met by grants depending upon the evaluation of financial need until the total allocation has been disbursed. Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until dispersed.

(3) A grant may be renewed until the course of study is completed, but not for more than an additional four academic years beyond the first year of the award. These shall not be required to be consecutive years. Qualifications for renewal will include maintaining satisfactory academic standing

toward completion of the course of study, and continued eligibility as determined by the commission. Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the state educational grant fund by the institution according to the institution's own policy for issuing refunds, except as provided in section 3 of this act.

(4) In computing financial need the commission shall determine a maximum student expense budget allowance, not to exceed an amount equal to the total maximum student expense budget at the public institutions plus the current average state appropriation per student for operating expense in the public institutions.

Sec. 5. RCW 28B.15.600 and 1985 c 390 s 32 are each amended to read as follows:

The boards of regents of the state's universities and the boards of trustees of the regional universities and The Evergreen State College and community colleges may refund or cancel in full the tuition and services and activities fees if the student withdraws from a university or college course or program prior to the sixth day of instruction of the quarter or semester for which said fees have been paid or are due. If the student withdraws on or after the sixth day of instruction, said boards of regents and trustees may refund or cancel up to one-half of said fees, provided such withdrawal occurs within the first thirty calendar days following the beginning of instruction. The regents or trustees of the respective universities and colleges may adopt rules for the refund of tuition and fees for courses or programs that begin after the start of the regular quarter or semester. Said boards of regents and trustees may adopt rules to comply with section 2 of this act and may extend the refund or cancellation period for students who withdraw for medical reasons or who are called into the military service of the United States.

Said boards of regents and trustees may refund other fees pursuant to such rules as they may prescribe.

Sec. 6. RCW 28B.102.060 and 1987 c 437 s 6 are each amended to read as follows:

(1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest, unless they teach for ten years in the public schools of the state of Washington, under rules adopted by the board.

(2) The terms of the repayment, including deferral of the interest, shall be consistent with the terms of the federal guaranteed loan program.

(3) The period for repayment shall be ten years, with payments accruing quarterly commencing nine months from the date the participant completes or discontinues the course of study.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant teaches in a public school

until the entire repayment obligation is satisfied or the borrower ceases to teach at a public school in this state. Should the participant cease to teach at a public school in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the higher education coordinating board and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

(7) The board shall temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in section 1 of this act.

Sec. 7. RCW 28B.104.060 and 1988 c 242 s 6 are each amended to read as follows:

(1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest, unless they serve for five years in nurse shortage areas of the state of Washington. Nurse shortage areas may include geographical areas as a result of maldistribution, or specialty areas of nursing such as gerontology, critical care, or coronary care.

(2) The terms of the repayment, including deferral of the interest, shall be consistent with the terms of the federal guaranteed loan program.

(3) The period for repayment shall be five years, with payments accruing quarterly commencing nine months from the date the participant completes or discontinues the course of study.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant serves in a nurse shortage area, as determined by the state health coordinating council, until the entire

repayment obligation is satisfied or the borrower ceases to so serve. Should the participant cease to serve in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the higher education coordinating board and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

(7) The board shall temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in section 1 of this act.

Sec. 8. RCW 18.150.060 and 1989 1st ex.s. c 9 s 721 are each amended to read as follows:

Participants in the health professional loan repayment program shall receive payment from the program for the purpose of repaying educational loans secured while attending a program of health professional training which led to licensure as a licensed health professional in the state of Washington.

(1) Participants shall agree to serve at least three years in a designated health professional shortage area.

(2) In providing health care services the participant shall not discriminate against any person on the basis of the person's ability to pay for such services or because payment for the health care services provided to such persons will be made under the insurance program established under part A or B of Title XVIII of the federal social security act or under a state plan for medical assistance approved under Title XIX of the federal social security act and agrees to accept assignment under section 18.42(b)(3)(B)(ii) of such act for all services for which payment may be made under part B of

Title XVIII and enters into an appropriate agreement with the department of social and health services for medical assistance under Title XIX to provide services to individuals entitled to medical assistance under the plan. Participants found by the board in violation of this section shall be declared ineligible for receiving assistance under the program authorized by this chapter.

(3) Repayment shall be limited to reasonable educational and living expenses as determined by the board and shall include principal and interest.

(4) Loans from both government and private sources may be repaid by the program. Participants shall agree to allow the board access to loan records and to acquire information from lenders necessary to verify eligibility and to determine payments. Loans may not be renegotiated with lenders to accelerate repayment.

(5) Repayment of loans established pursuant to this program shall begin no later than ninety days after the individual has become a participant. Payments shall be made quarterly, or more frequently if deemed appropriate by the board, to the participant until the loan is repaid or the participant becomes ineligible due to discontinued service in a health professional shortage area or after the fifth year of services when eligibility discontinues, whichever comes first.

(6) Should the participant discontinue service in a health professional shortage area payments against the loans of the participants shall cease to be effective on the date that the participant discontinues service.

(7) Except for circumstances beyond their control, participants who serve less than three years shall be obligated to repay to the program an amount equal to twice the total amount paid by the program on their behalf in addition to any payments on the unsatisfied portion of the principal and interest. The board shall determine the applicability of this subsection.

(8) The board is responsible for the collection of payments made on behalf of participants from the participants who discontinue service before their three-year obligation. The board shall exercise due diligence in such collection, maintaining all necessary records to ensure that the maximum amount of payment made on behalf of the participant is recovered. Collection under this section shall be pursued using the full extent of the law, including wage garnishment if necessary.

(9) The board shall not be held responsible for any outstanding payments on principal and interest to any lenders once a participant's eligibility expires.

(10) The board shall temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in section 1 of this act.

Sec. 9. RCW 70.180.100 and 1990 c 271 s 13 are each amended to read as follows:

(1) Participants in the program incur an obligation to repay the scholarship, with interest set by state law, unless they serve for five years in rural areas, pharmacist shortage areas, or midwife shortage areas of the state of Washington.

(2) The terms of the repayment, including deferral of the interest, shall be consistent with the terms of the federal guaranteed loan program.

(3) The period for repayment shall be three years, with payments accruing quarterly commencing nine months from the date the participant completes or discontinues the course of study or completes or discontinues the required residency.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant serves in a rural area, pharmacist shortage area, or midwife shortage area until the entire repayment obligation is satisfied or the borrower ceases to so serve. Should the participant cease to serve in a rural area, pharmacist shortage area, or midwife shortage area of this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied. Except for circumstances beyond their control, participants who serve less than five years shall be obliged to repay to the program an amount equal to twice the total amount paid by the program on their behalf in addition to the unsatisfied portion of principal and interest required by this section.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the board and shall be used to cover the costs of granting the scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant scholarships to eligible students.

(7) Sponsoring communities who financially contribute to the eligible financial expenses of eligible medical students may enter into agreements with the student to require repayment should the student not serve the

minimum of five years in the community as a primary care physician. The board may develop criteria for the content of such agreements with respect to reasonable provisions and obligations between communities and eligible students.

(8) The board may make exceptions to the conditions for participation and repayment obligations should circumstances beyond the control of individual participants warrant such exceptions. The board shall temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in section 1 of this act.

NEW SECTION. Sec. 10. Private vocational schools and private higher education institutions are encouraged to provide students deployed either to the Persian Gulf combat zone, as designated by the president of the United States through executive order, or in another location in support of the Persian Gulf combat zone, with the choice of tuition refunds or one free term, as provided under sections 1 and 2 of this act for public higher education institutions.

NEW SECTION. Sec. 11. Section 2 of this act shall expire June 30, 1995.

NEW SECTION. Sec. 12. 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 shall take effect immediately.

Passed the House March 15, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 165

[House Bill 2059]

LOW-INCOME WEATHERIZATION AND ENERGY ASSISTANCE—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to low-income residential weatherization and energy assistance; amending RCW 35.21.300, 54.16.285, and 80.28.010; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the health and welfare of the people of the state of Washington require that all citizens receive essential levels of heat and electric service regardless of economic circumstance and that rising energy costs have had a negative effect on the affordability of housing for low-income citizens and have made it difficult for low-income citizens of the state to afford adequate fuel for residential

space heat. The legislature further finds that level payment plans, the protection against winter heating shutoff, and house weatherization programs have all been beneficial to low-income persons.

Sec. 2. RCW 35.21.300 and 1990 1st ex.s. c 1 s 1 are each amended to read as follows:

(1) The lien for charges for service by a city waterworks, or electric light or power plant may be enforced only by cutting off the service until the delinquent and unpaid charges are paid, except that until June 30, 1991, utility service for residential space heating may be terminated between November 15 and March 15 only as provided in subsections (2) and ~~((3))~~ (4) of this section. In the event of a disputed account and tender by the owner of the premises of the amount he claims to be due before the service is cut off, the right to refuse service to any premises shall not accrue until suit has been entered by the city and judgment entered in the case.

(2) ~~((Until June 30, 1991:~~

~~((a)))~~ Utility service for residential space heating shall not be terminated between November 15 through March 15 if the customer:

~~((i)))~~ (a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

~~((ii)))~~ (b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information in the self-certification;

~~((iii)))~~ (c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

~~((iv)))~~ (d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

~~((v)))~~ (e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the

customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

~~((v))~~ (f) Agrees to pay the moneys owed even if he or she moves.

~~((b))~~ (3) The utility shall:

~~((i))~~ (a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

~~((ii))~~ (b) Assist the customer in fulfilling the requirements under this section;

~~((iii))~~ (c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

~~((iv))~~ (d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this section. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

~~((v))~~ (e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

~~((3))~~ (4) All municipal utilities shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

~~((4))~~ (5) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter.

Sec. 3. RCW 54.16.285 and 1990 1st ex.s. c 1 s 3 are each amended to read as follows:

(1) A district providing utility service for residential space heating shall not terminate such utility service between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(2) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this section. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(3) All districts providing utility service for residential space heating shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(4) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter.

~~((5) This section shall expire June 30, 1991.)~~

Sec. 4. RCW 80.28.010 and 1990 1st ex.s. c 1 s 5 are each amended to read as follows:

(1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

~~(4) ((Until June 30, 1991:~~

~~(a))~~ Utility service for residential space heating shall not be terminated between November 15 through March 15 if the customer:

~~((f))~~ (a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days

of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

((~~(ii)~~)) (b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

((~~(iii)~~)) (c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

((~~(iv)~~)) (d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

((~~(v)~~)) (e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

((~~(vi)~~)) (f) Agrees to pay the moneys owed even if he or she moves.

((~~(b)~~)) (5) The utility shall:

((~~(i)~~)) (a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

((~~(ii)~~)) (b) Assist the customer in fulfilling the requirements under this section;

((~~(iii)~~)) (c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

~~((iv))~~ (d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this subsection. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

~~((v))~~ (e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

~~((e))~~ (6) A payment plan implemented under this section is consistent with RCW 80.28.080.

~~((5))~~ (7) Every gas company and electrical company shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

~~((6))~~ (8) Every gas company, electrical company and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product as will be efficient and safe to its employees and the public.

~~((7))~~ (9) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter.

Passed the House March 13, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 10, 1991.

Filed in Office of Secretary of State May 10, 1991.

CHAPTER 166

[Engrossed Substitute Senate Bill 5114]
SCHOOL BUS SAFETY EQUIPMENT
Effective Date: 7/28/91

AN ACT Relating to student transportation; adding a new section to chapter 46.37 RCW; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.37 RCW to read as follows:

Effective September 1, 1992, every school bus shall, in addition to any other equipment required by this chapter, be equipped with a crossing arm mounted to the bus that, when extended, will require students who are crossing in front of the bus to walk more than five feet from the front of the bus.

NEW SECTION. Sec. 2. By October 1, 1991, the superintendent of public instruction shall purchase the crossing arms required in section 1 of this act for every public school bus owned by a school district or under contract by a school district. By March 1, 1992, the superintendent of public instruction shall distribute, or have distributed, the crossing arms to the school districts. Installation of the crossing arms shall be the responsibility of the school districts.

NEW SECTION. Sec. 3. The superintendent of public instruction shall, in cooperation with at least one school district, conduct a pilot program to test the feasibility of using video cameras inside of school buses to reduce discipline problems and assist school bus drivers in identifying students who create discipline problems. The superintendent of public instruction shall report the findings to the education committees of the house of representatives and the senate by December 31, 1991.

NEW SECTION. Sec. 4. By December 1, 1991, the superintendent of public instruction shall review the current use of aides on special education buses and provide to the education committees of the house of representatives and the senate recommended guidelines, with associated fiscal impacts, for increasing the use of aides on special education buses.

NEW SECTION. Sec. 5. The superintendent of public instruction, in cooperation with school districts, the state patrol, and local law enforcement personnel, shall develop a proposed definition and guidelines for implementing an expanded definition of "hazardous walking conditions" as used in RCW 28A.160.160(4) that would also include "social hazards." At a minimum, social hazards shall include areas with unacceptable levels of narcotic activity, sex offenders, prostitution, street violence, or environmentally dangerous conditions such as toxic waste dumps. The superintendent of public instruction shall submit its proposed definition and guidelines, with the projected fiscal impact of implementing the definition and guidelines, to the education committees of the house of representatives and the senate by December 1, 1991.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the Senate April 22, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 167

[Engrossed House Bill 1740]

PUBLIC HOUSING AUTHORITIES—POWERS AND DUTIES

Effective Date: 7/28/91

AN ACT Relating to public housing authorities; and amending RCW 35.82.070, 35.82-.130, 35.82.285, 35.83.020, and 35.83.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 35.82.070 and 1989 c 363 s 2 are each amended to read as follows:

An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

(1) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments, including but not limited to partnership agreements and joint venture agreements, necessary or convenient to the exercise of the powers of the authority; to participate in the organization or the operation of a non-profit corporation which has as one of its purposes to provide or assist in the provision of housing for persons of low income; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of the authority.

(2) Within its area of operation: To prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to agree to rent or sell dwellings forming part of the projects to or for persons of low income. Where an agreement or option is made to sell a dwelling to a person of low income, the authority may convey the dwelling to the person upon fulfillment of the agreement irrespective of whether the person is at the time of the conveyance a person of low income. Leases, options, agreements, or conveyances may include such covenants as the authority deems appropriate to assure the achievement of the objectives of this chapter.

(3) To acquire, lease, rent, sell, or otherwise dispose of any commercial space located in buildings or structures containing a housing project or projects.

(4) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other

provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(5) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this chapter) to establish and revise the rents or charges therefor; to own or manage buildings containing a housing project or projects as well as commercial space or other dwelling units that do not constitute a housing project as that term is defined in this chapter: **PROVIDED**, That notwithstanding the provisions under subsection (1) of this section, dwelling units ~~((that constitute a housing project))~~ made available to persons of low income, together with functionally related and subordinate facilities, shall occupy at least thirty percent of the interior space of any individual building ~~((in the project))~~ other than a detached single-family or duplex residential building~~((;))~~ or mobile or manufactured home and at least fifty percent of the interior space in the total ~~((project))~~ development owned by the authority or at least fifty percent of the total number of units in the development owned by the authority, whichever produces the greater number of units for persons of low income, and for mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent of the total number of mobile home lots in the park owned by the authority; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise including financial assistance and other aid from the state or any public body, person or corporation, any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein; to sell, lease, exchange, transfer, or dispose of any real or personal property or interest therein at less than fair market value to a governmental entity for any purpose when such action assists the housing authority in carrying out its powers and purposes under this chapter, to a low-income person or family for the purpose of providing housing for that person or family, or to a nonprofit corporation provided the nonprofit corporation agrees to sell the property to a low-income person or family or to use the property for the provision of housing for persons of low income for at least twenty years; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance.

(6) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be canceled.

(7) Within its area of operation: To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(8) Acting through one or more commissioners or other person or persons designated by the authority: To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(9) To initiate eviction proceedings against any tenant as provided by law. Activity occurring in any housing authority unit that constitutes a violation of chapter 69.41, 69.50 or 69.52 RCW shall constitute a nuisance for the purpose of RCW 59.12.030(5).

(10) To exercise all or any part or combination of powers herein granted.

No provisions of law with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

~~((+0))~~ (11) To agree (notwithstanding the limitation contained in RCW 35.82.210) to make such payments in lieu of taxes as the authority finds consistent with the achievement of the purposes of this chapter.

~~((+H))~~ (12) To exercise the powers granted in this chapter within the boundaries of any city, town, or county not included in the area in which such housing authority is originally authorized to function: PROVIDED,

HOWEVER, The governing or legislative body of such city, town, or county, as the case may be, adopts a resolution declaring that there is a need for the authority to function in such territory.

~~((12))~~ (13) To administer contracts for assistance payments to persons of low income in accordance with section 8 of the United States Housing Act of 1937, as amended by Title II, section 201 of the Housing and Community Development Act of 1974, P.L. 93-383.

~~((13))~~ (14) To sell at public or private sale, with or without public bidding, for fair market value, any mortgage or other obligation held by the authority.

~~((14))~~ (15) To the extent permitted under its contract with the holders of bonds, notes, and other obligations of the authority, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which the authority is a party.

~~((15))~~ (16) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans to persons of low income to enable them to ((rehabilitate their dwellings or purchase a dwelling)) acquire, construct, reconstruct, rehabilitate, improve, lease, or refinance their dwellings, and to take such security therefor as is deemed necessary and prudent by the authority.

~~((16))~~ (17) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans for the acquisition, construction, reconstruction, rehabilitation, improvement, leasing, or refinancing of land, buildings, or developments ((containing)) for housing for persons of low income. ((However, an authority shall not finance the acquisition or construction of new buildings or developments under this subsection unless: (a) All of the housing within the building or development will be made available to persons of low income; (b) a federal, state, or local government loan, grant, or investment is provided with respect to the building or development; or (c) a housing authority owns at least a twenty-five percent interest in the completed building or development or at least twenty-five percent of the number of housing units therein:)) For purposes of this subsection, development shall include either land or buildings or both.

(a) Any ~~((building or))~~ development financed under this subsection shall be subject to ~~((a covenant))~~ an agreement that for at least twenty years the dwelling units ((that constitute a housing project)) made available to persons of low income together with functionally related and subordinate facilities shall occupy at least thirty percent of the interior space of any individual building ((in the project)) other than a detached single-family or duplex residential building or mobile or manufactured home and shall occupy at least fifty percent of the interior space in the total ((project; and be

~~made available to persons of low income for at least twenty years. For purposes of this subsection, dwelling units that constitute a housing project in any building or development owned by other than a nonprofit corporation and are made available for rent shall: Not be rented to persons whose incomes exceed fifty percent of the area median income; and not have rents that exceed fifteen percent of the area median income)) development or at least fifty percent of the total number of units in the development, whichever produces the greater number of units for persons of low income. For mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent of the total number of mobile home lots in the park. During the term of the agreement, the owner shall use its best efforts in good faith to maintain the dwelling units or mobile home lots required to be made available to persons of low income at rents affordable to persons of low income.~~

~~(b) In addition, if the development is owned by a for-profit entity, the dwelling units or mobile home lots required to be made available to persons of low income shall be rented to persons whose incomes do not exceed fifty percent of the area median income, adjusted for household size, and shall have unit or lot rents that do not exceed fifteen percent of area median income, adjusted for household size, unless rent subsidies are provided to make them affordable to persons of low income.~~

~~For purposes of this subsection (17)(b), if the development is owned directly or through a partnership by a governmental entity or a nonprofit organization, which nonprofit organization is itself not controlled by a for-profit entity or affiliated with any for-profit entity that a nonprofit organization itself does not control, it shall not be treated as being owned by a for-profit entity when the governmental entity or nonprofit organization exercises legal control of the ownership entity and in addition, (i) the dwelling units or mobile home lots required to be made available to persons of low income are rented to persons whose incomes do not exceed sixty percent of the area median income, adjusted for household size, and (ii) the development is subject to an agreement that transfers ownership to the governmental entity or nonprofit organization or extends an irrevocable right of first refusal to purchase the development under a formula for setting the acquisition price that is specified in the agreement.~~

~~(c) Commercial space in any building ((or development)) financed under this subsection ((which)) that exceeds four stories in height shall not ((contain)) constitute more than twenty percent of the interior area ((in commercial space)) of the building. Before financing any ((building or)) development under this subsection the authority shall make a written finding that financing is((:)) important for project feasibility((:)) or necessary to enable the authority to carry out its powers and purposes under this chapter.~~

~~((17))~~ (18) To contract with a public authority or corporation, created by a county, city, or town under RCW 35.21.730 through 35.21.755, to act as the developer for new housing projects or improvement of existing housing projects.

Sec. 2. RCW 35.82.130 and 1977 ex.s. c 274 s 5 are each amended to read as follows:

An authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable: (1) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds; (2) exclusively from the income and revenues of certain designated housing projects whether or not they are financed in whole or in part with the proceeds of such bonds; or (3) from all or part of its revenues or assets generally. Any such bonds may be additionally secured by a pledge of any grant or contributions from the federal government or other source, or a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority. Any pledge made by the authority shall be valid and binding from the time when the pledge is made and recorded; the revenues, moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. The resolution and any other instrument by which a pledge is created shall be filed or recorded.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state on their face) shall not be a debt of the city, the county, the state or any political subdivision thereof and neither the city or the county, nor the state or any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes. Nothing in this section shall prevent an authority from issuing bonds the interest on which is included in gross income of the owners thereof for income tax purposes.

Sec. 3. RCW 35.82.285 and 1973 1st ex.s. c 198 s 2 are each amended to read as follows:

Housing authorities (~~(of first class counties)~~) created under this chapter may establish and operate group homes or halfway houses to serve juveniles released from state juvenile or correctional institutions, or to serve the developmentally disabled as defined in (~~(42 U.S.C. 2670, 85 Stat. 1316)~~) RCW 71A.10.020(2). (~~(Such)~~) Authorities may contract for the operation of facilities so established, with qualified nonprofit organizations as agent of the authority. Authorities may provide support or supportive services in facilities serving juveniles, the developmentally disabled or other persons under a disability, and the frail elderly, whether or not they are operated by the authority.

Action under this section shall be taken by the authority only after a public hearing as provided by chapter 42.30 RCW. In exercising this power the authority shall not be empowered to acquire property by eminent domain, and the facilities established shall comply with all zoning, building, fire, and health regulations and procedures applicable in the locality.

Sec. 4. RCW 35.83.020 and 1965 c 7 s 35.83.020 are each amended to read as follows:

The following terms, whenever used or referred to in this chapter shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Housing authority" shall mean any housing authority created pursuant to the housing authorities law of this state.

(2) "Housing project" shall mean any work or undertaking of a housing authority pursuant to the housing authorities law or any similar work or undertaking of the federal government.

(3) "State public body" shall mean the state of Washington and any city, town, county, municipal corporation, commission, district, authority, other subdivision or public body of the state.

(4) "Governing body" shall mean the council, the commission, board of county commissioners or other body having charge of the fiscal affairs of the state public body.

(5) "Federal government" shall include the United States of America, the United States housing authority, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

Sec. 5. RCW 35.83.030 and 1965 c 7 s 35.83.030 are each amended to read as follows:

For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, grant, convey, or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a housing authority or the federal government;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of such state public body; make exceptions from building regulations and ordinances; any city or town also may change its map;

(5) Cause services to be furnished to the housing authority of the character which such state public body is otherwise empowered to furnish;

(6) Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, elimination or closing of unsafe, insanitary or unfit dwellings;

(7) Employ (notwithstanding the provisions of any other law) any funds belonging to or within the control of such state public body, including funds derived from the sale or furnishing of property or facilities to a housing authority, in the purchase of the bonds or other obligations of a housing authority; and exercise all the rights of any holder of such bonds or other obligations;

(8) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(9) Incur the entire expense of any public improvements made by such state public body in exercising the powers granted in this chapter;

(10) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary), with a housing authority respecting action to be taken by such state public body pursuant to any of the powers granted by this chapter. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, advertisement or public bidding: PROVIDED, There must be five days public notice given either by posting in three public places or publishing in the official county newspaper of the county wherein the property is located; and

(11) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any

changes to be made in the housing project or the manner of its construction or take any other action relating to such construction.

Passed the House March 11, 1991.

Passed the Senate April 9, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 168

[Engrossed Substitute Senate Bill 5494]

DISHONORED CHECKS—REVISED COLLECTION PROCEDURES

Effective Date: 7/28/91

AN ACT Relating to collection of debts; and amending RCW 62A.3-515 and 62A.3-520.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 62A.3-515 and 1986 c 128 s 1 are each amended to read as follows:

(1) Whenever a check as defined in RCW 62A.3-104 has been dishonored by nonacceptance or nonpayment the payee or holder of the check is entitled to collect a reasonable handling fee for each such instrument. When such check has not been paid within fifteen days and after the holder of such check sends such notice of dishonor as provided by RCW 62A.3-520 to the drawer at his or her last known address, then if the instrument does not provide for the payment of interest, or collection costs and attorneys fees, the drawer of such instrument shall also be liable for payment of interest at the rate of twelve percent per annum from the date of dishonor and cost of collection not to exceed forty dollars or the face amount of the check, whichever is the lesser. In addition, in the event of court action on the check the court, after such notice and the expiration of said fifteen days, shall award a reasonable attorneys fee, and three times the face amount of the check or ~~((one))~~ three hundred dollars, whichever is less, as part of the damages payable to the holder of the check. This section shall not apply to any instrument which has been dishonored by reason of any justifiable stop payment order.

(2)(a) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court and service costs.

(b) Nothing in this section precludes the right to commence action in any court under chapter 12.40 RCW for small claims.

Sec. 2. RCW 62A.3-520 and 1986 c 128 s 2 are each amended to read as follows:

The notice of dishonor shall be sent by mail to the drawer at his or her last known address, and said notice shall be substantially in the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to in the amount of has not been accepted for payment by, which is the drawee bank designated on your check. This check is dated, and it is numbered, No.

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

- (1) Costs of collecting the amount of the check, including an attorney's fee which will be set by the court;
- (2) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and
- (3) ~~((One))~~ **Three** hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within fifteen days after the date this letter is postmarked.

You are advised to make your payment to at the following address:

Passed the Senate April 22, 1991.
 Passed the House April 19, 1991.
 Approved by the Governor May 15, 1991.
 Filed in Office of Secretary of State May 15, 1991.

CHAPTER 169

[Substitute House Bill 1830]

**TESTIMONY OF CHILD REGARDING ACTS OF SEXUAL CONTACT—
 ADMISSIBILITY**

Effective Date: 5/15/91

AN ACT Relating to admissibility of children's statements; amending RCW 9A.44.120; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9A.44.120 and 1985 c 404 s 1 are each amended to read as follows:

A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another or describing any attempted act of sexual contact with or on the child by another, not

otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings under Title 13 RCW and criminal proceedings, including juvenile offense adjudications, in the courts of the state of Washington if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

(2) The child either:

(a) Testifies at the proceedings; or

(b) Is unavailable as a witness: **PROVIDED**, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

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 shall take effect immediately.

Passed the House March 18, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 170

[Substitute Senate Bill 5261]

SCHOOLS—FIRE SAFETY STANDARDS

Effective Date: 7/28/91

AN ACT Relating to school construction standards for fire prevention and safety; amending RCW 48.48.045; and adding a new section to chapter 19.27 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 19.27 RCW to read as follows:

The building code council shall adopt rules by December 1, 1991, requiring that all buildings classed as E-1 occupancies, as defined in the state building code, except portable school classrooms, constructed after the effective date of this act, be provided with an automatic fire-extinguishing system. Rules adopted by the council shall consider applicable nationally recognized fire and building code standards and local conditions.

By December 15, 1991, the council shall transmit to the superintendent of public instruction, the state board of education, and the fire protection policy board copies of the rules as adopted. The superintendent of public instruction, the state board of education, and the fire protection policy board shall respond to the council by February 15, 1992, with any recommended changes to the rule. If changes are recommended the council shall immediately consider those changes to the rules through its rule-making procedures. The rules shall be effective on July 1, 1992.

Sec. 2. RCW 48.48.045 and 1986 c 266 s 69 are each amended to read as follows:

Nonconstruction standards ~~((for construction))~~ relative to fire prevention and safety for all schools under the jurisdiction of the superintendent of public instruction and state board of education shall be established by the state fire protection board. ~~((The director of community development, through the director of fire protection, shall adopt such nationally recognized fire and building codes and standards as may be applicable to local conditions. After the approval of such standards by the superintendent of public instruction and the state board of education, the director of community development, through))~~ The director of fire protection ~~((;))~~ shall make or cause to be made plan reviews and construction inspections for all E-1 occupancies as may be necessary to insure compliance with ~~((said codes))~~ the state building code and standards for schools adopted under chapter 19.27 RCW. Nothing in this section prohibits the director of fire protection from delegating construction inspection authority to any local jurisdiction.

~~((Political subdivisions of the state having and enforcing such fire and building codes and standards at least equal to or higher than those adopted as provided for in this section shall be exempted from the plan review and construction inspection provisions of this section within their respective subdivision for as long as such codes and standards are enforced;))~~

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 171

[Engrossed Substitute House Bill 1727]

SPEECH IMPAIRED PERSONS—APPOINTMENT OF INTERPRETERS FOR

Effective Date: 7/28/91

AN ACT Relating to interpreters; amending RCW 2.42.110, 2.42.130, 2.42.160, and 2.42.170; and repealing RCW 2.42.020, 2.42.030, and 2.42.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.42.110 and 1985 c 389 s 11 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) (~~("Hearing")~~) "Impaired person" means a person who, because of a hearing or speech impairment, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, speech impaired, or hard of hearing.

(2) ~~"Qualified interpreter" means ((an interpreter who is certified by the registry of interpreters for the deaf with the certificate level specified below and who meets the requirements of RCW 2.42.130:~~

~~(a) For judicial proceedings involving a class A felony, use of the services of a qualified interpreter holding the specialist certificate legal is required:~~

~~(b) For other judicial, quasi-judicial, or administrative proceedings, use of the services of a qualified interpreter holding the specialist certificate-legal, master's comprehensive skills certificate, or comprehensive skills certificate is required:~~

~~(c) For programs and activities other than judicial or administrative proceedings, the services of a qualified interpreter holding a partial certification shall be required. Efforts to obtain the services of a qualified interpreter holding the master's comprehensive certificate or comprehensive skills certificate shall be made before obtaining the services of a qualified interpreter holding the interpreting certificate and/or the transliterating certificate)) a visual language interpreter who is certified by the state or is certified by the registry of interpreters for the deaf to hold the comprehensive skills certificate or both certificates of interpretation and transliteration, or an interpreter who can readily translate statements of speech impaired persons into spoken language.~~

~~((4))~~ (3) "Intermediary interpreter" means a hearing impaired interpreter who holds a reverse skills certificate by the state or is certified by the registry of interpreters for the deaf with a reverse skills certificate, who meets the requirements of RCW 2.42.130, and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified hearing interpreter.

~~((5))~~ (4) "Appointing authority" means the presiding officer or similar official of an; court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision.

Sec. 2. RCW 2.42.130 and 1985 c 389 s 13 are each amended to read as follows:

(1) If a qualified interpreter for a hearing impaired person is required, the appointing authority shall request a qualified interpreter and/or an intermediary interpreter through the department of social and health services,

office of deaf services, or through any community center for hearing impaired persons which operates an interpreter referral service. The office of deaf services and these community centers shall maintain an up-to-date list or lists of interpreters that are certified by the state and/or by the registry of interpreters for the deaf.

(2) The appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the hearing impaired person, that the interpreter is able in that particular proceeding, program, or activity to interpret accurately all communication to and from the hearing impaired person. If at any time during the proceeding, program, or activity, in the opinion of the hearing impaired person or a qualified observer, the interpreter does not provide accurate, impartial, and effective communication with the hearing impaired person the appointing authority shall appoint another qualified interpreter. No otherwise qualified interpreter who is a relative of any participant in the proceeding may be appointed.

Sec. 3. RCW 2.42.160 and 1985 c 389 s 16 are each amended to read as follows:

(1) A qualified and/or intermediary interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law.

(2) A qualified and/or intermediary interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

Sec. 4. RCW 2.42.170 and 1985 c 389 s 17 are each amended to read as follows:

A qualified and/or intermediary interpreter appointed under this chapter is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.

NEW SECTION. Sec. 5. The following acts or parts of acts are each repealed:

- (1) RCW 2.42.020 and 1989 c 358 s 13, 1983 c 222 s 2, & 1973 c 22 s 2;
- (2) RCW 2.42.030 and 1973 c 22 s 3; and
- (3) RCW 2.42.040 and 1973 c 22 s 4.

Passed the House March 20, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 172

[Substitute Senate Bill 5374]

INDUSTRIAL INSURANCE LABOR-MANAGEMENT COOPERATION PROGRAM

Effective Date: 7/28/91

AN ACT Relating to the industrial insurance labor-management cooperation program; creating new sections; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

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

(1) The quality and stability of the relationship between labor and management in this state's businesses contributes significantly to the health of the state's economy and the capacity of the economy to provide high-quality employment for the state's citizens;

(2) Cooperation between labor and management can lead to innovation, high productivity, and high product quality and is essential if the state is to be competitive in the fast-changing, international, and technology-oriented economy;

(3) Through cooperation, labor and management can better address common problems that hinder individual and business welfare; and

(4) The effective, efficient operation of the state's industrial insurance system is primarily a matter of concern to labor and management, and a major issue around which cooperation should be fostered.

Therefore, to strengthen the state's economy, to promote a better operating environment for the state's workers and businesses, and to inform persons and provide an ongoing forum for discussion regarding the state's industrial insurance system, the legislature establishes the industrial insurance labor-management cooperation program.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this act.

(1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries.

(3) "Local industrial insurance labor-management committee" means a formal, nonprofit organization structured for continuing service with voluntary membership, intended to provide information on and address issues regarding industrial insurance issues in a distinct and identifiable geographic region or industry, and including equal membership from labor and management.

(4) "Program" means the industrial insurance labor-management cooperation program.

NEW SECTION. Sec. 3. (1) The industrial insurance labor-management cooperation program is established within the industrial insurance division of the department. The program shall promote and support efforts by labor and management throughout the state to jointly address issues regarding the state's industrial insurance system and its operation in a local area or industry. Through this program, the department shall:

(a) Encourage the formation of and provide assistance to local industrial insurance labor-management committees;

(b) Serve as a clearinghouse for information on industrial insurance and relevant issues to be addressed by local labor-management committees;

(c) Provide conferences, workshops, seminars, or other educational offerings to promote labor-management cooperation in addressing industrial insurance issues; and

(d) Provide any other service determined by the director to enhance efforts by labor and management to jointly address industrial insurance issues.

(2) The director shall adopt rules to implement the program, appoint a program coordinator, and report annually to the legislature on the progress and status of the program.

(3) The program coordinator shall report quarterly to the worker's compensation advisory committee on the progress and status of the program.

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.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 6. This act shall expire and the industrial insurance labor-management cooperation program shall cease to exist on June 30, 1992, unless extended by law for an additional period of time.

Passed the Senate March 19, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 173

[Substitute House Bill 1342]

MOTOR VEHICLE FUELS—LOCAL TAXATION OF SALES AND DISTRIBUTION

Effective Date: 7/1/91

AN ACT Relating to the local taxation of the sale or distribution of motor vehicle fuels; amending RCW 82.36.440 and 82.38.280; adding a new chapter to Title 82 RCW; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislative authority of a border area jurisdiction may, by resolution for the purposes authorized in this chapter and by approval of a majority of the registered voters of the jurisdiction voting on the proposition at a general or special election, fix and impose an excise tax on the retail sale of motor vehicle fuel and special fuel within the jurisdiction. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition shall state the tax rate that is proposed. The rate of such tax shall be in increments of one-tenth of a cent per gallon and shall not exceed one cent per gallon.

The tax imposed in this section shall be collected and paid to the jurisdiction but once in respect to any motor vehicle fuel or special fuel. This tax shall be in addition to any other tax authorized or imposed by law.

For purposes of this chapter, the term "border area jurisdictions" means all cities and towns within ten miles of an international border crossing and any transportation benefit district established under RCW 36-.73.020 which has within its boundaries an international border crossing.

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

- (1) "Motor vehicle fuel" has the meaning given in RCW 82.36.010(2).
- (2) "Special fuel" has the meaning given in RCW 82.38.020(5).
- (3) "Motor vehicle" has the meaning given in RCW 82.36.010(1).

NEW SECTION. Sec. 3. The entire proceeds of the tax imposed under this chapter, less refunds authorized by the resolution imposing such tax and less amounts deducted by the border area jurisdiction for administration and collection expenses, shall be used solely for the purposes of border area jurisdiction street maintenance and construction.

Sec. 4. RCW 82.36.440 and 1990 c 42 s 204 are each amended to read as follows:

The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing motor vehicle fuel, and no city, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax

upon or measured by the sale, receipt, distribution, or use of motor vehicle fuel, except as provided in RCW 82.80.010 and section 1 of this act.

Sec. 5. RCW 82.38.280 and 1990 c 42 s 205 are each amended to read as follows:

The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing special fuel, and no city, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of special fuel, except as provided in RCW 82.80.010 and section 1 of this act.

NEW SECTION. Sec. 6. Sections 1 through 3 of this act shall constitute a new chapter in Title 82 RCW.

NEW SECTION. Sec. 7. 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 shall take effect July 1, 1991.

Passed the House March 15, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 174

[Substitute House Bill 1142]

PROCESSOR AND PREPARER LIENS

Effective Date: 7/28/91

AN ACT Relating to processor and preparer liens; and amending RCW 20.01.010 and 60.13.010.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 20.01.010 and 1989 c 354 s 37 are each amended to read as follows:

As used in this title the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Director" means the director of agriculture or his duly authorized representative.

(2) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(3) "Agricultural product" means any unprocessed horticultural, vermicultural and its byproducts, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock. (~~When used~~)

~~in RCW 60.13.020, "agricultural product" means horticultural, viticultural, and berry products, hay and straw, and turf and forage seed and applies only when such products are delivered to a processor or conditioner in an unprocessed form:))~~

(4) "Producer" means any person engaged in the business of growing or producing any agricultural product, whether as the owner of the products, or producing the products for others holding the title thereof.

(5) "Consignor" means any producer, person, or his agent who sells, ships, or delivers to any commission merchant, dealer, cash buyer, or agent, any agricultural product for processing, handling, sale, or resale.

(6) "Commission merchant" means any person who receives on consignment for sale or processing and sale from the consignor thereof any agricultural product for sale on commission on behalf of the consignor, or who accepts any farm product in trust from the consignor thereof for the purpose of resale, or who sells or offers for sale on commission any agricultural product, or who in any way handles for the account of or as an agent of the consignor thereof, any agricultural product.

(7) "Dealer" means any person other than a cash buyer, as defined in subsection (10) of this section, who solicits, contracts for, or obtains from the consignor thereof for reselling or processing, title, possession, or control of any agricultural product, or who buys or agrees to buy any agricultural product from the consignor thereof for sale or processing and includes any person, other than one who acts solely as a producer, who retains title in an agricultural product and delivers it to a producer for further production or increase. For the purposes of this chapter, the term dealer includes any person who purchases livestock on behalf of and for the account of another, or who purchases cattle in another state or country and imports these cattle into this state for resale.

(8) "Limited dealer" means any person operating under the alternative bonding provision in RCW 20.01.211.

(9) "Broker" means any person other than a commission merchant, dealer, or cash buyer who negotiates the purchase or sale of any agricultural product, but no broker may handle the agricultural products involved or proceeds of the sale.

(10) "Cash buyer" means any person other than a commission merchant, dealer, or broker, who obtains from the consignor thereof for the purpose of resale or processing, title, possession, or control of any agricultural product or who contracts for the title, possession, or control of any agricultural product, or who buys or agrees to buy for resale any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product, in coin or currency, lawful money of the United States. However, a cashier's check, certified check, or bankdraft may be used for

the payment. For the purposes of this subsection, "agricultural product," does not include hay, grain, straw, or livestock.

(11) "Agent" means any person who, on behalf of any commission merchant, dealer, broker, or cash buyer, acts as liaison between a consignor and a principal, or receives, contracts for, or solicits any agricultural product from the consignor thereof or who negotiates the consignment or purchase of any agricultural product on behalf of any commission merchant, dealer, broker, or cash buyer and who transacts all or a portion of that business at any location other than at the principal place of business of his employer. With the exception of an agent for a commission merchant or dealer handling horticultural products, an agent may operate only in the name of one principal and only to the account of that principal.

(12) "Retail merchant" means any person operating from a bona fide or established place of business selling agricultural products twelve months of each year.

(13) "Fixed or established place of business" for the purpose of this chapter means any permanent warehouse, building, or structure, at which necessary and appropriate equipment and fixtures are maintained for properly handling those agricultural products generally dealt in, and at which supplies of the agricultural products being usually transported are stored, offered for sale, sold, delivered, and generally dealt ~~(in)~~ with in quantities reasonably adequate for and usually carried for the requirements of such a business, and that is recognized as a permanent business at such place, and carried on as such in good faith and not for the purpose of evading this chapter, and where specifically designated personnel are available to handle transactions concerning those agricultural products generally dealt in, which personnel are available during designated and appropriate hours to that business, and shall not mean a residence, barn, garage, tent, temporary stand or other temporary quarters, any railway car, or permanent quarters occupied pursuant to any temporary arrangement.

(14) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale.

(15) "Pooling contract" means any written agreement whereby a consignor delivers a horticultural product to a commission merchant under terms whereby the commission merchant may commingle the consignor's horticultural products for sale with others similarly agreeing, which must include all of the following:

(a) A delivery receipt for the consignor that indicates the variety of horticultural product delivered, the number of containers, or the weight and tare thereof;

(b) Horticultural products received for handling and sale in the fresh market shall be accounted for to the consignor with individual pack-out records that shall include variety, grade, size, and date of delivery. Individual daily packing summaries shall be available within forty-eight hours after packing occurs. However, platform inspection shall be acceptable by mutual contract agreement on small deliveries to determine variety, grade, size, and date of delivery;

(c) Terms under which the commission merchant may use his judgment in regard to the sale of the pooled horticultural product;

(d) The charges to be paid by the consignor as filed with the state of Washington;

(e) A provision that the consignor shall be paid for his pool contribution when the pool is in the process of being marketed in direct proportion, not less than eighty percent of his interest less expenses directly incurred, prior liens, and other advances on the grower's crop unless otherwise mutually agreed upon between grower and commission merchant.

(16) "Date of sale" means the date agricultural products are delivered to the person buying the products.

(17) "Conditioner" means any person, firm, company, or other organization that receives turf, forage, or vegetable seeds from a consignor for drying or cleaning.

(18) "Seed bailment contract" means any contract meeting the requirements of chapter 15.48 RCW.

(19) "Proprietary seed" means any seed that is protected under the Federal Plant Variety Protection Act.

(20) "Licensed public weighmaster" means any person, licensed under the provisions of chapter 15.80 RCW, who weighs, measures, or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure, or count upon which the purchase or sale of any commodity or upon which the basic charge of payment for services rendered is based.

(21) "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a licensed public weighmaster in accordance with the provisions of chapter 15.80 RCW.

Sec. 2. RCW 60.13.010 and 1987 c 148 s 1 are each amended to read as follows:

As used in this chapter, the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Agricultural product((:))" means any unprocessed horticultural, vermicultural and its byproducts, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock. When used in RCW 60.13.020, "agricultural product" means horticultural, viticultural,

aquacultural, or berry products, hay and straw, milk and milk products, or turf and forage seed and applies only when such products are delivered to a processor or conditioner in an unprocessed form.

(2) "Conditioner," "consignor," "person," (~~("processor,")~~) and "producer" have the meanings defined in RCW 20.01.010.

(~~((2))~~) (3) "Delivers" means that a producer completes the performance of all contractual obligations with reference to the transfer of actual or constructive possession or control of an agricultural product to a processor or conditioner or preparer, regardless of whether the processor or conditioner or preparer takes physical possession.

(4) "Preparer" means a person engaged in the business of feeding livestock or preparing livestock products for market.

(~~((3))~~) (5) "Processor" means any person, firm, company, or other organization that purchases agricultural products except milk and milk products from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale, or that purchases or markets milk from a dairy producer and is obligated to remit payment to such dairy producer directly.

(6) "Commercial fisherman" means a person licensed to fish commercially for or to take food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute.

(~~((4))~~) (7) "Fish" means food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute.

Passed the House February 20, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 175

[Substitute House Bill 1635]

EMERGENCY MEDICAL SERVICES—LOCAL TAXING AUTHORITY

Effective Date: 7/28/91

AN ACT Relating to local governmental medical care and services; and amending RCW 84.52.069.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.52.069 and 1985 c 348 s 1 are each amended to read as follows:

(1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, or fire protection district.

(2) A taxing district may impose additional regular property tax levies in an amount equal to (~~(twenty-five)~~) fifty cents or less per thousand dollars of the assessed value of property in the taxing district in each year for six

consecutive years when specifically authorized so to do by a majority of at least three-fifths of the ~~((electors))~~ registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election when the number of ~~((electors))~~ registered voters voting on the proposition does not exceed forty per centum of the total votes cast in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the ~~((electors))~~ registered voters thereof voting on the proposition when the number of ~~((electors))~~ registered voters voting on the proposition exceeds forty per centum of the total votes cast in such taxing district in the last preceding general election. Ballot propositions shall conform with RCW 29.30.111.

(3) Any tax imposed under this section shall be used only for the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(4) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: PROVIDED, That if a county levies less than ~~((twenty-five))~~ fifty cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and ~~((twenty-five))~~ fifty cents: PROVIDED FURTHER, That if a taxing district within a county levies this tax, and the voters of the county subsequently approve a levying of this tax, then the amount of the taxing district levy within the county shall be reduced, when the combined levies exceed ~~((twenty-five))~~ fifty cents. Whenever a tax is levied county-wide, the service shall, insofar as is feasible, be provided throughout the county: PROVIDED FURTHER, That no county-wide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: AND PROVIDED FURTHER, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: AND PROVIDED, FURTHER, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which the county ballot proposition is placed: AND PROVIDED FURTHER, That any taxing district emergency medical service levy that is authorized subsequent to a

county emergency medical service levy, shall expire concurrently with the county emergency medical service levy.

(5) The tax levy authorized in this section is in addition to the tax levy authorized in RCW 84.52.043.

(6) The limitation in RCW 84.55.010 shall not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

(7) No taxing district may levy under this section more than twenty-five cents per thousand dollars of assessed value of property if reductions under RCW 84.52.010(2) are made for the year within the boundaries of the taxing district.

Passed the House March 20, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 176

[House Bill 1032]

DEATH INVESTIGATIONS AND RESPONSIBILITY FOR COSTS OF TRANSPORTING HUMAN REMAINS

Effective Date: 7/28/91

AN ACT Relating to death investigations; amending RCW 43.103.030, 28B.20.426, and 43.79.445; adding a new section to chapter 68.50 RCW; adding a new section to chapter 43.103 RCW; creating a new section; and repealing RCW 68.50.030.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 68.50 RCW to read as follows:

Whenever a coroner or medical examiner assumes jurisdiction over human remains and directs transportation of those remains by a funeral establishment, as defined in RCW 18.39.010, the reasonable costs of transporting shall be borne by the county if: (1) The funeral establishment transporting the remains is not providing the funeral or disposition services; or (2) the funeral establishment providing the funeral or disposition services is required to transport the remains to a facility other than its own.

Except as provided in RCW 36.39.030, 68.52.030, and 73.08.070, any transportation costs or other costs incurred after the coroner or medical examiner has released jurisdiction over the human remains shall not be borne by the county.

Sec. 2. RCW 43.103.030 and 1983 1st ex.s. c 16 s 3 are each amended to read as follows:

There is created the Washington state death investigations council. The council shall oversee the state toxicology laboratory and, together with the

president of the University of Washington, control the laboratory's operation. The council may also study and recommend cost-efficient improvements to the death investigation system in Washington and report its findings to the legislature.

Further, the council shall, jointly with the chairperson of the pathology department of the University of Washington's School of Medicine, or the chairperson's designee, oversee the state forensic pathology fellowship program, determine the budget for the program and set the fellow's annual salary, and take those steps necessary to administer the program.

Sec. 3. RCW 28B.20.426 and 1986 c 31 s 1 are each amended to read as follows:

(1) A fellowship program in forensic pathology is created in the school of medicine at the University of Washington. The program shall provide training for one person per year. The program shall be funded from funds in the death investigation account of the general fund under RCW 43.79.445.

(2) The fellowship recipient, during the period of his or her fellowship, shall be available, as soon as his or her level of expertise warrants it, to the county coroners of the state without charge to perform autopsies, for consultations, and to provide testimony in court.

(3) The forensic pathology fellowship shall be administered according to the provisions in RCW 43.103.030, as amended.

Sec. 4. RCW 43.79.445 and 1986 c 31 s 2 are each amended to read as follows:

There is established an account in the state treasury referred to as the "death investigations' account" which shall exist for the purpose of receiving, holding, investing, and disbursing funds appropriated or provided in ~~((section 20, chapter 16, Laws of 1983 1st ex. sess.))~~ RCW 70.58.107 and any moneys appropriated or otherwise provided thereafter. All earnings of investments of balances in the death investigations' account shall be credited to the general fund.

Moneys in the death investigations' account shall be disbursed by the state treasurer once every year on December 31 and at any other time determined by the treasurer. ~~((The above-mentioned entities and individuals may submit billings to the state treasurer prior to December 31. The University of Washington may also submit billings for amounts not to exceed thirty-five thousand dollars per twelve-month period for the fellowship program in forensic pathology under RCW 28B.20.426 and the state treasurer shall make such payments for the fellowship program in forensic pathology under RCW 28B.20.426))~~ The treasurer shall make disbursements to: The state toxicology laboratory, counties for the cost of autopsies, the University of Washington to fund the state forensic pathology fellowship program, the state patrol for providing partial funding for the state dental identification

system, the criminal justice training commission for training county coroners, medical examiners and their staff, and the state death investigations council.

The University of Washington and the Washington state death investigations council shall jointly determine the yearly amount for the state forensic pathology fellowship program established by RCW 28B.20.426.

NEW SECTION. Sec. 5. The legislature finds and declares that sudden and unexplained child deaths are a leading cause of death for children under age three. The public interest is served by research and study of the potential causes and indications of such unexplained child deaths and the prevention of inaccurate and inappropriate designation of sudden infant death syndrome (SIDS) as a cause of death. The legislature further finds and declares that law enforcement officers, fire fighters, emergency medical technicians, and other first responders in emergency situations are not adequately informed regarding sudden, unexplained death in young children including but not limited to sudden infant death syndrome, its signs and typical history, and as a result may compound the family and child care provider's grief through conveyed suspicions of a criminal act. Coroners, investigators, and prosecuting attorneys are also in need of updated training on the identification of unexplained death in children under the age of three, including but not limited to sudden infant death syndrome awareness and sensitivity and the establishment of a state-wide uniform protocol in cases of sudden, unexplained child death.

NEW SECTION. Sec. 6. A new section is added to chapter 43.103 RCW to read as follows:

The council shall research and develop an appropriate training component on the subject of sudden, unexplained child death, including but not limited to sudden infant death syndrome. The training component shall include, at a minimum:

- (1) Medical information on sudden, unexplained child death for first responders, including awareness and sensitivity in dealing with families and child care providers, and the importance of forensically competent death scene investigation;
- (2) Information on community resources and support groups available to assist families who have lost a child to sudden, unexplained death, including sudden infant death syndrome;
- (3) Development and adoption of an up-to-date protocol of investigation in cases of sudden, unexplained child death, including the importance of a consistent policy of thorough death scene investigation, and an autopsy in unresolved cases as appropriate;
- (4) The value of timely communication between the county coroner or medical examiner and the public health department, when a sudden, unexplained child death occurs, in order to achieve a better understanding of

such deaths, and connecting families to various community and public health support systems to enhance recovery from grief.

The council shall work with volunteer groups with expertise in the area of sudden, unexplained child death, including but not limited to the SIDS Northwest Regional Center at Children's Hospital, the Washington chapter of the national SIDS foundation, and the Washington association of county officials.

Upon development of an appropriate curriculum, agreed upon by the council, the training module shall be offered to first responders, coroners, medical examiners, prosecuting attorneys serving as coroners, and investigators, both voluntarily through their various associations and as a course offering at the criminal justice training center.

NEW SECTION. Sec. 7. RCW 68.50.030 and 1917 c 90 s 5 are each repealed.

Passed the House March 19, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 177

[House Bill 1748]

SMALL BUSINESS EXPORT FINANCE ASSISTANCE CENTER CONTINUED

Effective Date: 7/28/91

AN ACT Relating to the small business export finance assistance center; and repealing RCW 43.131.325 and 43.131.326.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The following acts or parts of acts are each repealed:

(1) RCW 43.131.325 and 1985 c 231 s 10; and

(2) RCW 43.131.326 and 1985 c 231 s 11.

Passed the House March 12, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 178

[Engrossed Substitute Senate Bill 5156]

CANDIDATE RESIDENCY REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to candidate residency requirements; adding a new section to chapter 29.18 RCW; adding a new section to chapter 29.04 RCW; adding new sections to chapter 29.15 RCW; and recodifying RCW 29.18.— and 29.04.—.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 29.18 RCW to read as follows:

(1) A person filing a declaration and affidavit of candidacy for an office shall, at the time of filing, possess the qualifications specified by law for persons who may be elected to the office.

(2) The name of a candidate for an office shall not appear on a ballot for that office unless the candidate is, at the time the candidate's declaration and affidavit of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration and affidavit of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations and affidavits of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(3) This section does not apply to the office of a member of the United States congress.

NEW SECTION. Sec. 2. A new section is added to chapter 29.04 RCW to read as follows:

(1) The legislative authority of each county and each city, town, and special purpose district which lies entirely within the county shall provide the county auditor accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner districts and shall ensure that the information provided to the auditor is kept current.

(2) A city, town, or special purpose district that lies in more than one county shall provide the secretary of state accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner districts and shall ensure that the information provided to the secretary is kept current. The secretary of state shall promptly transmit to each county in which a city, town, or special purpose district is located information regarding the boundaries of that jurisdiction which is provided to the secretary.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act are each recodified as sections in chapter 29.15 RCW on July 1, 1992.

Passed the Senate April 22, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 179

[Senate Bill 5264]

COMMUNITY AND URBAN FORESTRY PROGRAM

Effective Date: 7/28/91

AN ACT Relating to community and urban forestry; and adding a new chapter to Title 76 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature hereby finds and declares that:

(1) Trees and other woody vegetation are a necessary and important part of community and urban environments. Community and urban forests have many values and uses including conserving energy, reducing air and water pollution and soil erosion, contributing to property values, attracting business, reducing glare and noise, providing aesthetic and historical values, providing wood products, and affording comfort and protection for humans and wildlife.

(2) As urban and community areas in Washington state grow, the need to plan for and protect community and urban forests increases. Cities and communities benefit from assistance in developing and maintaining community and urban forestry programs that also address future growth.

(3) Assistance and encouragement in establishment, retention, and enhancement of these forests and trees by local governments, citizens, organizations, and professionals are in the interest of the state based on the contributions these forests make in preserving and enhancing the quality of life of Washington's municipalities and counties while providing opportunities for economic development.

NEW SECTION. Sec. 2. The purpose of this chapter is to:

(1) Encourage planting and maintenance and management of trees in the state's municipalities and counties and maximize the potential of tree and vegetative cover in improving the quality of the environment.

(2) Encourage the coordination of state and local agency activities and maximize citizen participation in the development and implementation of community and urban forestry-related programs.

(3) Foster healthy economic activity for the state's community and urban forestry-related businesses through cooperative and supportive contracts with the private business sector.

(4) Facilitate the creation of employment opportunities related to community and urban forestry activities including opportunities for inner city youth to learn teamwork, resource conservation, environmental appreciation, and job skills.

(5) Provide meaningful voluntary opportunities for the state's citizens and organizations interested in community and urban forestry activities.

NEW SECTION. Sec. 3. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of natural resources.

(2) "Person" means an individual, partnership, private or public municipal corporation, Indian tribe, state entity, county or local governmental entity, or association of individuals of whatever nature.

(3) "Community and urban forest" is that land in and around human settlements ranging from small communities to metropolitan areas, occupied or potentially occupied by trees and associated vegetation. Community and urban forest land may be planted or unplanted, used or unused, and includes public and private lands, lands along transportation and utility corridors, and forested watershed lands within populated areas.

(4) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(5) "Municipality" means a city, town, port district, public school district, community college district, irrigation district, weed control district, park district, or other political subdivision of the state.

NEW SECTION. Sec. 4. (1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose stated in section 2 of this act. The department may assist municipalities and counties in establishing and maintaining community and urban forestry programs and encourage persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist municipalities, counties, and other public and private entities in the development and coordination of policies, programs, and activities for the promotion of community and urban forestry.

(3) The department may appoint a committee or council to advise the department in establishing and carrying out a program in community and urban forestry.

(4) The department may assist municipal and county tree maintenance programs by making surplus equipment available on loan where feasible for community and urban forestry programs and cooperative projects.

NEW SECTION. Sec. 5. The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.

(2) Receive such gifts, grants, bequests, and endowments and donations of labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter, and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources.

(3) Charge fees for attendance at workshops and conferences, and for various publications and other materials that the department may prepare.

(4) Enter into agreements and contracts with persons having community and urban forestry-related responsibilities.

NEW SECTION. Sec. 6. The department shall assume the primary responsibility of carrying out this chapter and shall cooperate with other private and public, state and federal persons, any agency of another state, the United States, any agency of the United States, or any agency or province of Canada.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act shall constitute a new chapter in Title 76 RCW.

Passed the Senate April 22, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 180

[Substitute Senate Bill 5632]

OCULARISTS—REVISED REGULATORY PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to ocularists; amending RCW 18.55.020, 18.55.040, 18.55.050, and 18.55.060; and adding new sections to chapter 18.55 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds it necessary to regulate the practice of ocularist to protect the public health, safety, and welfare. The legislature intends that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public.

Sec. 2. RCW 18.55.020 and 1980 c 101 s 2 are each amended to read as follows:

The terms defined in this section shall have the meaning ascribed to them wherever appearing in this chapter, unless a different meaning is specifically used to such term in such statute.

(1) (~~"Director" means the director of licensing~~) "Department" means the department of health.

(2) "Secretary" means the secretary of health.

(3) "Ocularist" means a person (who designs, fabricates, and fits ocular prosthetic appliances. An ocularist is authorized to perform the necessary procedures to provide an ocular prosthetic service for the patient in the ocularist's office or laboratory on prescription of a physician. The ocularist is authorized to make judgment on the needed care, replacement, and use of

~~an ocular prosthetic appliance. The ocularist is authorized to design, fabricate, and fit human prosthetics in the following categories:~~

- ~~(a) Stock and custom prosthetic eyes;~~
- ~~(b) Stock and custom therapeutic scleral shells;~~
- ~~(c) Stock and custom therapeutic painted iris shells;~~
- ~~(d) External orbital and facial prosthetics; and~~

~~(e) Ocular conformers. PROVIDED, That nothing herein shall be construed to allow the fitting or fabricating of contact lenses.~~

~~(3) "Apprentice" means a person designated an apprentice in the records of the director at the request of a licensed ocularist, and who shall thereafter receive from such licensee training and direct supervision in the work of an ocularist)) licensed under this chapter.~~

(4) "Advisory committee" means the state ocularist advisory committee.

(5) "Apprentice" means a person designated an apprentice in the records of the secretary to receive from a licensed ocularist training and direct supervision in the work of an ocularist.

(6) "Stock-eye" means an ocular stock prosthesis that has not been originally manufactured or altered by the ocularist or service provider selling or fitting, or both, said prosthesis to a patient or customer. "Altered" means either taking away or adding materials, or colorization, or otherwise changing the prosthesis' appearance, function, or fit in the socket or on the implant of the patient or customer.

(7) "Modified stock-eye" means a stock-eye, as defined in subsection (6) of this section, that has been altered in some manner by the ocularist or service provider selling or fitting, or both, said prosthesis to a patient or customer. "Altered" is as defined in subsection (6) of this section. A modified stock-eye cannot be defined as either a "custom" or "impression-fitted" eye or prosthesis by adding material that incorporates an impression-surface of the patient or customer socket or implant surfaces.

(8) "Custom-eye" means an original, newly manufactured eye or prosthesis that has been specifically crafted by an ocularist or authorized service provider for the patient or customer to whom it is sold or provided. The "custom-eye" may be either an impression-fitted eye (an impression of the socket or implant surfaces) or an empirical/wax pattern-fitted method eye, or a combination of either, as delineated in the ocularist examination.

NEW SECTION. Sec. 3. An ocularist designs, fabricates, and fits ocular prosthetic appliances. An ocularist is authorized to perform the necessary procedures to provide an ocular prosthetic service for the patient in the ocularist's office or laboratory on referral of a physician. A referral is not required for the replacement of an ocular prosthetic appliance. The ocularist is authorized to make judgment on the needed care, replacement, and use of an ocular prosthetic appliance. The ocularist is authorized to design, fabricate, and fit human prosthetics in the following categories:

- (1) Stock and custom prosthetic eyes;
- (2) Stock and custom therapeutic scleral shells;
- (3) Stock and custom therapeutic painted iris shells;
- (4) External orbital and facial prosthetics; and
- (5) Ocular conformers: PROVIDED, That nothing herein shall be construed to allow the fitting or fabricating of contact lenses.

Sec. 4. RCW 18.55.040 and 1985 c 7 s 53 are each amended to read as follows:

~~((t))~~ No applicant ~~((for a license))~~ shall be ~~((registered))~~ licensed under this chapter until the applicant pays an examination fee ~~((as shall be))~~ determined by the ~~((director))~~ secretary, as provided in RCW ~~((43.24-086))~~ 43.70.250, and certifies under oath after furnishing satisfactory documentation, that the applicant:

~~((a))~~ (1) Is eighteen years or more of age;

~~((b))~~ (2) Has graduated from high school or has received a general equivalency degree;

~~((c))~~ (3) Is of good moral character; and

~~((d))~~ Has either:

~~((i))~~ (4)(a) Had at least ~~((five years))~~ ten thousand hours of apprenticeship training under the direct supervision of a licensed ocularist ~~((in the state of Washington))~~; or

~~((ii))~~ (b) Successfully completed a prescribed course in ocularist training programs ~~((in a college, teaching facility, or university approved by the director; or~~

~~((iii))~~ ~~Been principally engaged in practicing as an ocularist outside the state of Washington for eight years and shall have been employed by a licensed ocularist or physician for one year in the state of Washington))~~ approved by the secretary; or

(c) Has had at least ten thousand hours of apprenticeship training under the direct supervision of a practicing ocularist, or has the equivalent experience as a practicing ocularist, or any combination of training and supervision, not in the state of Washington; and

~~((iv))~~ (5) Successfully passes ~~((with a grade of at least seventy-five percent;))~~ an examination~~((;))~~ conducted or approved by the ~~((director, which shall determine whether the applicant has a thorough knowledge of the principles governing the practice of an ocularist))~~ secretary.

~~((2))~~ The director shall issue a license without examination to any person who makes application therefor within six months after June 12, 1980, pays a fee as determined by the director, and certifies under oath that the applicant has been actually and principally engaged in the practice of an ocularist in the state of Washington for a period of not less than five years immediately preceding June 12, 1980:

~~(3) Any person who on June 12, 1980 (a) is employed as apprentice by a person who is principally engaged in the practice of an ocularist, (b) registers with the director prior to one hundred twenty days after June 12, 1980, and (c) furnishes the director a statement, under oath, and certified as correct by the employer, as to the length of time of such employment shall be given credit for such period towards compliance with the requirement for five years' apprenticeship.)~~

NEW SECTION. Sec. 5. The secretary may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The examination shall determine if the applicant has a thorough knowledge of the principles governing the practice of an ocularist.

Sec. 6. RCW 18.55.050 and 1985 c 7 s 54 are each amended to read as follows:

Every ~~((licensee))~~ individual licensed or registered under this chapter shall pay an annual ~~((renewal))~~ license or registration renewal fee determined by the ~~((director))~~ secretary, as provided by RCW ~~((43.24.086))~~ 43.70.250, on or before the ~~((1st day of July of each year, and thereupon the license of such person shall be renewed for a period of one year))~~ expiration date established by the secretary. An application for renewal shall be on the form provided by the ~~((director))~~ secretary and shall be filed with the department of ~~((licensing))~~ health not less than ten days prior to its expiration. Each application for renewal shall be accompanied by a ~~((license))~~ renewal fee ~~((as shall))~~ in an amount to be determined by the ((director)) secretary. Any license or registration not renewed as provided in this section shall ~~((render the license))~~ be invalid ((but such licensee shall be reinstated upon written application therefore to the director and payment of a renewal fee to the director as provided in RCW 43.24.086, together with all delinquent annual renewal license fees)).

The secretary may provide by rule the procedures that may allow for the reinstatement of a license or registration upon payment of the renewal fee and a late renewal penalty fee.

Sec. 7. RCW 18.55.060 and 1980 c 101 s 5 are each amended to read as follows:

~~(1) ((No licensee under this chapter may have more than two apprentices in training at one time.~~

~~(2) The licensee shall be responsible for the acts of the apprentices in the performance of their work in the apprenticeship program.~~

~~(3))~~ A person wishing to work as an apprentice ocularist shall submit to the secretary the registration fee and completed application form signed by the applicant and the licensed ocularist who shall be responsible for the acts of the apprentice in the performance of his or her work in the apprenticeship program.

(2) Apprentices shall complete their ten thousand hours of apprenticeship ~~((m))~~ within eight years and shall not work longer as an apprentice unless the ~~((director))~~ secretary determines, after a hearing, that the apprentice was prevented by causes beyond his or her control from completing the apprenticeship and becoming a licensee hereunder in eight years.

(3) No licensee under this chapter may have more than two apprentices in training at one time.

NEW SECTION. Sec. 8. In addition to any other authority provided by law, the secretary may:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) Establish forms necessary to administer this chapter;

(3) Issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure. Proceedings concerning the denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) Employ clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;

(5) Maintain the official departmental record of all applicants and licensees;

(6) Determine the minimum education and experience requirements for licensure, including but not limited to approval of educational programs;

(7) Prepare and administer or approve the preparation and administration of examinations for licensure; and

(8) Establish and implement by rule a continuing competency program.

NEW SECTION. Sec. 9. An ocularist or authorized service provider shall explain to patients or customers exactly which type of prosthesis or service they are receiving or purchasing. Failure to do so, or misrepresentation of said services, constitutes unprofessional conduct under this chapter and chapter 18.130 RCW.

****NEW SECTION. Sec. 10. There is created a state advisory committee appointed by the secretary who shall advise the secretary concerning the administration of this chapter. One member of the committee shall be a medical doctor, one member shall be a currently licensed ocularist, and one member shall be an employee of the department of health. The term of office is three years. Members of the committee 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. 10 was vetoed, see message at end of chapter.

***NEW SECTION. Sec. 11. The secretary, members of the committee, and individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties.**

*Sec. 11 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 12. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state.

NEW SECTION. Sec. 13. Sections 1, 3, 5, and 8 through 12 of this act are added to chapter 18.55 RCW.

Passed the Senate April 22, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 15, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 15, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 10 and 11, Substitute Senate Bill No. 5632 entitled:

"AN ACT Relating to ophthalmologists."

Section 10 of this bill establishes the state ophthalmologist advisory committee in statute. This three member committee, appointed by the Secretary of the Department of Health, is comprised of a physician, an ophthalmologist, and a state department of health employee. The purpose of this committee is to advise the Secretary of the Department of Health on the administration of the ophthalmologist practice act. I see no reason for a state employee to be a member of this health profession advisory committee nor is it necessary to establish this advisory committee by statute. The Secretary of the Department of Health has authority under RCW 18.122.070 to appoint advisory committees to assist in the administration of health profession regulatory statutes. Therefore, I have vetoed section 10 of this bill.

Section 11 of this bill restates substantially the immunity from liability extended by RCW 18.122.070(5) to the secretary, members of advisory committees or individuals acting on their behalf. RCW 18.122.070(5) provides immunity based on "official acts performed in the course of their duties" for members of health care advisory committees. Section 11 of this bill would extend immunity to the state ophthalmologist advisory committee for "any act performed in the course of their duties."

CHAPTER 181

[Engrossed Substitute House Bill 1780]

OFFENDER WORK CREWS

Effective Date: 7/28/91

AN ACT Relating to work crews for offenders; amending RCW 9.94A.030, 9.94A.120, 9.94A.180, 9.94A.190, and 9A.76.010; and adding a new section to chapter 9.94A RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.94A.030 and 1991 c 32 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) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily

imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to comply with any limitations on the inmate's movements while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug or the selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.

(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than

eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in ~~((the residence of either the defendant or a member of the defendant's immediate family))~~ an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release ~~((and)), home detention, work crew, and a combination of work crew and home detention~~ as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while intoxicated (RCW 46.61.502), actual physical control while intoxicated (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

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

(30) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(31) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(32) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(33) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(34) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with section 2 of this act. The civic improvement tasks shall be performed on public property or on private property owned or operated by nonprofit entities, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county are eligible to participate on a work crew. Offenders sentenced for a

sex offense as defined in subsection (29) of this section are not eligible for the work crew program.

(35) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

~~((35))~~ (36) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program. Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (a) Successfully completing twenty-one days in a work release program, (b) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (c) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (d) having no prior charges of escape, and (e) fulfilling the other conditions of the home detention program.

Participation in a home detention program shall be conditioned upon: (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW to read as follows:

Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules shall include the requirements that the offender work to the best of his or her abilities and that he or she provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crews projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on existing private industries or labor force in the county where their service or labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.

Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the department administering the program the monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the

work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(1) The offender has diligently attempted but has been unable to obtain employment that provided the offender sufficient income to make such payment.

(2) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.

(5) Other extenuating circumstances as determined by the court.

Sec. 3. RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (5), and (7) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

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

(4) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years, and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum five-year term except for the purpose of commitment to an inpatient treatment facility. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which

may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer;

or

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(D) Anticipated length of treatment; and

(E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;

(II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) After July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender is convicted of any felony sex offense committed before July 1, 1987, and is sentenced to a term of confinement of more than

one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of social and health services for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary of social and health services cannot begin the evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

If the offender does not comply with the conditions of the treatment program, the secretary of social and health services may refer the matter to the sentencing court. The sentencing court shall commit the offender to the department of corrections to serve the balance of the term of confinement.

If the offender successfully completes the treatment program before the expiration of the term of confinement, the court may convert the balance of confinement to community supervision and may place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

After June 30, 1993, this subsection (b) shall cease to have effect.

(c) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his community supervision, the court may order the offender to serve out the balance of his community supervision term in confinement in the custody of the department of corrections.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (c) does not apply to any crime committed after July 1, 1990.

(d) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(8)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the

offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances; and

(v) The offender shall pay supervision fees as determined by the department of corrections.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol;

(v) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(vi) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be

more restrictive by the sentencing court, upon recommendation of the department of corrections.

(9) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(10) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(12) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer of any change in the offender's address or employment.

(13) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(14) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and

(3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(15) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(16) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(17) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release ((σ)), in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(18) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

Sec. 4. RCW 9.94A.180 and 1988 c 154 s 4 are each amended to read as follows:

(1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030(23) and section 2 of this act. The offender shall be required as a condition of partial confinement to report to the facility at designated times. An offender may be required to comply with crime-related prohibitions during the period of partial confinement.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the state department of corrections.

Sec. 5. RCW 9.94A.190 and 1988 c 154 s 5 are each amended to read as follows:

(1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. Except as provided for in subsection (3) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the defendant or a member of the defendant's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided for in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department of corrections for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.400.

Sec. 6. RCW 9A.76.010 and 1979 c 155 s 35 are each amended to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Custody" means restraint pursuant to a lawful arrest or an order of a court, or any period of service on a work crew: PROVIDED, That custody pursuant to chapter 13.34 RCW and RCW 74.13.020 and 74.13.031 and chapter 13.32A RCW shall not be deemed custody for purposes of this chapter;

(2) "Detention facility" means any place used for the confinement of a person (a) arrested for, charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020 as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an

order of a court, except an order under chapter 13.34 RCW or chapter 13.32A RCW, or (e) in any work release, furlough, or other such facility or program;

(3) "Contraband" means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation, or order of a court.

Passed the House April 27, 1991.

Passed the Senate April 27, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 182

[Substitute House Bill 1911]

MASSAGE PRACTITIONERS—LOCAL REGULATION OF STATE LICENSED PRACTITIONERS

Effective Date: 7/28/91

AN ACT Relating to local government regulation of state licensed massage practitioners; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.11 RCW; and adding a new section to chapter 36.32 RCW.

Be it enacted by the Legislature of the State of Washington:

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

(1) A state licensed massage practitioner seeking a city or town license to operate a massage business must provide verification of his or her state massage license as provided for in RCW 18.108.030.

(2) The city or town may charge a licensing or operating fee, but the fee charged a state licensed massage practitioner shall not exceed the licensing or operating fee imposed on similar health care providers, such as physical therapists or occupational therapists, operating within the same city or town.

(3) A state licensed massage practitioner is not subject to additional licensing requirements not currently imposed on similar health care providers, such as physical therapists or occupational therapists.

NEW SECTION. Sec. 2. A new section is added to chapter 35A.11 RCW to read as follows:

(1) A state licensed massage practitioner seeking a city license to operate a massage business must provide verification of his or her state massage license as provided for in RCW 18.108.030.

(2) The city may charge a licensing or operating fee, but the fee charged a state licensed massage practitioner shall not exceed the licensing or operating fee imposed on similar health care providers, such as physical therapists or occupational therapists, operating within the same city.

(3) A state licensed massage practitioner is not subject to additional licensing requirements not currently imposed on similar health care providers, such as physical therapists or occupational therapists.

NEW SECTION. Sec. 3. A new section is added to chapter 36.32 RCW to read as follows:

(1) A state licensed massage practitioner seeking a county license to operate a massage business must provide verification of his or her state massage license as provided for in RCW 18.108.030.

(2) The county may charge a licensing or operating fee, but the fee charged a state licensed massage practitioner shall not exceed the licensing or operating fee imposed on similar health care providers, such as physical therapists or occupational therapists, operating within the same county.

(3) A state licensed massage practitioner is not subject to additional licensing requirements not currently imposed on similar health care providers, such as physical therapists or occupational therapists.

Passed the House March 20, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 183

[Engrossed House Bill 1500]

JAIL LABOR—REDUCTION OF OUTSTANDING FINES AND COSTS FOR—RATE

Effective Date: 7/28/91

AN ACT Relating to jail labor; and amending RCW 10.82.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 10.82.030 and 1983 c 276 s 2 are each amended to read as follows:

If any person ordered into custody until the fine and costs adjudged against him be paid shall not, within five days, pay, or cause the payment of the same to be made, the clerk of the court shall issue a warrant to the sheriff commanding him to imprison such defendant in the county jail until the amount of such fine and costs owing are paid. Execution may at any time issue against the property of the defendant for that portion of such fine and costs not reduced by the application of this section. The amount of such fine and costs owing shall be the whole of such fine and costs reduced by the amount of any portion thereof paid, and ~~((thirty-five dollars))~~ an amount established by the county legislative authority for every day the defendant performs labor as provided in RCW 10.82.040, and ~~((twenty-five dollars))~~

a lesser amount established by the county legislative authority for every day the defendant does not perform such labor while imprisoned.

Passed the House March 12, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 184

[Senate Bill 5834]

STATE ARCHIVIST—RULE—MAKING AUTHORITY

Effective Date: 7/28/91

AN ACT Relating to archives and records management; and amending RCW 40.14.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 40.14.020 and 1986 c 275 s 1 are each amended to read as follows:

All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter. In order to insure the proper management and safeguarding of public records, the division of archives and records management is established in the office of the secretary of state(~~(, and, under the administration of)~~). The state archivist, who shall administer the division and have reasonable access to all public records, wherever kept, for purposes of information, surveying, or cataloguing, shall undertake the following functions, duties, and responsibilities:

- (1) To manage the archives of the state of Washington;
- (2) To centralize the archives of the state of Washington, to make them available for reference and scholarship, and to insure their proper preservation;
- (3) To inspect, inventory, catalog, and arrange retention and transfer schedules on all record files of all state departments and other agencies of state government;
- (4) To insure the maintenance and security of all state public records and to establish safeguards against unauthorized removal or destruction;
- (5) To establish and operate such state record centers as may from time to time be authorized by appropriation, for the purpose of preserving, servicing, screening and protecting all state public records which must be preserved temporarily or permanently, but which need not be retained in office space and equipment;
- (6) To ~~((set))~~ adopt rules under chapter 34.05 RCW:

(a) Setting standards ((by rule)) for the durability and permanence of public records ((required by law or for other reasons to be filed and)) maintained ((permanently or for very long periods of time)) by state and local agencies;

(b) Governing procedures for the creation, maintenance, transmission, or reproduction of photographic, optical, electronic, or other images of public documents or records in a manner consistent with current standards, policies, and procedures of the department of information services for the acquisition of information technology;

(c) Governing the accuracy and durability of photographic, optical, electronic, or other images used as public records; or

(d) To carry out any other provision of this chapter;

(7) To gather and disseminate to interested agencies information on all phases of records management and current practices, methods, procedures, techniques, and devices for efficient and economical management and preservation of records;

(8) To operate a central microfilming bureau which will microfilm, at cost, records approved for filming by the head of the office of origin and the archivist; to approve microfilming projects undertaken by state departments and all other agencies of state government; and to maintain proper standards for this work;

(9) To maintain necessary facilities for the review of records approved for destruction and for their economical disposition by sale or burning; directly to supervise such destruction of public records as shall be authorized by the terms of this chapter; and

(10) To conduct an oral history program to record and document the oral history of former members and staff of the Washington state legislature, former state government officials and personnel, and other citizens of interest through recording memoirs, processing and making transcripts of the tapes, and taking photographs. The tapes, transcripts, and photographs shall be indexed, shall be available for reference, and shall be properly preserved(;

~~(11) To adopt rules under chapter 34.05 RCW to carry out the state archivist's duties under this chapter)).~~

Passed the Senate April 22, 1991.

Passed the House April 10, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 185

[Substitute House Bill 1858]

CITIES AND TOWNS—CASHING OF EMPLOYEE CHECKS

Effective Date: 7/28/91

AN ACT Relating to employee check, draft, or warrant cashing by cities and towns; adding a new section to chapter 35.21 RCW; and adding a new section to chapter 35A.40 RCW.

Be it enacted by the Legislature of the State of Washington:

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

Any city or town is hereby authorized, at its option and after the adoption of the appropriate ordinance, to accept in exchange for cash a payroll check, draft, or warrant; expense check, draft, or warrant; or personal check from a city or town employee in accordance with the following conditions:

(1) The check, warrant, or draft must be drawn to the order of cash or bearer and be immediately payable by a drawee financial institution;

(2) The person presenting the check, draft, or warrant to the city or town must produce identification as outlined by the city or town in the authorizing ordinance;

(3) The payroll check, draft, or warrant or expense check, draft, or warrant must have been issued by the city or town; and

(4) Personal checks cashed pursuant to this authorization cannot exceed two hundred dollars.

In the event that any personal check cashed for a city or town employee by the city or town under this section is dishonored by the drawee financial institution when presented for payment, the city or town is authorized, after notice to the drawer or endorser of the dishonor, to withhold from the drawer's or endorser's next payroll check, draft, or warrant the full amount of the dishonored check.

NEW SECTION. Sec. 2. A new section is added to chapter 35A.40 RCW to read as follows:

Any code city is hereby authorized, at its option and after the adoption of the appropriate ordinance, to accept in exchange for cash a payroll check, draft, or warrant; expense check, draft, or warrant; or personal check from a city employee in accordance with the following conditions:

(1) The check, warrant, or draft must be drawn to the order of cash or bearer and be immediately payable by a drawee financial institution;

(2) The person presenting the check, draft, or warrant to the city must produce identification as outlined by the city in the authorizing ordinance;

(3) The payroll check, draft, or warrant or expense check, draft, or warrant must have been issued by the city; and

(4) Personal checks cashed pursuant to this authorization cannot exceed two hundred dollars.

In the event that any personal check cashed for a city employee by the city under this section is dishonored by the drawee financial institution when presented for payment, the city is authorized, after notice to the drawer or endorser of the dishonor, to withhold from the drawer's or endorser's next payroll check, draft, or warrant the full amount of the dishonored check.

Passed the House March 14, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 186

[Senate Bill 5043]

ELECTION DOCUMENTS—FACSIMILE FILING

Effective Date: 7/28/91

AN ACT Relating to facsimile filing of election documents; and adding new sections to chapter 29.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 29.04 RCW to read as follows:

The secretary of state or a county auditor shall accept and file in his or her office electronic facsimile transmissions of the following documents:

- (1) Declarations and affidavits of candidacy;
- (2) County canvass reports;
- (3) Candidates' pamphlet statements;
- (4) Arguments for and against ballot measures that will appear in a voters' pamphlet;
- (5) Requests for recounts;
- (6) Certification of candidates and measures by the secretary of state;
- (7) Direction by the secretary of state for the conduct of a mandatory recount;
- (8) Requests for absentee ballots;
- (9) Any other election related document authorized by rule adopted by the secretary of state under section 2 of this act.

The acceptance by the secretary of state or the county auditor is conditional upon the document being filed in a timely manner, being legible, and otherwise satisfying the requirements of state law or rules with respect to form and content.

If the original copy of a document must be signed and a copy of the document is filed by facsimile transmission under this section, the original copy shall be subsequently filed with the official with whom the facsimile was filed. The original copy shall be filed by a deadline established by the

secretary by rule. The secretary may by rule require that the original of any document, a copy of which is filed by facsimile transmission under this section, also be filed by a deadline established by the secretary by rule.

NEW SECTION. Sec. 2. A new section is added to chapter 29.04 RCW to read as follows:

The secretary of state shall adopt rules in accordance with chapter 34.05 RCW to implement section 1 of this act.

Passed the Senate April 22, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 187

[Senate Bill 5473]

TORT CLAIMS REVOLVING FUND

Effective Date: 7/28/91

AN ACT Relating to the tort claims revolving fund; amending RCW 4.92.160; adding a new section to chapter 4.92 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 4.92 RCW to read as follows:

The tort claims revolving fund is created in the custody of the treasurer to be used solely and exclusively for the payment of claims arising out of tortious conduct taking place prior to July 1, 1990 and against both the state and its officers, employees, and volunteers for whom the defense of the claims was authorized under RCW 4.92.070.

Moneys paid from the revolving fund for any claim are limited to the amount by which the claim exceeds the amount available to the claimant from any valid and collectible liability insurance. Payment from the revolving fund shall not be made until the claim has been approved for payment in accordance with RCW 4.92.210.

NEW SECTION. Sec. 2. It is the intent of the legislature that the tort claims revolving fund created under section 1 of this act have the same purpose, use, and application as the tort claims revolving fund abolished effective July 1, 1989, by the legislature in chapter 419, Laws of 1989.

Sec. 3. RCW 4.92.160 and 1986 c 126 s 9 are each amended to read as follows:

Payment of claims and judgments arising out of tortious conduct or pursuant to 42 U.S.C. Sec. 1981 et seq. shall not be made by any agency or department of state government with the exception of the risk management office, and that office shall authorize and direct the payment of moneys only from the tort claims revolving fund whenever:

(1) The head or governing body of any agency or department of state or the designee of any such agency certifies to the risk management office that a claim has been settled (~~(under authority of RCW 4.92.140 as herein or hereafter amended)~~); or

(2) The clerk of court has made and forwarded a certified copy of a final judgment in a court of competent jurisdiction and the attorney general certifies that the judgment is final and was entered in an action on a claim arising out of tortious conduct or under and pursuant to 42 U.S.C. Sec. 1981 et seq. Payment of a judgment shall be made to the clerk of the court for the benefit of the judgment creditors. Upon receipt of payment, the clerk shall satisfy the judgment against the state.

Passed the Senate April 22, 1991.

Passed the House April 10, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 188

[Senate Bill 5077]

REAL PROPERTY—PERFECTION OF SECURITY INTERESTS IN

Effective Date: 7/28/91

AN ACT Relating to recording security interests; and amending RCW 7.28.230.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 7.28.230 and 1989 c 73 s 1 are each amended to read as follows:

(1) A mortgage of any interest in real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale according to law: PROVIDED, That nothing in this section shall be construed as any limitation upon the right of the owner of real property to mortgage, pledge or assign the rents and profits thereof, nor as prohibiting the mortgagee, pledgee or assignee of such rents and profits, or any trustee under a mortgage or trust deed either contemporaneously or upon the happening of a future event of default, from entering into possession of any real property, other than farm lands or the homestead of the mortgagor or his successor in interest, for the purpose of collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of equity to appoint a receiver to take charge of such real property and collect such rents and profits thereof for application in accordance with the terms of such mortgage, trust deed or assignment.

(2) Until paid, the rents and profits of real property constitute real property for the purposes of mortgages, trust deeds or assignments whether

or not said rents and profits have accrued. The provisions of RCW 65.08-.070 as now or hereafter amended shall be applicable to such rents and profits, and such rents and profits are excluded from Article 62A.9 RCW.

(3) The recording of an assignment, mortgage, or pledge of unpaid rents and profits of real property, intended as security, in accordance with RCW 65.08.070, shall immediately perfect the security interest in the assignee, mortgagee, or pledgee and shall not require any further action by the holder of the security interest to be perfected as to any subsequent purchaser, mortgagee, or assignee. Any lien created by such assignment, mortgage, or pledge shall, when recorded, be deemed specific, perfected, and choate even if recorded prior to July 23, 1989.

Passed the Senate February 25, 1991.

Passed the House April 15, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 189

[Substitute Senate Bill 5466]

PHARMACISTS—LIMITATIONS ON LIABILITY FOR DISPENSING OF PRESCRIPTION

Effective Date: 7/28/91

AN ACT Relating to licensed pharmacists, limiting their liability by declaring them to be nonproduct sellers who are not subject to Title 62A RCW; amending RCW 7.72.040 and 7.72.010; and adding a new section to chapter 18.64 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 18.64 RCW to read as follows:

(1) A pharmacist who dispenses a prescription product in the form manufactured by a commercial manufacturer pursuant to a prescription issued by a licensed practitioner is not liable to a person who was injured through the use of the product, based on a claim of the following:

(a) Strict liability in tort; or

(b) Implied warranty provisions under the uniform commercial code Title 62 RCW.

(2) The limitation on pharmacist's liability as provided in subsection (1) of this section shall only apply if the pharmacist complies with record-keeping requirements pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related administrative rules.

(3) A pharmacist who dispenses a prescription product in the form manufactured by a commercial manufacturer issued by a licensed practitioner is liable to the claimant only if the claimant's harm was proximately caused by (a) the negligence of the pharmacist; (b) breach of an express warranty made by the pharmacist; or (c) the intentional misrepresentation

of facts about the product by the pharmacist or the intentional concealment of information about the product by the pharmacist. A pharmacist shall not be liable for the product manufacturer's liability except as provided in RCW 7.72.040.

Sec. 2. RCW 7.72.040 and 1981 c 27 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a product seller other than a manufacturer is liable to the claimant only if the claimant's harm was proximately caused by:

- (a) The negligence of such product seller; or
- (b) Breach of an express warranty made by such product seller; or
- (c) The intentional misrepresentation of facts about the product by such product seller or the intentional concealment of information about the product by such product seller.

(2) A product seller, other than a manufacturer, shall have the liability of a manufacturer to the claimant if:

- (a) No solvent manufacturer who would be liable to the claimant is subject to service of process under the laws of the claimant's domicile or the state of Washington; or
- (b) The court determines that it is highly probable that the claimant would be unable to enforce a judgment against any manufacturer; or
- (c) The product seller is a controlled subsidiary of a manufacturer, or the manufacturer is a controlled subsidiary of the product seller; or
- (d) The product seller provided the plans or specifications for the manufacture or preparation of the product and such plans or specifications were a proximate cause of the defect in the product; or
- (e) The product was marketed under a trade name or brand name of the product seller.

(3) Subsection (2) of this section does not apply to a pharmacist who dispenses a prescription product in the form manufactured by a commercial manufacturer pursuant to a prescription issued by a licensed practitioner if the pharmacist complies with recordkeeping requirements pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related administrative rules.

Sec. 3. RCW 7.72.010 and 1981 c 27 s 2 are each amended to read as follows:

For the purposes of this chapter, unless the context clearly indicates to the contrary:

(1) Product seller. "Product seller" means any person or entity that is engaged in the business of selling products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of the relevant product. The term also includes a party who is in the business of leasing or bailing such products. The term "product seller" does not include:

(a) A seller of real property, unless that person is engaged in the mass production and sale of standardized dwellings or is otherwise a product seller;

(b) A provider of professional services who utilizes or sells products within the legally authorized scope of the professional practice of the provider;

(c) A commercial seller of used products who resells a product after use by a consumer or other product user: PROVIDED, That when it is resold, the used product is in essentially the same condition as when it was acquired for resale; (~~and~~)

(d) A finance lessor who is not otherwise a product seller. A "finance lessor" is one who acts in a financial capacity, who is not a manufacturer, wholesaler, distributor, or retailer, and who leases a product without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(e) A licensed pharmacist who dispenses a prescription product manufactured by a commercial manufacturer pursuant to a prescription issued by a licensed prescribing practitioner if the claim against the pharmacist is based upon strict liability in tort or the implied warranty provisions under the uniform commercial code, Title 62A RCW, and if the pharmacist complies with recordkeeping requirements pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related administrative rules as provided in section 2 of this act. Nothing in this subsection (1)(e) affects a pharmacist's liability under RCW 7.72.040(1).

(2) Manufacturer. "Manufacturer" includes a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer. The term also includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer.

A product seller acting primarily as a wholesaler, distributor, or retailer of a product may be a "manufacturer" but only to the extent that it designs, produces, makes, fabricates, constructs, or remanufactures the product for its sale. A product seller who performs minor assembly of a product in accordance with the instructions of the manufacturer shall not be deemed a manufacturer. A product seller that did not participate in the design of a product and that constructed the product in accordance with the design specifications of the claimant or another product seller shall not be deemed a manufacturer for the purposes of RCW 7.72.030(1)(a).

(3) Product. "Product" means any object possessing intrinsic value, capable of delivery either as an assembled whole or as a component part or parts, and produced for introduction into trade or commerce. Human tissue

and organs, including human blood and its components, are excluded from this term.

The "relevant product" under this chapter is that product or its component part or parts, which gave rise to the product liability claim.

(4) Product liability claim. "Product liability claim" includes any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product. It includes, but is not limited to, any claim or action previously based on: Strict liability in tort; negligence; breach of express or implied warranty; breach of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent; misrepresentation, concealment, or nondisclosure, whether negligent or innocent; or other claim or action previously based on any other substantive legal theory except fraud, intentionally caused harm or a claim or action under the consumer protection act, chapter 19.86 RCW.

(5) Claimant. "Claimant" means a person or entity asserting a product liability claim, including a wrongful death action, and, if the claim is asserted through or on behalf of an estate, the term includes claimant's decedent. "Claimant" includes any person or entity that suffers harm. A claim may be asserted under this chapter even though the claimant did not buy the product from, or enter into any contractual relationship with, the product seller.

(6) Harm. "Harm" includes any damages recognized by the courts of this state: PROVIDED, That the term "harm" does not include direct or consequential economic loss under Title 62A RCW.

Passed the Senate April 22, 1991.

Passed the House April 10, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 190

[Senate Bill 5512]

SEWER AND WATER DISTRICTS—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to sewer and water districts; amending RCW 56.12.015, 56.20.030, 56.20.080, 57.12.015, 57.16.060, and 57.16.090; adding a new section to chapter 56.08 RCW; adding a new section to chapter 57.08 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 56.08 RCW to read as follows:

It is unlawful and a misdemeanor to make, or cause to be made, or to maintain any sewer connection with any sewer of any sewer district, or with

any sewer which is connected directly or indirectly with any sewer of any sewer district without having permission from the sewer district.

Sec. 2. RCW 56.12.015 and 1990 c 259 s 23 are each amended to read as follows:

If a three-member board of commissioners of any sewer district with any number of customers determines by resolution (~~and approves by unanimous vote of the board~~) that it would be in the best interest of the district to increase the number of commissioners from three to five, or if the board of a sewer district with any number of customers is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the sewer district in accordance with RCW 29.13.010 and 29.13.020, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (Name and/or No. of sewer district) be increased from three to five members?

Yes

No

If the proposition receives a majority approval at the election the board of commissioners of the sewer district shall be increased to five members. In any sewer district with more than ten thousand customers, if a three-member board of commissioners determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, the number of commissioners shall be so increased, without an election, unless within ninety days of adoption of that resolution, a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last general municipal election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section and in accordance with the provisions of RCW 29.13.010 and 29.13.020.

The two positions created on boards of sewer commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general sewer district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general sewer district election after the appointment, at which two commissioners shall be elected for six-year terms.

Sec. 3. RCW 56.20.030 and 986 c 256 s 2 are each amended to read as follows:

Whether the improvement is initiated by petition or resolution, the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in plans for the proposed improvement as shall be deemed necessary. The board may not change the boundaries of the district to include property not previously included in it without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time provided in this chapter for the original notice.

After the hearing and the expiration of the ten-day period for filing written protests, the commissioners shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution. The jurisdiction of the commissioners to proceed with any improvement initiated by resolution shall be divested: (a) By protests filed with the secretary of the board ((before the public hearing)) no later than ten days after the hearing, signed by the owners, according to the records of the county auditor, of at least forty percent of the area of land within the proposed local district or (b) by the commissioners not adopting a resolution ordering the improvement at a public hearing held not more than ninety days from the day the resolution of intention was adopted, unless the commissioners file with the county auditor a copy of the notice required by RCW 56.20.020, and in no event at a hearing held more than two years from the day the resolution of intention was adopted.

If the commissioners find that the district should be formed, they shall by resolution form the district and order the improvement. After execution of the resolution forming the district, the secretary of the board of commissioners shall publish, in a legal publication that serves the area subject to the district, a notice setting forth that a resolution has been passed forming the district and that a lawsuit challenging the jurisdiction or authority of the sewer district to proceed with the improvement and creating the district must be filed, and notice to the sewer district served, within thirty days of the publication of the notice. The notice shall set forth the nature of the appeal. Property owners bringing the appeal shall follow the procedures as set forth under appeal under RCW 56.20.080. Whenever a resolution forming a district has been adopted, the formation is conclusive in all things upon all parties, and cannot be contested or questioned in any manner in any proceeding whatsoever by any person not commencing a lawsuit in the manner and within the time provided in this section, except for lawsuits made under RCW 56.20.080.

Following an appeal, if it is unsuccessful or if no appeal is made under RCW 56.20.080, the commissioners may proceed with the improvement and

provide the general funds of the sewer district to be applied thereto, adopt detailed plans of the utility local improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the sewer district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle the district to proceed with the work. The board of sewer commissioners shall proceed with the work and file with the county treasurer of each county in which the real property is to be assessed its roll levying special assessments in the amount to be paid by special assessment against the property situated within the local improvement district in proportion to the special benefits to be derived by the property therein from the improvement.

Sec. 4. RCW 56.20.080 and 1971 ex.s. c 272 s 11 are each amended to read as follows:

The decision of the sewer commission upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the secretary of said sewer commission and with the clerk of the superior court in the county in which the real property is situated within ten days after publication of a notice that the resolution confirming such assessment roll has been adopted, and such notice of appeal shall describe the property and set forth the objections of such appellant to such assessment. Within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court, a transcript consisting of the assessment roll and his or her objections thereto, together with the resolution confirming such assessment roll and the record of the sewer district commission with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such secretary of said sewer commission and by him or her certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with sureties thereon as provided by law for appeals in civil cases, shall be filed conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the sewer district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the secretary of such sewer district, that such transcript is filed. Said notice shall state a time, not less than three days from

the service thereof, when the appellant will call up the said cause for hearing. The superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury, and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in such sewer district and actions of forcible entry and detainer. The judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is either founded upon a fundamentally wrong basis or a decision of the council or other legislative body thereon was arbitrary or capricious, or both; in which event the judgment of the court shall correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have the custody of the assessment roll, and he or she shall modify and correct such assessment roll in accordance with such decision. An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court, as in other cases, however, such appeal must be taken within fifteen days after the date of the entry of the judgment of such superior court, and the record and opening brief of the appellant in said cause shall be filed in the supreme court or the court of appeals within sixty days after the appeal shall have been taken by notice as provided in this title. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. The supreme court or the court of appeals on such appeal may correct, change, modify, confirm or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision.

NEW SECTION. Sec. 5. A new section is added to chapter 57.08 RCW to read as follows:

It is unlawful and a misdemeanor to make, or cause to be made, or to maintain any sewer connection with any sewer of any water district, or with any sewer which is connected directly or indirectly with any sewer of any water district without having permission from the water district.

Sec. 6. RCW 57.12.015 and 1990 c 259 s 29 are each amended to read as follows:

In the event a three-member board of commissioners of any water district with any number of customers determines by resolution (~~and approves by unanimous vote of the board~~) that it would be in the best interest of the district to increase the number of commissioners from three to five, or in the event the board of a district with any number of customers is presented with a petition signed by ten percent of the registered voters resident within the

district who voted in the last general municipal election calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the water district in accordance with RCW 29.13.010 and 29.13.020, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (Name and/or No. of water district) be increased from three to five members?

Yes

No

If the proposition receives a majority approval at the election the board of commissioners of the water district shall be increased to five members. In any water district with more than ten thousand customers, if a three-member board of commissioners determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, the number of commissioners shall be so increased, without an election, unless within ninety days of adoption of that resolution a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last general municipal election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section and in accordance with the provisions of RCW 29.13.010 and 29.13.020.

The two positions created on boards of water commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general water district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general water district election after the appointment, at which two commissioners shall be elected for six-year terms.

Sec. 7. RCW 57.16.060 and 1986 c 256 s 3 are each amended to read as follows:

Local improvement districts or utility local improvement districts to carry out the whole or any portion of the general comprehensive plan of improvements or plan providing for additions and betterments to the original general comprehensive plan previously adopted may be initiated either by resolution of the board of water commissioners or by petition signed by the owners according to the records of the office of the applicable county auditor of at least fifty-one percent of the area of the land within the limits of the local improvement district to be created.

In case the board of water commissioners desires to initiate the formation of a local improvement district or a utility local improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed local improvement district or utility local improvement district, and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

In case any such local improvement district or utility local improvement district is initiated by petition, such petition shall set forth the nature and territorial extent of the proposed improvement requested to be ordered and the fact that the signers thereof are the owners according to the records of the applicable county auditor of at least fifty-one percent of the area of land within the limits of the local improvement district or utility local improvement district to be created. Upon the filing of such petition the board shall determine whether the petition is sufficient, and the board's determination thereof shall be conclusive upon all persons. No person may withdraw his or her name from the petition after it has been filed with the board of water commissioners. If the board finds the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of the improvement, designating the number of the proposed local district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

Notice of the adoption of the resolution of intention, whether the resolution was adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of water commissioners. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed improvement district by mailing the notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer of the county in which the real property is located at the address shown thereon. Whenever such notices are mailed, the water commissioners shall maintain a list of such reputed property owners, which list shall be kept on file at a

location within the water district and shall be made available for public perusal. The notices shall refer to the resolution of intention and designate the proposed improvement district by number. The notices shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the date, time, and place of the hearing before the board of water commissioners. In the case of improvements initiated by resolution, the notice shall also: (1) State that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board of water commissioners no later than ten days after the public hearing; (2) state that if owners of at least forty percent of the area of land within the proposed district file written protests with the secretary of the board, the power of the water commissioners to proceed with the creation of the proposed district shall be divested; (3) provide the name and address of the secretary of the board; and (4) state the hours and location within the water district where the names of the property owners within the proposed district are kept available for public perusal. In the case of the notice given each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, parcel of land, or other property.

Whether the improvement is initiated by petition or resolution, the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in the plans for the proposed improvement as shall be deemed necessary. The board may not change the boundaries of the district to include property not previously included in it without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time provided in this chapter for the original notice.

After the hearing and the expiration of the ten-day period for filing written protests, the commissioners shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution. The jurisdiction of the commissioners to proceed with any improvement initiated by resolution shall be divested by protests filed with the secretary of the board (~~before the public hearing~~) no later than ten days after the hearing, signed by the owners, according to the records of the applicable county auditor, of at least forty percent of the area of land within the proposed local district.

If the commissioners find that the district should be formed, they shall by resolution form the district and order the improvement. After execution of the resolution forming the district, the secretary of the board of commissioners shall publish, in a legal publication that serves the area subject to the district, a notice setting forth that a resolution has been passed forming

the district and that a lawsuit challenging the jurisdiction or authority of the water district to proceed with the improvement and creating the district must be filed, and notice to the water district served, within thirty days of the publication of the notice. The notice shall set forth the nature of the appeal. Property owners bringing the appeal shall follow the procedures as set forth under appeal under RCW 57.16.090. Whenever a resolution forming a district has been adopted, the formation is conclusive in all things upon all parties, and cannot be contested or questioned in any manner in any proceeding whatsoever by any person not commencing a lawsuit in the manner and within the time provided in this section, except for lawsuits made under RCW 57.16.090.

Following an appeal, if it is unsuccessful or if no appeal is made under RCW 57.16.090, the commissioners may proceed with the improvement and provide the general funds of the water district to be applied thereto, adopt detailed plans of the local improvement district or utility local improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the water district such eminent domain proceedings as may be necessary to entitle the district to proceed with the work. The board shall thereupon proceed with the work and file with the county treasurer of the county in which the real property is located its roll levying special assessments in the amount to be paid by special assessment against the property situated within the improvement district in proportion to the special benefits to be derived by the property therein from the improvement.

Sec. 8. RCW 57.16.090 and 1988 c 202 s 53 are each amended to read as follows:

The decision of the water district commission upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the secretary of said water district commission and with the clerk of the superior court in the county in which the real property is situated within ten days after publication of a notice that the resolution confirming such assessment roll has been adopted, and such notice of appeal shall describe the property and set forth the objections of such appellant to such assessment; and within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of the court, a transcript consisting of the assessment roll and the appellant's objections thereto, together with the resolution confirming such assessment roll and the record of the water district commission with reference to the assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by the secretary of the water district commission certified by the secretary to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees

payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of said court, conditioned to prosecute such appeal without delay, and if unsuccessful to pay all costs to which the water district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, the appellant shall give written notice to the secretary of such water district, that such transcript is filed. The notice shall state a time, not less than three days from the service thereof, when the appellant will call up the cause for hearing; and the superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury; and such cause shall have preference over all civil causes pending in the court, except proceedings under an act relating to eminent domain and actions of forcible entry and detainer. The judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is either founded upon the fundamentally wrong basis or a decision of the council or other legislative body thereon was arbitrary or capricious, or both; in which event the judgment of the court shall correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, who shall modify and correct such assessment roll in accordance with such decision. Appellate review of the judgment of the superior court may be sought as in other civil cases. However, the review must be sought within fifteen days after the date of the entry of the judgment of such superior court. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision.

Passed the Senate April 22, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 191

[Substitute Senate Bill 5518]

DECEPTIVE PAY-PER-CALL INFORMATION DELIVERY SERVICES—
VIOLATION OF CONSUMER PROTECTION ACT

Effective Date: 7/28/91

AN ACT Relating to telephone information delivery services; amending RCW 80.36.500; and adding a new chapter to Title 19 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds that the deceptive use of pay-per-call information delivery services is a matter vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

(2) The deceptive use of pay-per-call information delivery services is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW, and constitutes an act of deceptive pay-per-call information delivery service.

(3) This chapter applies to a communication made by a person in Washington or to a person in Washington.

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

(1) "Person" means an individual, corporation, the state or its subdivisions or agencies, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(2) "Information delivery services" means telephone-recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code.

(3) "Information provider" means the person who provides the information, prerecorded message, or interactive program for the information delivery service. The information provider generally receives a portion of the revenue from the calls. "Information provider" does not include the medium for advertising information delivery services.

(4) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's delivery service, to use the caller's telephone device to access more specific information or further information or to talk to other callers during the call.

(5) "Telecommunications company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town owning, operating, or managing any facilities used to provide

telecommunications for hire, sale, or resale to the general public within the state of Washington.

(6) "Interexchange carrier" means a carrier providing transmissions between local access and transport areas interstate or intrastate.

(7) "Billing services" means billing and collection services provided to information providers whether by the local exchange company or the interexchange carrier.

(8) "Program message" means the information that a caller hears or receives upon placing a call to an information provider.

(9) "Advertisement" includes all radio, television, or other broadcast, video, newspaper, magazine, or publication, billboard, direct mail, print media, telemarketing, or any promotion of an information delivery service, program, or number, and includes brochures, pamphlets, fliers, coupons, promotions, or the labeling of products or in-store communications circulated or distributed in any manner whatsoever. "Advertisement" does not include any listing in a white page telephone directory. In a yellow page telephone directory, "advertisement" includes only yellow page display advertising.

(10) "Subscriber" means the person in whose name an account is billed.

(11) "Does business in Washington" includes providing information delivery services to Washington citizens, advertising information delivery services in Washington, entering into a contract for billing services in Washington, entering into a contract in Washington with a telecommunications company or interexchange carrier for transmission services, or having a principal place of business in Washington.

NEW SECTION. Sec. 3. (1) An information provider that does business in Washington must include a preamble in all program messages for:

- (a) Programs costing more than five dollars per minute; or
- (b) Programs having a total potential cost of greater than ten dollars.

(2) The preamble must:

(a) Accurately describe the service that will be provided by the program;

(b) Advise the caller of the price of the call, including:

- (i) Any per minute charge;
- (ii) Any flat rate charge; and
- (iii) Any minimum charge;

(c) State that billing will begin shortly after the end of the introductory message; and

(d) Be clearly articulated, at a volume equal to that of the program message, in plain English or the language used to promote the information delivery service, and spoken in a normal cadence.

(3) Mechanisms that provide for the option of bypassing the preamble are only permitted when:

(a) The caller has made use of the information provider's service in the past, at which time the preamble required by this section was part of the program message; and

(b) The cost of the call has not changed during the thirty-day period before the call.

(4) When an information provider's program message consists of a polling application that permits the caller to register an opinion or vote on a matter by completing a call, this section does not apply.

NEW SECTION. Sec. 4. An information provider that does business in Washington shall comply with the following provisions in its advertisement of information delivery services:

(1) Advertisements for information delivery services that are broadcast by radio or television, contained in home videos, or that appear on movie screens must include a voice-over announcement that is clearly audible and articulates the price of the service provided. The announcement must be made at a volume equal to that used to announce the telephone number, spoken in a normal cadence, and in plain English or the language used in the advertisement.

(2) Advertisements for information delivery services that are broadcast by television, contained in home videos, or that appear on movie screens must include, in clearly visible letters and numbers, the cost of calling the advertised number. This visual disclosure of the cost of the call must be displayed adjacent to the number to be called whenever the number is shown in the advertisement, and the lettering of the visual disclosure of the cost must be in the same size and typeface as that of the number to be called.

(3)(a) Except as otherwise provided in (b) of this subsection, advertisements for information delivery services that appear in print must include, in clearly visible letters and numbers, the cost of calling the advertised number. The printed disclosure of the cost of the call must be displayed adjacent to the number to be called wherever the number is shown in the advertisement.

(b) In telephone directory yellow page display advertising and in printed materials published not more than three times a year, instead of disclosing the cost of the service, advertisements for information delivery services, shall include the conspicuous disclosure that the call is a pay-per-call service.

(4) The advertised price or cost of the information delivery service must include:

- (a) Any per minute charge;
- (b) Any flat rate charge; and
- (c) Any minimum charge.

NEW SECTION. Sec. 5. An information provider that does business in the state of Washington shall not direct information delivery services to

children under the age of twelve years unless the information provider complies with the following provisions:

(1) Interactive calls where children under the age of twelve years can speak to other children under the age of twelve years are prohibited.

(2) Programs directed to children under the age of twelve where the children are asked to provide their names, addresses, telephone numbers, or other identifying information are prohibited.

(3) Advertisements for information delivery services that are directed to children under the age of twelve years must contain a visual disclosure that clearly and conspicuously in the case of print and broadcast advertising, and audibly in the case of broadcast advertising, states that children under the age of twelve years must obtain parental consent before placing a call to the advertised number.

(4) Program messages that encourage children under the age of twelve years to make increased numbers of calls in order to obtain progressively more valuable prizes, awards, or similarly denominated items are prohibited.

(5) Advertisements for information delivery services that are directed to children under the age of twelve years must contain, in age-appropriate language, an accurate description of the services being provided. In the case of print advertising, the information must be clear and conspicuous and in the case of broadcast advertising, it must be visually displayed clearly and conspicuously and verbally disclosed in an audible, clearly articulated manner.

(6) Program messages that are directed to children under the age of twelve years that employ broadcast advertising where an electronic tone signal is emitted during the broadcast of the advertisement that automatically dials the program message are prohibited.

NEW SECTION. Sec. 6. An information provider's failure to substantially comply with any of the provisions of sections 3 through 5 of this act is a defense to the nonpayment of charges accrued as a result of using the information provider's services, billed by any entity, including but not limited to telecommunications companies and interexchange carriers.

NEW SECTION. Sec. 7. A person who suffers damage from a violation of this chapter may bring an action against an information provider. In an action alleging a violation of this chapter, the court may award the greater of three times the actual damages sustained by the person or five hundred dollars; equitable relief, including but not limited to an injunction and restitution of money and property; attorneys' fees and costs; and any other relief that the court deems proper. For purposes of this section, a telecommunications company or interexchange carrier is a person.

Sec. 8. RCW 80.36.500 and 1988 c 123 s 2 are each amended to read as follows:

(1) As used in this section:

(a) "Information delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code.

(b) "Information providers" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information delivery service. The information provider generally receives a portion of the revenue from the calls.

(c) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's announcement machine, to use the caller's telephone device to access more specific information.

(2) The utilities and transportation commission shall by rule require any local exchange company that offers information delivery services to a local telephone exchange to provide each residential telephone subscriber the opportunity to block access to all information delivery services offered through the local exchange company. The rule shall take effect by October 1, 1988.

(3) All costs of complying with this section shall be borne by the information providers.

(4) The local exchange company shall inform subscribers of the availability of the blocking service through a bill insert and by publication in a local telephone directory.

NEW SECTION. Sec. 9. Sections 1 through 7 of this act constitute a new chapter in Title 19 RCW.

Passed the Senate April 22, 1991.

Passed the House April 10, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 192

[Substitute Senate Bill 5776]

ALCOHOLIC BEVERAGE CONTROL—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to alcoholic beverage control; amending RCW 66.04.010, 66.24.170, 66.24.210, and 9.46.0315.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.04.010 and 1987 c 386 s 3 are each amended to read as follows:

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(3) "Brewer" means any person engaged in the business of manufacturing beer and malt liquor.

(4) "Board" means the liquor control board, constituted under this title.

(5) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(6) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(7) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(8) "Distiller" means a person engaged in the business of distilling spirits.

(9) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(10) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(11) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

(12) "Fund" means 'liquor revolving fund.'

(13) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its

guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(14) "Imprisonment" means confinement in the county jail.

(15) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(16) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(17) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(18) "Package" means any container or receptacle used for holding liquor.

(19) "Permit" means a permit for the purchase of liquor under this title.

(20) "Person" means an individual, copartnership, association, or corporation.

(21) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(22) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(23) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to

which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(24) "Regulations" means regulations made by the board under the powers conferred by this title.

(25) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(26) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

(27) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(28) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

(29) "Store" means a state liquor store established under this title.

(30) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(31) "Vendor" means a person employed by the board as a store manager under this title.

(32) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(33) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(34) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine

spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing ~~((tess))~~ no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount ~~((equal to or))~~ more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than fourteen percent ~~((or more))~~ alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(35) "Beer wholesaler" means a person who buys beer from a brewer or brewery located either within or beyond the boundaries of the state for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(36) "Wine wholesaler" means a person who buys wine from a vintner or winery located either within or beyond the boundaries of the state for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

Sec. 2. RCW 66.24.170 and 1982 c 85 s 4 are each amended to read as follows:

(1) There shall be a license to domestic wineries; fee to be computed only on the liters manufactured: One hundred thousand liters or less per year, one hundred dollars per year; over one hundred thousand liters to seven hundred fifty thousand liters per year, four hundred dollars per year; and over seven hundred fifty thousand liters per year, eight hundred dollars per year.

(2) Any applicant for a domestic winery license shall, at the time of filing application for license, accompany such application with a license fee based upon a reasonable estimate of the amount of wine liters to be manufactured by such applicant. Persons holding domestic winery licenses shall report annually at the end of each fiscal year, at such time and in such manner as the board may prescribe, the amount of wine manufactured by them during the fiscal year. If the total amount of wine manufactured during the year exceeds the amount permitted annually by the license fee already paid the board, the licensee shall pay such additional license fee as may be unpaid in accordance with the schedule provided in this section.

(3) Any domestic winery licensed under this section shall also be considered as holding, for the purposes of selling or importing wine~~((s))~~ of its own production, a current wine wholesaler's license under RCW 66.24.200,

a wine importer's license under RCW 66.24.204, and a wine retailer's license, class F, under RCW 66.24.370 without further application or fee. Any winery operating as a wholesaler, importer, or retailer under this subsection shall comply with the applicable laws and rules relating to ~~((such))~~ wholesalers, importers, and retailers.

(4) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license.

Sec. 3. RCW 66.24.210 and 1989 c 271 s 501 are each amended to read as follows:

(1) There is hereby imposed upon all wines sold to wine wholesalers and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section may, if so prescribed by the board, be collected by means of stamps to be furnished by the board, or by direct payments based on wine purchased by wine wholesalers. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. If this tax be collected by means of stamps, every such person shall procure from the board revenue stamps representing the tax in such form as the board shall prescribe and shall affix the same to the package or container in such manner and in such denomination as required by the board and shall cancel the same prior to the delivery of the package or container containing the wine to the purchaser. If the tax is not collected by means of stamps, the board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. Such additional tax shall cease to be imposed on July 1, 1993. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) Until July 1, 1995, an additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine (~~((containing alcohol in an amount equal to or more than fourteen percent by volume))~~) as defined in RCW 66.04.010(34) when bottled or packaged by the manufacturer and one cent per liter on all other wine. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under RCW 69.50.520 by the twenty-fifth day of the following month.

Sec. 4. RCW 9.46.0315 and 1987 c 4 s 27 are each amended to read as follows:

Bona fide charitable or bona fide nonprofit organizations organized primarily for purposes other than the conduct of raffles, are hereby authorized to conduct raffles without obtaining a license to do so from the commission when such raffles are held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission; when gross revenues from all such raffles held by the organization during the calendar year do not exceed five thousand dollars; and when tickets to such raffles are sold only to, and winners are determined only from among, the regular members of the organization conducting the raffle. The organization may provide unopened containers of beverages containing alcohol as raffle prizes if the appropriate permit has been obtained from the liquor control board; PROVIDED, That the term members for this purpose shall mean only those persons who have become members prior to the commencement of the raffle and whose qualification for membership was not dependent upon, or in any way related to, the purchase of a ticket, or tickets, for such raffles.

Passed the Senate April 22, 1991.

Passed the House April 1, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 193

[Engrossed Substitute House Bill 1088]

UNIFORM TRANSFERS TO MINORS ACT

Effective Date: 7/1/91

AN ACT Relating to uniform transfers to minors; amending RCW 11.76.095, 11.98.170, 67.70.220, and 11.92.140; adding a new chapter to Title 11 RCW; repealing RCW 11.93.010, 11.93.020, 11.93.030, 11.93.040, 11.93.050, 11.93.060, 11.93.070, 11.93.080, 11.93.900, 11.93.910, 11.93.911, 11.93.912, 11.93.920, and 11.76.090; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult" means an individual who has attained the age of twenty-one years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Guardian" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions. Conservator means guardian for transfers made under another state's law but enforceable in this state's courts.

(5) "Court" means a superior court of the state of Washington.

(6) "Custodial property" means (a) any interest in property transferred to a custodian under this chapter and (b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under section 9 of this act or a successor or substitute custodian designated under section 18 of this act.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or guardian.

(10) "Member of the minor's family" means the minor's parent, step-parent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of twenty-one years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(14) "Transfer" means a transaction that creates custodial property under section 9 of this act.

(15) "Transferor" means a person who makes a transfer under this chapter.

(16) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

NEW SECTION. Sec. 2. SCOPE AND JURISDICTION. (1) This chapter applies to a transfer that refers to this chapter in the designation under section 9(1) of this act by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(4) A matter under this chapter subject to court determination is governed by the procedures provided in chapter 11.96 RCW. However, no guardian ad litem is required for the minor, except under section 19(1) of this act, in the case of a petition by a unrepresented minor under the age of fourteen years.

NEW SECTION. Sec. 3. NOMINATION OF CUSTODIAN. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: ". . . as custodian for (name of minor) under the Washington uniform transfers to minors act." The nomination may name one or more persons as substitute custodians to whom the property shall be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered

with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section shall be a person to whom a transfer of property of that kind may be made under section 9(1) of this act.

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 9 of this act. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 9 of this act.

NEW SECTION. Sec. 4. TRANSFER BY GIFT OR EXERCISE OF POWER OF APPOINTMENT. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 9 of this act.

NEW SECTION. Sec. 5. TRANSFER AUTHORIZED BY WILL OR TRUST. (1) A personal representative or trustee may make an irrevocable transfer pursuant to section 9 of this act to a custodian for the benefit of a minor as authorized in the governing will or trust. The personal representative or trustee may designate himself or herself as custodian provided he or she falls within the class of persons eligible to serve as custodian under section 9(1) of this act.

(2) If the testator or grantor has nominated a custodian under section 3 of this act to receive the custodial property, the transfer shall be made to that person.

(3) If the testator or grantor has not nominated a custodian under section 3 of this act, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 9(1) of this act. The personal representative or trustee may designate himself or herself as custodian, provided he or she falls within the class of persons eligible to serve as custodian under section 9(1) of this act.

NEW SECTION. Sec. 6. OTHER TRANSFER BY FIDUCIARY. (1) A personal representative or trustee may make an irrevocable transfer to an adult or trust company for the benefit of a minor pursuant to section 9 of this act, in the absence of a will or under a will or trust that does not contain an authorization to do so, but only if:

(a) The personal representative or trustee, or the court if an order is requested under (c) of this subsection, considers the transfer to be in the best interest of the minor;

(b) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust instrument, or other governing instrument; and

(c) The transfer is authorized by the court if it exceeds thirty thousand dollars in value.

The personal representative, the trustee, or a member of the minor's family may select the custodian, subject to court approval. The personal representative or trustee may serve as custodian, provided he or she falls within the class of persons eligible to serve as custodian under section 9(1) of this act.

(2) A member of the minor's family may request that the court establish a custodianship if a custodianship has not already been established, regardless of the value of the transfer.

NEW SECTION. Sec. 7. TRANSFER BY OBLIGOR. (1) Subject to subsections (2) and (3) of this section, a person not subject to section 5 or 6 of this act who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 9 of this act.

(2) If a person having the right to do so under section 3 of this act has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

(3) If no custodian has been nominated under section 3 of this act, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds thirty thousand dollars in value.

(4) A member of the minor's family or the person who holds the property of the minor or who owes a debt to the minor may request that the court establish a custodianship if not previously established, regardless of the value of the transfer.

NEW SECTION. Sec. 8. RECEIPT FOR CUSTODIAL PROPERTY. A written confirmation of delivery by a custodian constitutes a sufficient receipt and discharge of the transferor for custodial property transferred to the custodian under this chapter.

NEW SECTION. Sec. 9. MANNER OF CREATING CUSTODIAL PROPERTY AND EFFECTING TRANSFER—DESIGNATION OF INITIAL CUSTODIAN—CONTROL. (1) Custodial property is created and a transfer is made if:

(a) An uncertificated security or a certificated security in registered form is either:

(i) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "... as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "... as custodian for (name of minor) under the Washington uniform transfers to minors act";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "... as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "... as custodian for (name of minor) under the Washington uniform transfers to minors act";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "... as custodian for (name of minor) under the Washington uniform transfers to minors act";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "... as custodian for (name of minor) under the Washington uniform transfers to minors act";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "... as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "... as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(g) An interest in any property not described in (a) through (f) of this subsection is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of subsection (1) (a)(ii) and (g) of this section:

"TRANSFER UNDER THE WASHINGTON UNIFORM TRANSFERS TO MINORS ACT

I, (name of transferor or name and representative capacity if a fiduciary) hereby transfer to (name of custodian), as custodian for (name of minor) under the Washington uniform transfers to minors act, the following: (insert a description of the custodial property sufficient to identify it).

Dated:

.....

(Signature)

..... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Washington uniform transfers to minors act.

Dated:

.....

(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

NEW SECTION. Sec. 10. SINGLE CUSTODIANSHIP. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

NEW SECTION. Sec. 11. VALIDITY AND EFFECT OF TRANSFER. (1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(a) Failure of the transferor to comply with section 9(3) of this act concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under section 9(1) of this act; or

(c) Death or incapacity of a person nominated under section 3 of this act or designated under section 9 of this act as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to section 9 of this act is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and

neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

NEW SECTION. Sec. 12. CARE OF CUSTODIAL PROPERTY.

(1) A custodian shall, as soon as custodial property is made available to the custodian:

- (a) Take control of custodial property;
- (b) Register or record title to custodial property if appropriate; and
- (c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care applicable to fiduciaries under chapter 11.100 RCW. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. A custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor according to the same standards as apply to a fiduciary holding trust funds under RCW 11.100.060. However, the provisions of RCW 11.100.025, 11.100.040, and 11.100.140 shall not apply to a custodian.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "... as custodian for (name of minor) under the Washington uniform transfers to minors act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available upon request for inspection by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

NEW SECTION. Sec. 13. POWERS OF CUSTODIAN. (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, including without limitation all the powers granted to a trustee under RCW 11.98.070, but a custodian may exercise those rights, powers, and authority only in a custodial capacity.

(2) This section does not relieve a custodian from liability for breach of section 12 of this act.

NEW SECTION. Sec. 14. USE OF CUSTODIAL PROPERTY. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (a) the duty or ability of the custodian personally or of any other person to support the minor, or (b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

NEW SECTION. Sec. 15. CUSTODIAN'S EXPENSES, COMPENSATION, AND BOND. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under section 4 of this act, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in section 18(6) of this act, a custodian need not give a bond.

(4) Notwithstanding section 19 of this act, a custodian not compensated for services is not liable for losses to the custodial property unless they result from bad faith, intentional wrongdoing, or gross negligence, or from failure to maintain the standard of prudence in investing the custodial property provided in this chapter.

NEW SECTION. Sec. 16. EXEMPTION OF THIRD PERSON FROM LIABILITY. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian or successor custodian and, in the absence of knowledge, is not responsible for determining:

- (1) The validity of the purported custodian's designation;
- (2) The propriety of, or the authority under this chapter for, any act of the purported custodian;
- (3) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
- (4) The propriety of the application of any property of the minor delivered to the purported custodian.

NEW SECTION. Sec. 17. LIABILITY TO THIRD PERSONS. (1)
A claim based on:

- (a) A contract entered into by a custodian acting in a custodial capacity;
- (b) An obligation arising from the ownership or control of custodial property;
- (c) A tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor; or
- (d) A noncontractual obligation, including obligations in tort, is collectible from the custodial property only if:
 - (i) The obligation was a common incident of the kind of business activity in which the custodian or the custodian's predecessor was properly engaged for the custodianship;
 - (ii) Neither the custodian nor the custodian's predecessor, nor any officer or employee of the custodian or the custodian's predecessor was personally at fault in incurring the obligation; or
 - (iii) Although the obligation did not fall within (d)(i) or (ii) of this subsection, the incident that gave rise to the obligation increased the value of the custodial property.

If the obligation is within (d) (i) or (ii) or [of] this subsection, collection may be had of the full amount of damage proved. If the obligation is within (d)(iii) of this subsection, collection may be had only to the extent of the increase in the value of the trust property.

(2) A custodian is not personally liable:

- (a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity. The addition of the words "custodian" or "as custodian" after the signature of a custodian is adequate revelation of this capacity; or
- (b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodial property is not liable for the obligation under (b) of this subsection and unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

NEW SECTION. Sec. 18. RENUNCIATION, RESIGNATION, DEATH, OR REMOVAL OF CUSTODIAN—DESIGNATION OF SUCCESSOR CUSTODIAN. (1) A person nominated under section 3 of this act or designated under section 9 of this act as custodian may decline to serve. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 3 of this act, the person who made the nomination may nominate a substitute custodian under section 3 of this act; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 9(1) of this act. The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under section 4 of this act as successor custodian by executing and dating an instrument of designation. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed, and custodial property is transferred to the successor custodian.

(3) A custodian may resign at any time by delivering written notice to the minor, if the minor has attained the age of fourteen years, and to the successor custodian, and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated and no successor custodian has been designated as provided in this chapter, and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a guardian of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the

successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 4 of this act or to require the custodian to give appropriate bond.

NEW SECTION. Sec. 19. ACCOUNTING BY AND DETERMINATION OF LIABILITY OF CUSTODIAN. (1) A minor who has attained the age of fourteen years, the minor's legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative; or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 17 of this act to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under section 18(6) of this act, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

NEW SECTION. Sec. 20. TERMINATION OF CUSTODIANSHIP. Subject to section 22 of [this] act, the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of twenty-one years of age with respect to custodial property transferred under section 4 or 5 of this act;

(2) The minor's attainment of eighteen years of age with respect to custodial property transferred under section 6 or 7 of this act; or

(3) The minor's death.

NEW SECTION. Sec. 21. APPLICABILITY. This chapter applies to a transfer within the scope of section 2 of this act made after the effective date of section 2 of this act, if:

(1) The transfer purports to have been made under the Washington uniform gifts to minors act; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state, and the application of this chapter is necessary to validate the transfer.

NEW SECTION. Sec. 22. EFFECT ON EXISTING CUSTODIANSHIPS. (1) Any transfer of custodial property as now defined in this chapter made before the effective date of this section, is validated notwithstanding that there was no specific authority in the Washington uniform gifts to minors act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This chapter applies to all transfers made before the effective date of this section, in a manner and form prescribed in the Washington uniform gifts to minors act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this section. However, as to any custodianship established after August 9, 1971, but prior to January 1, 1985, a minor has the right after attaining the age of eighteen to demand delivery from the custodian of all or any portion of the custodial property.

NEW SECTION. Sec. 23. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

NEW SECTION. Sec. 24. SHORT TITLE. This chapter may be cited as the uniform transfers to minors act.

NEW SECTION. Sec. 25. CAPTIONS NOT LAW. Section headings as used in this chapter do not constitute any part of the law.

NEW SECTION. Sec. 26. SAVINGS. To the extent that this chapter, by virtue of section 22(2) of this act, does not apply to transfers made in a manner prescribed in the uniform gifts to minors act of Washington or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the uniform gifts to minors act of Washington does not affect those transfers or those powers, duties, and immunities.

NEW SECTION. Sec. 27. The following acts or parts of acts are each repealed:

- (1) RCW 11.93.010 and 1985 c 30 s 12;
- (2) RCW 11.93.020 and 1985 c 30 s 13;
- (3) RCW 11.93.030 and 1985 c 30 s 14;
- (4) RCW 11.93.040 and 1985 c 30 s 15;
- (5) RCW 11.93.050 and 1985 c 30 s 16;
- (6) RCW 11.93.060 and 1985 c 30 s 17;

- (7) RCW 11.93.070 and 1985 c 30 s 18;
- (8) RCW 11.93.080 and 1985 c 30 s 19;
- (9) RCW 11.93.900 and 1985 c 30 s 20;
- (10) RCW 11.93.910 and 1985 c 30 s 21;
- (11) RCW 11.93.911 and 1985 c 30 s 22;
- (12) RCW 11.93.912 and 1985 c 30 s 23; and
- (13) RCW 11.93.920 and 1985 c 30 s 24.

Sec. 28. RCW 11.76.095 and 1988 c 29 s 5 are each amended to read as follows:

When a decree of distribution is made by the court in administration upon a decedent's estate or when distribution is made by a personal representative under a nonintervention will and distribution is ordered under such decree or authorized under such nonintervention will to a person under the age of eighteen years, it shall be required that:

(1) The money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the age of eighteen years and furnishing proof thereof satisfactory to the depository;

(2) A general guardian shall be appointed and qualify and the money or property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding; ((or))

(3) The provisions of ((either)) RCW 11.76.090 ((or 11.93.020(4))) are complied with; or

(4) A custodian be selected and the money or property be transferred to the custodian subject to chapter 11.93 RCW.

Sec. 29. RCW 11.98.170 and 1985 c 30 s 59 are each amended to read as follows:

(1) Any life insurance policy or retirement plan payment provision may designate as beneficiary:

(a) A trustee named or to be named by will, and immediately after the proving of the will, the proceeds of such insurance or of such plan designated as payable to that trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of under the terms of the will governing the testamentary trust; or

(b) A trustee named or to be named under a trust agreement executed by the insured, the plan participant, or any other person, and the proceeds of such insurance or retirement plan designated as payable to such trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of by the trustee as provided in such trust agreement; a trust is valid even if the only corpus consists of the right of the trustee to receive as beneficiary insurance or retirement plan proceeds; any such trustee may also receive assets, other than insurance or

retirement plan proceeds, by testamentary disposition or otherwise and, unless directed otherwise by the transferor of the assets, shall administer all property of the trust according to the terms of the trust agreement.

(2) If no qualified trustee makes claim to the insurance policy or retirement plan proceeds from the insurance company or the plan administrator within twelve months after the death of the insured or plan participant, determination of the proper recipient of the proceeds shall be made pursuant to the judicial or nonjudicial dispute resolution procedures of chapter 11.96 RCW, unless prior to the institution of the judicial procedures, a qualified trustee makes claim to the proceeds, except that (a) if satisfactory evidence is furnished the insurance company or plan administrator within the twelve-month period showing that no trustee can or will qualify to receive such proceeds, payment shall be made to those otherwise entitled to the proceeds under the terms of the policy or retirement plan, including the terms of the beneficiary designation except that (b) if there is any dispute as to the proper recipient of insurance policy or retirement plan proceeds, the dispute shall be resolved pursuant to the judicial or nonjudicial resolution procedures in chapter 11.96 RCW.

(3) The proceeds of the insurance or retirement plan as collected by the trustee are not subject to debts of the insured or the plan participant to any greater extent than if the proceeds were payable to any named beneficiary other than the personal representative or the estate of the insured or of the plan participant.

(4) For purposes of this section the following definitions apply:

(a) "Plan administrator" means the person upon whom claim must be made in order for retirement plan proceeds to be paid upon the death of the plan participant.

(b) "Retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for payment to a beneficiary designated by the plan participant for whom the plan is established. The term includes, without limitation, such plans regardless of source of funding, and, for example, includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other retirement plan or program.

(c) "Trustee" includes any custodian under chapter (~~(11.93)~~) 11.— RCW (sections 1 through 26 of this 1991 act) or any similar statutory provisions of any other state and the terms "trust agreement" and "will" refer to the provisions of chapter (~~(11.93)~~) 11.— RCW (sections 1 through 26 of this 1991 act) or such similar statutory provisions of any other state.

(5) Enactment of this section does not invalidate life insurance policy or retirement plan beneficiary designations executed prior to January 1, 1985, naming a trustee established by will or by trust agreement.

Sec. 30. RCW 67.70.220 and 1985 c 7 s 128 are each amended to read as follows:

If the person entitled to a prize is under the age of eighteen years, and such prize is less than five thousand dollars, the director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of such minor. If the person entitled to a prize is under the age of eighteen years, and such prize is five thousand dollars or more, the director may direct payment to such minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a guardian of the minor as custodian for such minor. The person so named as custodian shall have the same duties and powers as a person designated as a custodian in a manner prescribed by the Washington uniform ~~((gifts))~~ transfers to minors act, chapter ((11.93)) 11.— RCW (sections 1 through 26 of this 1991 act), and for the purposes of this section the terms "adult member of a minor's family," "guardian of a minor," and "bank" shall have the same meaning as in chapter ~~((11.93))~~ 11.— RCW (sections 1 through 26 of this 1991 act). The commission and the director shall be discharged of all further liability upon payment of a prize to a minor pursuant to this section.

NEW SECTION. Sec. 31. RCW 11.76.090 and 1988 c 29 s 4, 1974 ex.s. c 117 s 11, 1971 c 28 s 2, & 1965 c 145 s 11.76.090 are each repealed.

Sec. 32. RCW 11.92.140 and 1990 c 122 s 32 are each amended to read as follows:

The court, upon the petition of a guardian of the estate of an incapacitated person other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter 11.96 RCW, may authorize the guardian to take any action, or to apply funds not required for the incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the incapacitated person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incapacitated person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incapacitated person's estate which may extend beyond the incapacitated person's disability or life, the establishment of custodianships for the benefit of a

minor under chapter 11.93 RCW, the Washington uniform transfers to minors act, the exercise of options of the incapacitated person to purchase securities or other property, the exercise of the incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incapacitated person's right to any elective share in the estate of the incapacitated person's deceased spouse, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the savings expected to accrue. The proposed action or application of funds may include gifts of the incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incapacitated person, or may be made to individuals or charities in which the incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incapacitated person under the incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incapacitated person insofar as the intentions can be ascertained, and if the incapacitated person's intentions cannot be ascertained, the incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incapacitated person's estate as provided in this section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court does not constitute a breach of the guardian's fiduciary duties.

NEW SECTION. Sec. 33. Sections 1 through 26 of this act shall constitute a new chapter in Title 11 RCW.

NEW SECTION. Sec. 34. 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 shall take effect July 1, 1991.

NEW SECTION. Sec. 35. 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.

Passed the House March 19, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 194

[Substitute House Bill 1336]

TENANT APPLICATION FEES

Effective Date: 7/28/91

AN ACT Relating to prospective residential tenants; adding new sections to chapter 59.18 RCW; creating a new section; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that tenant application fees often have the effect of excluding low-income people from applying for housing because many low-income people cannot afford these fees in addition to the rent and other deposits which may be required. The legislature further finds that application fees are frequently not returned to unsuccessful applicants for housing, which creates a hardship on low-income people. The legislature therefore finds and declares that it is the policy of the state that certain tenant application fees should be prohibited and guidelines should be established for the imposition of other tenant application fees.

The legislature also finds that it is important to both landlords and tenants that consumer information concerning prospective tenants is accurate. Many tenants are unaware of their rights under federal fair credit reporting laws to dispute information that may be inaccurate. The legislature therefore finds and declares that it is the policy of the state for prospective tenants to be informed of their rights to dispute information they feel is inaccurate in order to help prevent denials of housing based upon incorrect information.

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

(1) It shall be unlawful for a landlord to require a fee from a prospective tenant for the privilege of being placed on a waiting list to be considered as a tenant for a dwelling unit.

(2) A landlord who charges a prospective tenant a fee or deposit to secure that the prospective tenant will move into a dwelling unit, after the dwelling unit has been offered to the prospective tenant, must provide the prospective tenant with a receipt for the fee or deposit, together with a written statement of the conditions, if any, under which the fee or deposit is refundable. If the prospective tenant does occupy the dwelling unit, then the

landlord must credit the amount of the fee or deposit to the tenant's first month's rent or to the tenant's security deposit. If the prospective tenant does not occupy the dwelling unit, then the landlord may keep up to the full amount of any fee or deposit that was paid by the prospective tenant to secure the tenancy, so long as it is in accordance with the written statement of conditions furnished to the prospective tenant at the time the fee or deposit was charged. A fee charged to secure a tenancy under this subsection does not include any cost charged by a landlord to use a tenant screening service or obtain background information on a prospective tenant.

(3) In any action brought for a violation of this section a landlord may be liable for the amount of the fee or deposit charged. In addition, any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed one hundred dollars. The prevailing party may also recover court costs and a reasonable attorneys' fee.

NEW SECTION. Sec. 3. A new section is added to chapter 59.18 RCW to read as follows:

(1) If a landlord uses a tenant screening service, then the landlord may only charge for the costs incurred for using the tenant screening service under this section. If a landlord conducts his or her own screening of tenants, then the landlord may charge his or her actual costs in obtaining the background information, but the amount may not exceed the customary costs charged by a screening service in the general area. The landlord's actual costs include costs incurred for long distance phone calls and for time spent calling landlords, employers, and financial institutions.

(2) A landlord may not charge a prospective tenant for the cost of obtaining background information under this section unless the landlord first notifies the prospective tenant in writing of what a tenant screening entails, the prospective tenant's rights to dispute the accuracy of information provided by the tenant screening service or provided by the entities listed on the tenant application who will be contacted for information concerning the tenant, and the name and address of the tenant screening service used by the landlord.

(3) Nothing in this section requires a landlord to disclose information to a prospective tenant that was obtained from a tenant screening service or from entities listed on the tenant application which is not required under the federal fair credit reporting act, 15 U.S.C. Sec. 1681 et seq.

(4) Any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed one hundred dollars. The prevailing party may also recover court costs and reasonable attorneys' fees.

Passed the House March 14, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 195

[House Bill 1527]

PHYSICIANS—CONTINUING EDUCATION REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to mandatory continuing education credit; and amending RCW 18.71.080.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.71.080 and 1985 c 322 s 4 are each amended to read as follows:

Every person licensed to practice medicine in this state shall register with the director of licensing annually, and pay an annual renewal registration fee determined by the director as provided in RCW 43.24.086. The board may establish rules and regulations governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. The rules and regulations shall provide that mandatory continuing education requirements may be met in part by physicians showing evidence of the completion of approved activities relating to professional liability risk management. Any failure to register and pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the director, and payment to the state of a penalty fee determined by the director as provided in RCW 43.24.086, together with all delinquent annual license renewal fees: PROVIDED, HOWEVER, That any person who fails to renew the license for a period of three years, shall in no event be entitled to renew the license under this section. Such a person in order to obtain a license to practice medicine in this state, shall file an original application as provided for in this chapter, along with the requisite fee therefor. The board, in its sole discretion, may permit such applicant to be licensed without examination if it is satisfied that such applicant meets all the requirements for licensure in this state, and is competent to engage in the practice of medicine.

Passed the House March 12, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 196

[House Bill 1558]

STATE PATROL COMPENSATION SURVEY

Effective Date: 7/28/91

AN ACT Relating to the compensation survey for the state patrol; and amending RCW 41.06.167.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.06.167 and 1986 c 158 s 7 are each amended to read as follows:

The department of personnel shall undertake comprehensive (~~((salary and fringe benefit))~~) compensation surveys for officers and entry-level officer candidates of the Washington state patrol, with such surveys to be conducted in the year prior to the convening of every other one hundred five day regular session of the state legislature. In the year prior to the convening of each one hundred five day regular session during which a comprehensive (~~((salary and fringe benefit))~~) compensation survey is not conducted, the department shall conduct a trend (~~((salary and fringe benefit))~~) compensation survey. This survey shall measure average (~~((salary and fringe benefit))~~) compensation movement which has occurred since the last comprehensive (~~((salary and fringe benefit))~~) compensation survey was conducted. The results of each comprehensive and trend survey shall be completed and forwarded by September 30th, after review and (~~((concurrence))~~) preparation of recommendations by the chief of the Washington state patrol, to the governor and director of financial management for their use in preparing budgets to be submitted to the succeeding legislature. A copy of the data and supporting documentation shall be furnished by the department of personnel to the legislative transportation committee and the standing committees for appropriations of the senate and house of representatives. The office of financial management shall analyze the survey results and conduct investigations which may be necessary to arbitrate differences between interested parties regarding the accuracy of collected survey data and the use of such data for salary adjustment.

Surveys conducted by the department of personnel for the Washington state patrol shall be undertaken in a manner consistent with statistically accurate sampling techniques, including comparisons of medians, base ranges, and weighted averages of salaries. The surveys shall compare competitive labor markets of law enforcement officers. This service performed by the department of personnel shall be on a reimbursable basis in accordance with the provisions of RCW 41.06.080 (~~((as now existing or hereafter amended))~~).

A comprehensive (~~((salary and fringe benefits))~~) compensation survey plan and the recommendations of the chief of the Washington state patrol shall be submitted jointly by the department of personnel and the Washington state patrol to the director of financial management, the legislative transportation committee, the committee on ways and means of the senate, and the committee on appropriations of the house of representatives six months before the beginning of each periodic survey.

~~((The first comprehensive salary and fringe benefit survey required by this section shall be completed and forwarded to the governor and the director of financial management by September 30, 1986. The first trend salary and fringe benefit survey required by this section shall be completed and forwarded to the governor and the director of financial management by September 30, 1988:))~~

Passed the House March 12, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 197

[House Bill 1675]

CIVIL DOCKET PRIORITY

Effective Date: 7/28/91

AN ACT Relating to civil docket priority for parties over seventy years of age or who are terminally ill; and adding a new section to chapter 4.44 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 4.44 RCW to read as follows:

When setting civil cases for trial, unless otherwise provided by statute, upon motion of a party, the court may give priority to cases in which a party is frail and over seventy years of age or is afflicted with a terminal illness.

Passed the House March 8, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 198

[Substitute House Bill 1739]

HOMELESS PERSONS—PROPERTY TAX EXEMPTION FOR NONPROFIT ORGANIZATIONS HOUSING

Effective Date: 7/28/91

AN ACT Relating to a property tax exemption for nonprofit organizations that house low-income homeless persons; and amending RCW 84.36.043.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.36.043 and 1990 c 283 s 2 are each amended to read as follows:

(1) The real and personal property used by a nonprofit organization in providing ((nonpermanent shelter to)) emergency or transitional housing for

low-income homeless persons as defined in RCW 35.21.685 or 36.32.415 or victims of domestic violence who are homeless for personal safety reasons is exempt from taxation if:

(a) The charge, if any, for the (~~(shelter)~~) housing does not exceed the actual cost of operating and maintaining the (~~(shelter facility)~~) housing; and

(b)(i) The property is owned by the nonprofit organization; or

(ii) For taxes levied for collection in 1991 through 1999 only, the property is rented or leased by the nonprofit organization and the benefit of the exemption inures to the nonprofit organization.

(2) As used in this section:

(a) "Homeless" means persons, including families, who, on one particular day or night, do not have decent and safe shelter nor sufficient funds to purchase or rent a place to stay.

(b) "Emergency housing" means a project that provides housing and supportive services to homeless persons or families for up to sixty days.

(c) "Transitional housing" means a project that provides housing and supportive services to homeless persons or families for up to two years and that has as its purpose facilitating the movement of homeless persons and families into independent living.

(3) This exemption is subject to the administrative provisions contained in RCW 84.36.800 through 84.36.865.

Passed the House March 19, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 199

[Engrossed Substitute House Bill 1028]

AIR POLLUTION REDUCTION

Effective Date: 5/15/91 - Except Sections 602 & 603 which become effective on 7/1/92; Sections 202 through 209 which become effective on 1/1/93; & Sections 210 & 505 which become effective on 1/1/92.

AN ACT Relating to reducing air contaminant emissions and improving air quality; amending RCW 70.94.011, 70.94.030, 70.120.010, 70.120.020, 70.120.070, 70.120.080, 70.120.120, 70.120.150, 70.120.170, 46.16.015, 82.44.020, 82.44.110, 82.44.150, 82.44.155, 82.44.180, 82.50.410, 82.50.510, 70.94.152, 70.94.155, 70.94.181, 70.94.205, 70.94.211, 70.94.430, 70.94.431, 70.94.860, 70.94.875, 70.94.745, 70.94.660, 70.94.670, 70.94.690, 70.94.650, 70.94.654, 70.94.775, 70.94.780, 70.94.750, 70.94.656, 70.94.457, 70.94.470, 70.94.473, 70.94.483, 70.94.041, 70.94.055, 70.94.092, 70.94.100, 70.94.130, 70.94.141, 70.94.170, 70.94.231, 70.94.240, 70.94.331, 70.94.332, 70.94.385, 70.94.395, 70.94.405, 70.94.410, and 70.94.420; reenacting and amending RCW 70.94.053; adding new sections to chapter 70.120 RCW; adding a new section to chapter 43.19 RCW; adding new sections to chapter 80.28 RCW; adding new sections to chapter 70.94 RCW; adding a new section to chapter 19.112 RCW; adding a new section to chapter 82.50 RCW; creating new sections; repealing RCW 70.120.110, 70.120.140, 70.120.900, 70.94.232, 70.94.680, 70.94.740, 70.94.810, 70.94.815, 70.94.825, and 70.94.870; prescribing penalties; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

I.

PUBLIC POLICY, FINDINGS, AND INTENT

NEW SECTION. Sec. 101. The legislature finds that ambient air pollution is the most serious environmental threat in Washington state. Air pollution causes significant harm to human health; damages the environment, including trees, crops, and animals; causes deterioration of equipment and materials; contributes to water pollution; and degrades the quality of life.

Over three million residents of Washington state live where air pollution levels are considered unhealthful. Of all toxic chemicals released into the environment more than half enter our breathing air. Citizens of Washington state spend hundreds of millions of dollars annually to offset health, environmental, and material damage caused by air pollution. The legislature considers such air pollution levels, costs, and damages to be unacceptable.

It is the intent of this act that the implementation of programs and regulations to control air pollution shall be the primary responsibility of the department of ecology and local air pollution control authorities.

Sec. 102. RCW 70.94.011 and 1973 1st ex.s. c 193 s 1 are each amended to read as follows:

It is declared to be the public policy ((of the state)) to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels of pollution. Improving air quality is a matter of state-wide concern and is in the public interest. It is the intent of this chapter to secure and maintain ((such)) levels of air quality ((as will)) that protect human health and safety ((and)), including the most sensitive members of the population, to comply with the requirements of the federal clean air act, ((and;)) to ((the greatest degree practicable;)) prevent injury to plant ((and)), animal life, and property, to foster the comfort and convenience of ((its)) Washington's inhabitants, to promote the economic and social development of the state, and to facilitate the enjoyment of the natural attractions of the state. ((The problems and effects of air pollution are frequently regional and interjurisdictional in nature, and are dependent upon the existence of urbanization and industrialization in areas having common topography and recurring weather conditions conducive to the buildup of air contaminants))

It is further the intent of this chapter to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

Because of the extent of the air pollution problem the legislature finds it necessary to return areas with poor air quality to levels adequate to protect health and the environment as expeditiously as possible but no later than December 31, 1995. Further, it is the intent of this chapter to prevent any areas of the state with acceptable air quality from reaching air contaminant levels that are not protective of human health and the environment.

The legislature recognizes that air pollution control projects may affect other environmental media. In selecting air pollution control strategies state and local agencies shall support those strategies that lessen the negative environmental impact of the project on all environmental media, including air, water, and land.

The legislature further recognizes that energy efficiency and energy conservation can help to reduce air pollution and shall therefore be considered when making decisions on air pollution control strategies and projects.

It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.

It is also declared as public policy that regional air pollution control programs are to be encouraged and supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

~~((It is also declared to be the public policy of the state to provide for the people of the populous metropolitan regions in the state the means of obtaining air pollution control not adequately provided by existing agencies of local government. For reasons of the present and potential dramatic growth in population, urbanization, and industrialization, the special problem of air resource management, encompassing both corrective and preventive measures for the control of air pollution cannot be adequately met by the individual towns, cities, and counties of many metropolitan regions.~~

~~In addition, the state is divided into two major areas, each having unique characteristics as to natural climatic and topographic features which may result in the different potentials for the accumulation and buildup of air contaminant concentrations. These two major areas are the area lying west of the Cascade Mountain crest and the area lying east of the Cascade Mountain crest. Within each of these major areas are regions which, because of the climate and topography and present and potential urbanization and industrial development may, through definitive evaluation be classed as regional air pollution areas:))~~

To these ends it is the purpose of this chapter to ~~((provide for a))~~ safeguard the public interest through an intensive, progressive, and coordinated state-wide program of air pollution prevention and control, to provide

for an appropriate distribution of responsibilities, and to encourage coordination and cooperation between the state, regional, and local units of government, ((and for cooperation across jurisdictional lines in dealing with problems of air pollution)) to improve cooperation between state and federal government, public and private organizations, and the concerned individual, as well as to provide for the use of all known, available, and reasonable methods to reduce, prevent, and control air pollution.

The legislature recognizes that the problems and effects of air pollution cross political boundaries, are frequently regional or interjurisdictional in nature, and are dependent upon the existence of human activity in areas having common topography and weather conditions conducive to the build-up of air contaminants. In addition, the legislature recognizes that air pollution levels are aggravated and compounded by increased population, and its consequences. These changes often result in increasingly serious problems for the public and the environment.

The legislature further recognizes that air emissions from thousands of small individual sources are major contributors to air pollution in many regions of the state. As the population of a region grows, small sources may contribute an increasing proportion of that region's total air emissions. It is declared to be the policy of the state to achieve significant reductions in emissions from those small sources whose aggregate emissions constitute a significant contribution to air pollution in a particular region.

It is the intent of the legislature that air pollution goals be incorporated in the missions and actions of state agencies.

Sec. 103. RCW 70.94.030 and 1987 c 109 s 33 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) ~~(("Person" means and includes an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency))~~ "Air quality standard" means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(4) "Ambient air" means the surrounding outside air.

(5) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

~~((5))~~ (6) "Board" means the board of directors of an authority.

~~((6))~~ (7) "Control officer" means the air pollution control officer of any authority.

~~((7))~~ (8) "Department" means the department of ecology.

(9) "Emission" means a release of air contaminants into the ~~((outdoor atmosphere of air contaminants))~~ ambient air.

~~((8))~~ "Department" means the state department of ecology.

~~(9)~~ "Ambient air" means the surrounding outside air.)

(10) "Emission standard" means a limitation on the release of an air contaminant or multiple contaminants into the ambient air.

(11) "Multicounty authority" means an authority which consists of two or more counties.

~~((11))~~ "Emission standard" means a limitation on the release of a contaminant or multiple contaminants into the ambient air.

~~(12)~~ "Air quality standard" means an established concentration, exposure time and frequency of occurrence of a contaminant or multiple contaminants in the ambient air which shall not be exceeded.

~~(13)~~ "Air quality objective" means the concentration and exposure time of a contaminant or multiple contaminants in the ambient air below which undesirable effects will not occur.)

(12) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(13) "Silvicultural burning" means burning of wood fiber on forest land consistent with the provisions of RCW 70.94.660.

II.

MOTOR VEHICLES AND FUELS

Sec. 201. RCW 70.120.010 and 1979 ex.s. c 163 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) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3) "Fleet" means ~~((a group of twenty-five or more motor vehicles owned or leased concurrently by one person))~~ a group of fifteen or more motor vehicles registered in the same name and whose owner has been assigned a fleet identifier code by the department of licensing.

(4) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16 RCW.

(5) "Motor vehicle dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(6) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(7) The terms "air contaminant," "air pollution," "air quality standard," "ambient air," "emission," and "emission standard" have the meanings given them in RCW 70.94.030.

Sec. 202. RCW 70.120.020 and 1989 c 240 s 5 are each amended to read as follows:

(1) The department shall conduct ~~((the following programs in a manner that will enhance the successful implementation of the air pollution control system established for motor vehicles by this chapter:~~

~~(a) A voluntary motor vehicle emissions inspection program;~~

~~(b)) a public educational program regarding the health effects of air pollution emitted by motor vehicles; the purpose, operation, and effect of emission control devices and systems; and the effect that proper maintenance of motor vehicle engines has on fuel economy and air pollution emission(~~and~~~~

~~(c)) and a public notification program identifying the geographic areas of the state that are designated as being noncompliance areas and emission contributing areas and describing the requirements imposed under this chapter for those areas.~~

(2)(a) The department~~((, the superintendent of public instruction, and the state board for community college education shall develop cooperatively, after consultation with automotive trades joint apprenticeship committees approved in accordance with RCW 49.04.040, a program for granting))~~ shall grant certificates of instruction to persons who successfully complete a course of study, under general requirements established by the director, in the maintenance of motor vehicle engines, the use of engine and exhaust analysis equipment, and the repair and maintenance of emission control devices. The director may establish and implement procedures for granting certification to persons who successfully complete other training programs or who have received certification from public and private organizations which meet the requirements established in this subsection, including programs on clean fuel technology and maintenance.

(b) The department shall make available to the public a list of those persons who have received certificates of instruction under subsection (2)(a) of this section.

Sec. 203. RCW 70.120.070 and 1989 c 240 c 6 are each amended to read as follows:

(1) Any person:

(a) Whose motor vehicle is tested pursuant to this chapter and fails to comply with the emission standards established for the vehicle; and

(b) Who, following such a test, expends more than ~~((fifty))~~ one hundred dollars on a 1980 or earlier model year motor vehicle or expends more than one hundred fifty dollars on a 1981 or later model year motor vehicle for repairs solely devoted to meeting the emission standards and that are performed by a certified emission specialist authorized by RCW 70.120.020(2)(a); and

(c) Whose vehicle fails a retest, may be issued a certificate of acceptance if (i) the vehicle has been in use for more than five years or fifty thousand miles, and (ii) any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

~~((d))~~ To receive the certificate, the person must document compliance with (b) and (c) of this subsection to the satisfaction of the department.

Should any provision of (b) of this subsection be disapproved by the administrator of the United States environmental protection agency, all vehicles shall be required to expend at least four hundred fifty dollars to qualify for a certificate of acceptance.

(2) Persons who fail the initial tests shall be provided with information regarding the availability of federal warranties and certified emission specialists.

****NEW SECTION. Sec. 204. (1) A task force is established for the purposes of recommending a program to assist persons with vehicles failing to comply with emission standards under RCW 70.120.120. The task force shall be appointed by the speaker of house of representatives and the president of the senate and shall consist of:***

(a) Two members from the house committee on environmental affairs;

(b) Two members from the senate committee on environment and natural resources; and

(c) Two members from the legislative committee on transportation.

(2) In developing recommendations, the task force shall consult with representatives from the departments of ecology, licensing, social and health services, and revenue, the Washington state patrol, vehicle dealers and manufacturers, automobile associations, auto wreckers, and advocates for low-income persons and senior citizens.

(3) By November 1, 1991, the task force shall report to the appropriate standing committees of the legislature. The report shall recommend methods to:

(a) Use public and private funds to provide credit toward purchasing vehicles ten years or older from persons with vehicles not meeting the emission standards under RCW 70.120.120 for the purpose of permanently removing such vehicles from the road;

(b) Identify persons needing assistance with the provisions of RCW 70.120.120. In identifying such persons, the task force shall give first consideration to persons with an income of less than one hundred fifty percent of the federal poverty level;

(c) Prevent fraud or abuse of the program developed under this section; and

(d) Share the cost of the program with new and used car dealers licensed under chapter 46.70 RCW.

In the event that the task force determines a program to provide credit toward the purchase of older, polluting vehicles, as described under (a) of this subsection, does not provide an adequate benefit to low-income persons, the task force shall include recommendations to provide public funds for the repair of such vehicles.

*Sec. 204 was vetoed, see message at end of chapter.

Sec. 205. RCW 70.120.080 and 1979 ex.s. c 163 s 8 are each amended to read as follows:

The director may authorize an owner or lessee of a fleet of motor vehicles, or the owner's or lessee's agent, to inspect the vehicles in the fleet and issue certificates of compliance for the vehicles in the fleet if the director determines that: (1) The director's ~~((emission and))~~ inspection ~~((standards))~~ procedures will be complied with; and (2) certificates will be issued only to vehicles in the fleet that meet emission and equipment standards adopted under RCW 70.120.150 and only when appropriate.

In addition, the director may authorize an owner or lessee of one or more diesel motor vehicles with a gross vehicle weight rating in excess of eight thousand five hundred pounds, or the owner's or lessee's agent, to inspect the vehicles and issue certificates of compliance for the vehicles. The inspections shall be conducted in compliance with inspection procedures adopted by the department and certificates of compliance shall only be issued to vehicles that meet emission and equipment standards adopted under RCW 70.120.150.

The director shall establish by rule the fee for fleet or diesel inspections provided for in this section. The fee shall be set at an amount necessary to offset the department's cost to administer the fleet and diesel inspection program authorized by this section.

Owners, leaseholders, or their agents conducting inspections under this section shall pay only the fee established in this section and not be subject to fees under RCW 70.120.170(4).

Sec. 206. RCW 70.120.120 and 1989 c 240 s 8 are each amended to read as follows:

The director shall adopt rules implementing and enforcing this chapter ~~((and RCW 46.16.015(2)(g)))~~ in accordance with chapter 34.05 RCW. ~~((Notwithstanding the provisions of chapter 34.05 RCW, any rule implementing and enforcing RCW 70.120.150(5) may not be adopted until it has~~

~~been submitted to the standing committees on ecology of the house of representatives and senate for review and approval.)~~ The ~~((standing committees))~~ department shall take into account when considering proposed modifications of emission contributing boundaries, as provided for in RCW 70.120.150~~((5))~~ (6), alternative ~~((plans for traffic rerouting and traffic bans))~~ transportation control and motor vehicle emission reduction measures that ((may have been prepared)) are required by local municipal corporations for the purpose of satisfying federal emission guidelines.

Sec. 207. RCW 70.120.150 and 1989 c 240 s 2 are each amended to read as follows:

The director:

(1) Shall adopt motor vehicle emission and equipment standards to: Ensure that no less than seventy percent of the vehicles tested comply with the standards on the first inspection conducted, meet federal clean air act requirements, and protect human health and the environment.

(2) Shall adopt rules implementing the smoke opacity testing requirement for diesel vehicles that ensure that such test is objective and repeatable and that properly maintained engines that otherwise would meet the applicable federal emission standards, as measured by the new engine certification test, would not fail the smoke opacity test.

(3) Shall designate a geographic area as being a "noncompliance area" for motor vehicle emissions if (a) the department's analysis of ~~((the))~~ emission and ambient air quality data, ((recorded for)) covering a period of no less than one year, ((at the monitoring sites)) indicates that the standard has or will probably be exceeded, and (b) the department determines that the primary source of the air contaminant ~~((being monitored at the sites))~~ is motor vehicle emissions.

~~((3))~~ (4) Shall reevaluate noncompliance areas if the United States environmental protection agency modifies the relevant air quality standards, and shall discontinue the program if compliance is indicated and if the department determines that the area would continue to be in compliance after the program is discontinued. The director shall notify persons residing in noncompliance areas of the reevaluation.

~~((4))~~ (5) Shall analyze information regarding the motor vehicle traffic in a noncompliance area to determine the smallest land area within whose boundaries are present registered motor vehicles that contribute significantly to the violation of motor vehicle-related air quality standards in the noncompliance area. The director shall declare the area to be an "emission contributing area." An emission contributing area established for a carbon monoxide or oxides of nitrogen noncompliance area must contain the noncompliance area within its boundaries. An emission contributing area established for an ozone noncompliance area located in this state need not contain the ozone noncompliance area within its boundaries if it can be

proven that vehicles registered in the area contribute significantly to violations of the ozone air quality standard in the noncompliance area. An emission contributing area may be established in this state for violations of federal air quality standards for ozone in an adjacent state if (a) the United States environmental protection agency designates an area to be a "nonattainment area for ozone" under the provisions of the federal Clean Air Act (42 U.S.C. 7401 et. seq.), and (b) ~~((the nonattainment area encompasses portions of both Washington and the adjacent state, and (c)))~~ it can be proven that vehicles registered in this state contribute significantly to the violation of the federal air quality standards for ozone in the adjacent state's ~~((portion of the))~~ nonattainment area.

~~((5))~~ (6) Shall, after consultation with the appropriate local government entities, designate areas as being noncompliance areas or emission contributing areas, and shall establish the boundaries of such areas by rule. The director may also modify boundaries. In establishing the external boundaries of an emission contributing area, the director shall use the boundaries established for ZIP code service areas by the United States postal service.

~~((6))~~ (7) May make grants to units of government in support of planning efforts to reduce motor vehicle emissions ~~((in areas where emission control inspections are not required))~~.

Sec. 208. RCW 70.120.170 and 1989 c 240 s 4 are each amended to read as follows:

(1) The department shall administer a system for ~~((biennial))~~ emission inspections ~~((of emissions))~~ of all motor vehicles registered within the boundaries of each emission contributing area. ~~((Persons residing within the boundaries of an emission contributing area shall register their motor vehicle within that area, unless business reasons require registration outside the area. Requests for exemption from inspection for business reasons shall be reviewed and approved by the director))~~ Under such system a motor vehicle shall be inspected biennially except where an annual program would be required to meet federal law and prevent federal sanctions. In addition, motor vehicles shall be inspected at each change of registered owner of a licensed vehicle.

(2) The director shall:

(a) Adopt procedures for conducting emission ~~((tests for))~~ inspections of motor vehicles. The ~~((tests shall))~~ inspections may include idle and high revolution per minute emission tests. The emission test for diesel vehicles shall consist solely of a smoke opacity test.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions standards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting ~~((the))~~ vehicle emission ~~((tests))~~ inspections authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public body may establish or operate contracted inspection stations. Any contracts must be let in accordance with the procedures established for competitive bids in chapter 43.19 RCW.

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1)~~((a))~~ if the inspections are conducted for the following purposes:

- (a) Auditing;
- (b) Contractor evaluation;
- (c) Collection of data for establishing calibration and performance standards; or
- (d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable state-wide or throughout an emission contributing area and shall be no greater than eighteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehicle is inspected shall receive the results of the inspection ~~((test))~~. If the inspected ~~((vehicle's emissions comply))~~ vehicle complies with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected ~~((vehicle's emissions do))~~ vehicle does not comply with those standards, one ~~((retest of the vehicle's emission))~~ reinspection of the vehicle shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles ~~((biennially))~~ annually to ensure that the vehicle's emissions comply with the emission standards established by the director. All state agencies outside of emission contributing areas with more than twenty motor vehicles housed at a single facility or contiguous facilities shall test the emissions of those vehicles annually to ensure that the vehicles' emissions comply with standards established by the director. A report of the results of the tests shall be submitted to the department.

Sec. 209. RCW 46.16.015 and 1990 c 42 s 318 are each amended to read as follows:

(1) Neither the department of licensing nor its agents may issue or renew a motor vehicle license for any vehicle (~~registered in an emission contributing area, as that area is established under chapter 70.120 RCW~~) or change the registered owner of a licensed vehicle, for any (~~year in which the~~) vehicle that is required to be ((tested)) inspected under chapter 70.120 RCW, unless the application for issuance or renewal is: (a) Accompanied by a valid certificate of compliance or a valid certificate of acceptance issued pursuant to chapter 70.120 RCW; or (b) exempted from this requirement pursuant to subsection (2) of this section. The certificates must have a date of validation which is within (~~ninety days~~) six months of the date of application for the vehicle license or license renewal. Certificates for fleet or owner tested diesel vehicles may have a date of validation which is within twelve months of the assigned license renewal date.

(2) Subsection (1) of this section does not apply to the following vehicles:

(a) New motor vehicles whose equitable or legal title has never been transferred to a person who in good faith purchases the vehicle for purposes other than resale;

(b) Motor vehicles with a model year of 1967 or earlier;

(c) Motor vehicles that use propulsion units powered exclusively by electricity;

(d) Motor vehicles fueled (~~exclusively~~) by propane, compressed natural gas, or liquid petroleum gas, unless it is determined that federal sanctions will be imposed as a result of this exemption;

(e) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(f) (~~Motor vehicles powered by diesel engines;~~

~~(g))~~ (g) Farm vehicles as defined in RCW 46.04.181;

~~((h))~~ (g) Used vehicles which are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW; or

~~((i))~~ (h) Motor vehicles exempted by the director of the department of ecology.

The provisions of subparagraph (a) of this subsection may not be construed as exempting from the provisions of subsection (1) of this section applications for the renewal of licenses for motor vehicles that are or have been leased.

(3) (~~The department of licensing shall mail to each owner of a vehicle registered within an emission contributing area a notice regarding the boundaries of the area and restrictions established under this section that apply to vehicles registered in such areas. The information for the notice shall be supplied to the department of licensing by the department of ecology.~~) The department of ecology shall provide information to motor vehicle owners regarding the boundaries of emission contributing areas and restrictions established under this section that apply to vehicles registered in such

areas. In addition the department of ecology shall provide information to motor vehicle owners on the relationship between motor vehicles and air pollution and steps motor vehicle owners should take to reduce motor vehicle related air pollution. The department of licensing shall send to all registered motor vehicle owners (~~(who reside within the emissions area)~~) affected by the emission testing program notice that they must have an emission test to renew their registration.

NEW SECTION. Sec. 210. A new section is added to chapter 70.120 RCW to read as follows:

(1) Motor vehicle dealers selling a used vehicle not under a new vehicle warranty shall include a notice in each vehicle purchase order form that reads as follows: "The owner of a vehicle may be required to spend up to [a dollar amount established under section 203 of this act] for repairs if the vehicle does not meet the vehicle emission standards under this chapter. Unless expressly warranted by the motor vehicle dealer, the dealer is not warranting that this vehicle will pass any emission tests required by federal or state law."

(2) The signature of the purchaser on the notice required under subsection (1) of this section shall constitute a valid disclaimer of any implied warranty by the dealer as to a vehicle's compliance with any emission standards.

(3) The disclosure requirement of subsection (1) of this section applies to all motor vehicle dealers located in counties where state emission inspections are required.

NEW SECTION. Sec. 211. A new section is added to chapter 70.120 RCW to read as follows:

Engine manufacturers shall certify that new engines conform with current exhaust emission standards of the federal environmental protection agency.

NEW SECTION. Sec. 212. A new section is added to chapter 70.120 RCW to read as follows:

By July 1, 1992, the department shall develop, in cooperation with the departments of general administration and transportation, and the state energy office, aggressive clean-fuel performance and clean-fuel vehicle emissions specifications including clean-fuel vehicle conversion equipment. To the extent possible, such specifications shall be equivalent for all fuel types. In developing such specifications the department shall consider the requirements of the clean air act and the findings of the environmental protection agency, other states, the American petroleum institute, the gas research institute, and the motor vehicles manufacturers association.

NEW SECTION. Sec. 213. A new section is added to chapter 43.19 RCW to read as follows:

(1) At least thirty percent of all new vehicles purchased through a state contract shall be clean-fuel vehicles.

(2) The percentage of clean-fuel vehicles purchased through a state contract shall increase at the rate of five percent each year.

(3) In meeting the procurement requirement established in this section, preference shall be given to vehicles designed to operate exclusively on clean fuels. In the event that vehicles designed to operate exclusively on clean fuels are not available or would not meet the operational requirements for which a vehicle is to be procured, conventionally powered vehicles may be converted to clean fuel or dual fuel use to meet the requirements of this section.

(4) Fuel purchased through a state contract shall be a clean fuel when the fuel is purchased for the operation of a clean-fuel vehicle.

(5)(a) Weight classes are established by the following motor vehicle types:

(i) Passenger cars;

(ii) Light duty trucks, trucks with a gross vehicle weight rating by the vehicle manufacturer of less than eight thousand five hundred pounds;

(iii) Heavy duty trucks, trucks with a gross vehicle weight rating by the vehicle manufacturer of eight thousand five hundred pounds or more.

(b) This subsection does not place an obligation upon the state or its political subdivisions to purchase vehicles in any number or weight class other than to meet the percent procurement requirement.

(6) For the purposes of this section, "clean fuels" and "clean-fuel vehicles" shall be those fuels and vehicles meeting the specifications provided for in section 212 of this act.

NEW SECTION. Sec. 214. (1) The state energy office shall convene a school bus compressed natural gas fuel advisory committee. The committee shall be chaired by the director of the state energy office or a designee and the following shall be invited to be members:

(a) The superintendent of public instruction or a designee;

(b) The director of the department of ecology or a designee;

(c) Two members of the house of representatives, one from each caucus, appointed by the speaker of the house;

(d) Two members of the senate, one from each caucus, appointed by the president of the senate;

(e) Two members representing school districts appointed by the director of the state energy office; and

(f) One member representing a natural gas local distribution company.

(2) The state energy office shall, with the guidance of the advisory committee, analyze and report on the potential benefits, costs, and safety risks associated with increasing the use of compressed natural gas as fuel for school buses. The report shall address:

(a) The anticipated operation and maintenance costs of compressed natural gas school buses in comparison to diesel fuel and gasoline school buses;

(b) Factors affecting the safety of passengers, drivers, mechanics, and other persons using compressed natural gas school buses in comparison to diesel fuel and gasoline school buses;

(c) Capital costs, including:

(i) The availability and capital cost of retrofitting diesel and gasoline school buses;

(ii) The feasibility and capital cost of retrofitting diesel and gasoline school buses; and

(iii) Capital costs associated with fuel storage and refueling; and

(d) Other considerations, including air quality benefits, needed to determine the total costs, problems, and benefits of increasing the use of compressed natural gas as a fuel for school buses. The report shall also evaluate all of the preceding factors as they relate to the use of propane as a fuel for school buses.

(3) The state energy office shall submit a report to the appropriations and environmental affairs committees of the house of representatives and the ways and means and environment and natural resources committees of the senate by December 1, 1991. The school bus compressed natural gas fuel advisory committee shall be disbanded when the report is submitted.

NEW SECTION. Sec. 215. A new section is added to chapter 70.120 RCW to read as follows:

The department, in cooperation with the departments of general administration and transportation, the utilities and transportation commission, and the state energy office, shall biennially prepare a report to the legislature starting July 1, 1992, on:

(1) Progress of clean fuel and clean-fuel vehicle programs in reducing automotive emissions;

(2) Recommendations for enhancing clean-fuel distribution systems;

(3) Efforts of the state, units of local government, and the private sector to evaluate and utilize "clean fuel" or "clean-fuel vehicles"; and

(4) Recommendations for changes in the existing program to make it more effective and, if warranted, for expansion of the program.

NEW SECTION. Sec. 216. A new section is added to chapter 80.28 RCW to read as follows:

The legislature finds that compressed natural gas offers significant potential to reduce vehicle emissions and to significantly decrease dependence on petroleum-based fuels. The legislature also finds that well-developed and convenient refueling systems are imperative if compressed natural gas is to be widely used by the public. The legislature declares that the development of compressed natural gas refueling stations are in the public interest. Nothing in this section and section 217 of this act is intended to alter the

regulatory practices of the commission or allow the subsidization of one ratepayer class by another.

NEW SECTION. Sec. 217. A new section is added to chapter 80.28 RCW to read as follows:

The commission shall identify barriers to the development of refueling stations for vehicles operating on compressed natural gas, and shall develop policies to remove such barriers. In developing such policies, the commission shall consider providing rate incentives to encourage natural gas companies to invest in the infrastructure required by such refueling stations.

NEW SECTION. Sec. 218. A new section is added to chapter 70.94 RCW to read as follows:

The department may disburse matching grants from funds provided by the legislature from the air pollution control account, created in section 228 of this act, to units of local government to partially offset the additional cost of purchasing "clean fuel" and/or operating "clean-fuel vehicles" provided that such vehicles are used for public transit. Publicly owned school buses are considered public transit for the purposes of this section. The department may also disburse grants to vocational-technical institutes for the purpose of establishing programs to certify clean-fuel vehicle mechanics. The department may also distribute grants to the state energy office for the purpose of furthering the establishment of clean fuel refueling infrastructure.

NEW SECTION. Sec. 219. A new section is added to chapter 70.94 RCW to read as follows:

In areas subject to a state implementation plan, no state agency, metropolitan planning organization, or local government shall approve or fund a transportation plan, program, or project within or that affects a nonattainment area unless a determination has been made that the plan, program, or project conforms with the state implementation plan for air quality as required by the federal clean air act.

Conformity determination shall be made by the state or local government or metropolitan planning organization administering or developing the plan, program, or project.

No later than eighteen months after the effective date of this section, the director of the department of ecology and the secretary of transportation, in consultation with other state, regional, and local agencies as appropriate, shall adopt by rule criteria and guidance for demonstrating and assuring conformity of plans, programs, and projects that are wholly or partially federally funded.

A project with a scope that is limited to preservation or maintenance, or both, shall be exempted from a conformity determination requirement.

Sec. 220. RCW 82.44.020 and 1990 c 42 s 302 are each amended to read as follows:

(1) An excise tax is imposed for the privilege of using in the state any motor vehicle, except those operated under reciprocal agreements, the provisions of RCW 46.16.160 as now or hereafter amended, or dealer's licenses. The annual amount of such excise tax shall be two percent of the value of such vehicle.

(2) An additional excise tax is imposed, in addition to any other tax imposed by this section, for the privilege of using in the state any such motor vehicle, and the annual amount of such additional excise shall be two-tenths of one percent of the value of such vehicle.

(3) Effective with October 1992 motor vehicle registration expirations, a clean air excise tax is imposed in addition to any other tax imposed by this section for the privilege of using in the state any motor vehicle as defined in RCW 82.44.010, except that farm vehicles as defined in RCW 46.04.181 shall not be subject to the tax imposed by this subsection. The annual amount of the additional excise tax shall be two dollars and twenty-five cents. Effective with July 1994 motor vehicle registration expirations, the annual amount of additional excise tax shall be two dollars.

(4) In no case shall the total tax be less than two dollars except for proportionally registered vehicles.

~~((4))~~ (5) Washington residents, as defined in RCW 46.16.028, who license motor vehicles in another state or foreign country and avoid Washington motor vehicle excise taxes are liable for such unpaid excise taxes. The department of revenue may assess and collect the unpaid excise taxes under chapter 82.32 RCW, including the penalties and interest provided therein.

Sec. 221. RCW 82.44.110 and 1990 2nd ex.s. c 1 s 801 are each amended to read as follows:

The county auditor shall regularly, when remitting license fee receipts, pay over and account to the director of licensing for the excise taxes collected under the provisions of this chapter. The director shall forthwith transmit the excise taxes to the state treasurer.

(1) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(1) as follows:

~~((1))~~ (a) 1.60 percent into the motor vehicle fund to defray administrative and other expenses incurred by the department in the collection of the excise tax.

~~((2))~~ (b) 8.15 percent into the Puget Sound capital construction account in the motor vehicle fund.

~~((3))~~ (c) 4.07 percent into the Puget Sound ferry operations account in the motor vehicle fund.

~~((4))~~ (d) 8.83 percent into the general fund to be distributed under RCW 82.44.155.

~~((5))~~ (e) 4.75 percent into the municipal sales and use tax equalization account in the general fund created in RCW 82.14.210.

~~((6))~~ (f) 1.60 percent into the county sales and use tax equalization account in the general fund created in RCW 82.14.200.

~~((7))~~ (g) 62.6440 percent into the general fund through June 30, 1993, 57.6440 percent into the general fund beginning July 1, 1993, and 66 percent into the general fund beginning January 1, 1994.

~~((8))~~ (h) 5 percent into the transportation fund created in RCW 82.44.180 beginning July 1, 1993.

~~((9))~~ (i) 5.9686 percent into the county criminal justice assistance account created in RCW 82.14.310 through December 31, 1993.

~~((10))~~ (j) 1.1937 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.320 through December 31, 1993.

~~((11))~~ (k) 1.1937 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.330 through December 31, 1993.

(2) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(2) into the transportation fund.

(3) The state treasurer shall deposit the excise tax imposed by RCW 82.44.020(3) into the air pollution control account created by section 228 of this act.

Sec. 222. RCW 82.44.150 and 1990 c 42 s 308 are each amended to read as follows:

(1) The director of licensing shall, on the twenty-fifth day of February, May, August, and November of each year, advise the state treasurer of the total amount of motor vehicle excise taxes imposed by RCW 82.44.020 (1) and (2) remitted to the department during the preceding calendar quarter ending on the last day of March, June, September, and December, respectively, except for those payable under RCW 82.44.030, from motor vehicle owners residing within each municipality which has levied a tax under RCW 35.58.273, which amount of excise taxes shall be determined by the director as follows:

The total amount of motor vehicle excise taxes remitted to the department, except those payable under RCW 82.44.020(3) and 82.44.030, from each county shall be multiplied by a fraction, the numerator of which is the population of the municipality residing in such county, and the denominator of which is the total population of the county in which such municipality or portion thereof is located. The product of this computation shall be the amount of excise taxes from motor vehicle owners residing within such municipality or portion thereof. Where the municipality levying a tax under RCW 35.58.273 is located in more than one county, the above computation shall be made by county, and the combined products shall provide the total amount of motor vehicle excise taxes from motor vehicle owners residing in

the municipality as a whole. Population figures required for these computations shall be supplied to the director by the office of financial management, who shall adjust the fraction annually.

(2) On the first day of the months of January, April, July, and October of each year, the state treasurer based upon information provided by the department shall, from motor vehicle excise taxes deposited in the general fund, under RCW 82.44.110(7), make the following deposits:

(a) To the high capacity transportation account created in RCW 47-.78.010, a sum equal to four and five-tenths percent of the special excise tax levied under RCW 35.58.273 by those municipalities authorized to levy a special excise tax within a class AA county, or within a class A county contiguous to a class AA county, or within a second class county contiguous to a class A county that is contiguous to a class AA county;

(b) To the central Puget Sound public transportation account created in RCW 82.44.180, for revenues distributed after December 31, 1992, within a class AA county or within a class A county contiguous to a class AA county, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(b) applies; however, any transfer under this subsection (2)(b) must be greater than zero;

(c) To the public transportation systems account created in RCW 82.44.180, for revenues distributed after December 31, 1992, within counties not described in (b) of this subsection, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58-.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(c) applies; however, any transfer under this subsection (2)(c) must be greater than zero; and

(d) To the transportation fund created in RCW 82.44.180, for revenues distributed after June 30, 1991, a sum equal to the difference between

(i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent notwithstanding the requirements set forth in subsections (3) through (6) of this section, reduced by an amount equal to distributions made under (a), (b), and (c) of this subsection.

(3) On the first day of the months of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, shall remit motor vehicle excise tax revenues imposed and collected under RCW 35.58.273 as follows:

(a) The amount required to be remitted by the state treasurer to the treasurer of any municipality levying the tax shall not exceed in any calendar year the amount of locally-generated tax revenues, excluding the excise tax imposed under RCW 35.58.273 for the purposes of this section, which shall have been budgeted by the municipality to be collected in such calendar year for any public transportation purposes including but not limited to operating costs, capital costs, and debt service on general obligation or revenue bonds issued for these purposes; and

(b) In no event may the amount remitted in a single calendar quarter exceed the amount collected on behalf of the municipality under RCW 35.58.273 during the calendar quarter next preceding the immediately preceding quarter.

(4) At the close of each calendar year accounting period, but not later than April 1, each municipality that has received motor vehicle excise taxes under subsection (3) of this section shall transmit to the director of licensing and the state auditor a written report showing by source the previous year's budgeted tax revenues for public transportation purposes as compared to actual collections. Any municipality that has not submitted the report by April 1 shall cease to be eligible to receive motor vehicle excise taxes under subsection (3) of this section until the report is received by the director of licensing. If a municipality has received more or less money under subsection (3) of this section for the period covered by the report than it is entitled to receive by reason of its locally-generated collected tax revenues, the director of licensing shall, during the next ensuing quarter that the municipality is eligible to receive motor vehicle excise tax funds, increase or decrease the amount to be remitted in an amount equal to the difference between the locally-generated budgeted tax revenues and the locally-generated collected tax revenues. In no event may the amount remitted for a calendar year exceed the amount collected on behalf of the municipality under RCW 35.58.273 during that same calendar year. At the time of the

next fiscal audit of each municipality, the state auditor shall verify the accuracy of the report submitted and notify the director of licensing of any discrepancies.

(5) The motor vehicle excise taxes imposed under RCW 35.58.273 and required to be remitted under this section shall be remitted without legislative appropriation.

(6) Any municipality levying and collecting a tax under RCW 35.58.273 which does not have an operating, public transit system or a contract for public transportation services in effect within one year from the initial effective date of the tax shall return to the state treasurer all motor vehicle excise taxes received under subsection (3) of this section.

Sec. 223. RCW 82.44.155 and 1990 c 42 s 309 are each amended to read as follows:

When distributions are made under RCW 82.44.150, the state treasurer shall apportion and distribute the motor vehicle excise taxes deposited into the general fund under RCW 82.44.110(4) to the cities and towns ratably on the basis of population as last determined by the office of financial management. When so apportioned, the amount payable to each such city and town shall be transmitted to the city treasurer thereof, and shall be used by the city or town for the purposes of police and fire protection and the preservation of the public health in the city or town, and not otherwise. If it is adjudged that revenue derived from the excise ~~((tax))~~ taxes imposed by ~~((this chapter))~~ RCW 82.44.020 (1) and (2) cannot lawfully be apportioned or distributed to cities or towns, all moneys directed by this section to be apportioned and distributed to cities and towns shall be credited and transferred to the state general fund.

Sec. 224. RCW 82.44.180 and 1990 c 42 s 312 are each amended to read as follows:

(1) The transportation fund is created in the state treasury. Revenues under RCW 82.44.020 (1) and (2), 82.44.110, 82.44.150, and the surcharge under RCW 82.50.510 shall be deposited into the fund as provided in those sections.

Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for transportation purposes.

(2) There is hereby created the central Puget Sound public transportation account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(b) shall be expended within the three county region from which the funds are derived, solely for:

(a) Development of high capacity transportation systems as defined in RCW 81.104.010;

(b) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020; and

(c) Public transportation system contributions required to fund projects approved by the transportation improvement board.

(3) There is hereby created the public transportation systems account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(c) shall be available to the public transportation system from which the funds are derived, solely for:

(a) Development of high capacity transportation systems as defined in RCW 81.104.010;

(b) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020;

(c) Other public transportation system-related roadway projects on state highways, county roads, or city streets; and

(d) Public transportation system contributions required to fund projects approved by the transportation improvement board.

Sec. 225. RCW 82.50.410 and 1990 c 42 s 321 are each amended to read as follows:

The rate and measure of tax imposed by ~~((this chapter))~~ RCW 82.50.400 for each registration year shall be one percent, and a surcharge of one-tenth of one percent, of the value of the travel trailer or camper, as determined in the manner provided in this chapter: PROVIDED, That the excise tax upon a travel trailer or camper licensed for the first time in this state after the last day of any registration month may only be levied for the remaining months of the registration year including the month in which the travel trailer or camper is first licensed: PROVIDED FURTHER, That the minimum amount of tax payable shall be two dollars: PROVIDED FURTHER, That every dealer in mobile homes or travel trailers, for the privilege of using any mobile home or travel trailer eligible to be used under a dealer's license plate, shall pay an excise tax of two dollars, and such tax shall be collected upon the issuance of each original dealer's license plate, and also a similar tax shall be collected upon the issuance of each dealer's duplicate license plate, which taxes shall be in addition to any tax otherwise payable under this chapter.

A travel trailer or camper shall be deemed licensed for the first time in this state when such vehicle was not previously licensed by this state for the registration year or any part thereof immediately preceding the registration year in which application for license is made or when it has been registered in another jurisdiction subsequent to any prior registration in this state.

NEW SECTION. Sec. 226. A new section is added to chapter 82.50 RCW to read as follows:

Effective with October 1992 motor vehicle registration expirations, an additional annual clean air excise tax of two dollars and twenty-five cents is imposed on the owner of any travel trailer or camper for the privilege of using such travel trailer or camper in this state. Effective with July 1994 motor vehicle registration expirations, the annual amount of additional excise tax shall be two dollars. The excise tax hereby imposed shall be due and

payable to the department of licensing or its agents at the time of registration of a travel trailer or camper. Whenever an application is made to the department of licensing or its agents for a license for a travel trailer or camper there shall be collected, in addition to the amount of the license fee or renewal license fee, the amount of the excise tax imposed by this chapter, and no license or license plates for a travel trailer or camper may be issued unless such tax is paid in full. No additional tax shall be imposed under this chapter upon any travel trailer or camper upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such travel trailer or camper has already been paid for the registration year or fractional part thereof in which such transfer occurs. Receipts from the tax levied in this section shall be deposited in the air pollution control account created by section 228 of this act.

Sec. 227. RCW 82.50.510 and 1990 c 42 s 322 are each amended to read as follows:

The county auditor shall regularly, when remitting motor vehicle excise taxes, pay to the state treasurer the excise taxes (~~collected under this chapter~~) imposed by RCW 82.50.400. The treasurer shall then distribute such funds quarterly on the first day of the month of January, April, July and October of each year in the following amount: (1) For the one percent tax imposed under RCW 82.50.410, fifteen percent to cities and towns for the use thereof apportioned ratably among such cities and towns on the basis of population; fifteen percent to counties for the use thereof to be apportioned ratably among such counties on the basis of moneys collected in such counties from the excise taxes imposed under this chapter; and seventy percent for schools to be deposited in the state general fund; and (2) for the one-tenth of one percent surcharge imposed under RCW 82.50.410, one hundred percent to the transportation fund created in RCW 82.44.180.

NEW SECTION. Sec. 228. (1) The air pollution control account is established in the state treasury. All receipts from RCW 70.94.650, 70.94.660, 82.44.020(3), and section 226 of this act shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to develop and implement the provisions of this act and chapters 70.94 and 70.120 RCW.

(2) The amounts collected and allocated in accordance with this section shall be expended upon appropriation except as otherwise provided in this section and in accordance with the following limitations:

Portions of moneys received by the department of ecology from the air pollution control account shall be distributed by the department to local authorities based on:

(a) The level and extent of air quality problems within such authority's jurisdiction;

(b) The costs associated with implementing air pollution regulatory programs by such authority; and

(c) The amount of funding available to such authority from other sources, whether state, federal, or local, that could be used to implement such programs.

(3) The air operating permit account is created in the custody of the state treasurer. All receipts paid to the department of revenue under section 301 of this act shall be deposited into the account. Expenditures from the account may be used only for the direct and indirect costs of implementing the air operating permit program under section 301 of this act. Only the director of the department of ecology or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for such expenditures.

NEW SECTION. Sec. 229. A new section is added to chapter 70.120 RCW to read as follows:

(1) It is the intent of the legislature that the state take advantage of the best emission control systems available on new motor vehicles. The department shall conduct a study to determine if requiring new vehicles sold in the state to meet California vehicle emission standards will provide a significant benefit to attainment of ambient air quality standards in this state. The department shall report the findings of its study and its recommendations to the appropriate standing committees of the legislature. The department shall not adopt the California vehicle emission standards unless authorized by the legislature.

(2) In the event that California vehicle emission standards are adopted, the department shall not include a program for in-use testing and recall of vehicles required to meet California emission standards.

NEW SECTION. Sec. 230. The department of ecology shall contract with Western Washington University for the biennium ending June 30, 1993, for research and development of alternative fuel and solar powered vehicles. A report on the progress of such research shall be presented to the standing environmental committees and the department by January 1, 1994.

NEW SECTION. Sec. 231. A new section is added to chapter 19.112 RCW to read as follows:

The directors of the departments of ecology and agriculture may grant a variance from ASTM motor fuel specifications if necessary to produce lower emission motor fuels.

III.

INDUSTRIAL AND COMMERCIAL SOURCES

NEW SECTION. Sec. 301. A new section is added to chapter 70.94 RCW to read as follows:

The department of ecology, or board of an authority, shall require renewable permits for the operation of air contaminant sources subject to the following conditions and limitations:

(1) Unless a different meaning is plainly required by the context, the following words and phrases shall have the following meanings:

(a) "Lowest achievable emission rate" (LAER) means for any source that rate of emissions which reflects:

(i) The most stringent emission limitation that is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(ii) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(b) "Best available control technology" (BACT) means technology that will result in an emission limitation, including a visible emission standard, based on the maximum degree of reduction for each air pollutant subject to this regulation that would be emitted from any proposed new or modified source that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such sources or modification through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available technology result in emissions of any air pollutant that would exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61. If the reviewing agency determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or operational standard, or combination thereof, to meet the requirement of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results. The term "all known available and reasonable methods of emission control" is interpreted to mean the same as best available control technology.

(c) "Reasonably available control technology" (RACT) means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the

capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

(d) "Source" means all of the emissions units including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products.

(e) "New source" means (i) the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and (ii) any other project that constitutes a new source under the federal clean air act.

(f) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant.

(g) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(2) Permits shall be issued for a term of five years. A permit may be modified or amended during its term at the request of the permittee, or for any reason allowed by the federal clean air act. The rules adopted pursuant to subsection (3) of this section shall include rules for permit amendments and modifications.

(3)(a) Rules establishing the elements for a state-wide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established by the department by January 1, 1993. The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. The permit program established by these rules shall be administered by the department and delegated local air authorities. Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent emission standards and operating restrictions.

(b) The board of any local air pollution control authority may apply to the department of ecology for a delegation order authorizing the local authority to administer the operating permit program for sources under that authority's jurisdiction. The department shall, by order, approve such delegation, if the department finds that the local authority has the technical and

financial resources, to discharge the responsibilities of a permitting authority under the federal clean air act. A delegation request shall include adequate information about the local authority's resources to enable the department to make the findings required by this subsection; provided, any delegation order issued under this subsection shall take effect ninety days after the environmental protection agency authorizes the local authority to issue operating permits under the federal clean air act.

(c) Except for the authority granted the energy facility site evaluation council to issue permits for the new construction, reconstruction, or enlargement or operation of new energy facilities under chapter 80.50 RCW, the department may exercise the authority, as delegated by the environmental protection agency, to administer Title IV of the federal clean air act as amended and to delegate such administration to local authorities as applicable pursuant to (b) of this subsection.

(4) "Best available control technology" (BACT) is required for new sources except where LAER is required.

Until July 1, 1993, "lowest achievable emission rate" (LAER) is required solely for those sources required by the federal clean air act. By December 1, 1992, the department shall recommend control technology requirements for new sources to the appropriate standing committees of the legislature.

Except as otherwise provided in RCW 70.94.331(9), "reasonably available control technology" (RACT) is required for existing sources.

In establishing technical standards, defined in subsection (2) of this section, the permitting authority shall consider and, if found to be appropriate, give credit for waste reduction within the process.

(5) Operating permits shall apply to all sources (a) where required by the federal clean air act, and (b) for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare. Subsection (b) of this subsection is not intended to apply to small businesses except when both of the following limitations are satisfied: (i) The source is in an area exceeding or threatening to exceed federal or state air quality standards; and (ii) the department provides a reasonable justification that requiring a source to have a permit is necessary to meet a federal or state air quality standard, or to prevent exceeding a standard in an area threatening to exceed the standard. For purposes of this subsection "areas threatening to exceed air quality standards" shall mean areas projected by the department to exceed such standards within five years. Prior to identifying threatened areas the department shall hold a public hearing or hearings within the proposed areas.

(6) Sources operated by government agencies are not exempt under this section.

(7) By October 1, 1993, or ninety days after the United States environmental protection agency approves the state operating permit program,

whichever is later, any person required to have a permit shall submit to the permitting agency a compliance plan and permit application, signed by a responsible official, certifying the accuracy of the information submitted. Until permits are issued, existing sources shall be allowed to operate under presently applicable standards and conditions provided that such sources submit complete and timely permit applications.

(8) All proposed permits shall be subject to public notice and comment. The rules adopted pursuant to subsection (3) of this section shall specify procedures for public notice and comment. Such procedures shall provide the permitting agency with an opportunity to respond to comments received from interested parties prior to the time that the proposed permit is submitted to the environmental protection agency for review pursuant to section 505(a) of the federal clean air act. In the event that the environmental protection agency objects to a proposed permit pursuant to section 505(b) of the federal clean air act, the permitting authority shall not issue the permit, unless the permittee consents to the changes required by the environmental protection agency.

(9) The procedures contained in chapter 43.21B RCW shall apply to permit appeals. The pollution control hearings board may stay the effectiveness of any permit issued under this section during the pendency of an appeal filed by the permittee, if the permittee demonstrates that compliance with the permit during the pendency of the appeal would require significant expenditures that would not be necessary in the event that the permittee prevailed on the merits of the appeal.

(10) After the effective date of any permit program promulgated under this section, it shall be unlawful for any person to: (a) Operate a permitted source in violation of any requirement of a permit issued under this section; or (b) fail to submit a permit application at the time required by rules adopted under subsection (3) of this section.

(11) Each air operating permit shall state the origin of and specific legal authority for each requirement included therein. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

(a) The federal clean air act and rules implementing that act, including provision of the approved state implementation plan;

(b) This chapter and rules adopted thereunder; and

(c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority.

(12) Consistent with the provisions of the federal clean air act, the permitting authority may issue general permits covering categories of permitted sources, and temporary permits authorizing emissions from similar operations at multiple temporary locations.

(13) Permitted sources within the territorial jurisdiction of an authority delegated the operating permit program shall file their permit applications with that authority, except that permit applications for sources regulated on a state-wide basis pursuant to RCW 70.94.395 shall be filed with the department. Permitted sources outside the territorial jurisdiction of a delegated authority shall file their applications with the department.

(14) When issuing operating permits to coal fired electric generating plants, the permitting authority shall give consideration to the federal time lines for the implementation of required control technology.

(15)(a) Each source emitting one hundred tons or more per year of a regulated pollutant shall pay an interim assessment of ten dollars per ton multiplied by the annual process-related emissions of each regulated pollutant emitted during calendar years 1990 and 1991. "Regulated pollutant" shall have the same meaning as defined in section 502(b) of the federal clean air act amendments of 1990.

(b) Fees collected under (a) of this subsection shall be distributed as follows: Eighty percent to the department and twenty percent to local air authorities.

(c) The fees assessed to a source under (a) of this subsection and any fees enacted under subsection (16) of this section shall be limited to the first seven thousand five hundred tons for each regulated pollutant per year.

(16) On or before November 1, 1992, the department, in consultation with the department of revenue, shall report to the appropriate standing committees of the legislature recommendations on air operating permit fees. The department shall recommend a level of fees to cover the direct and indirect costs of implementing the operating permit program required under the 1990 federal clean air act. In making such recommendations, the department shall address:

(a) The costs of the permit program elements as identified in regulations promulgated by the United States environmental protection agency, including, as applicable:

- (i) Oversight of a delegated local air authority;
- (ii) Ambient air monitoring, modeling, and reporting;
- (iii) Training;
- (iv) Data management and quality assurance;
- (v) Development of state implementation plans;
- (vi) Emission inventories;
- (vii) Technical assistance;
- (viii) Rule making and guidelines; and

(ix) Any other activities, consistent with the federal clean air act, that may be identified by the department;

(b) The appropriate division of fees with delegated local air authorities; and

(c) A methodology for tracking revenues and expenditures from fees paid under this chapter.

(17) The department shall determine the persons liable for the fee imposed by subsection (15) of this section, compute the fee, and provide by November 1 of 1991 and 1992, the identity of the fee payer with the computation of the fee to the department of revenue for collection. The department of revenue shall collect the fee computed by the department from the fee payers identified by the department. The administrative, collection, and penalty provisions of chapter 82.32 RCW shall apply to the collection of the fee by the department of revenue. The department shall provide technical assistance to the department of revenue for decisions made by the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All fees collected shall be deposited in the air operating permit account.

All fees identified in this section shall be due and payable on March 1 of 1992 and 1993.

(18) For sources or source categories not required to obtain permits under subsection (5) of this section, the department or local authority may establish by rule control technology requirements. If control technology rule revisions are made by the department or local authority under this subsection, the department or local authority shall consider the remaining useful life of control equipment previously installed on existing sources before requiring technology changes. The department or any local air authority may issue a general permit, as authorized under the federal clean air act, for such sources.

(19) RCW 70.94.151 shall not apply to any source for which a permit under this section has been issued.

Sec. 302. RCW 70.94.152 and 1973 1st ex.s. c 193 s 2 are each amended to read as follows:

(1) The department of ecology or board of any authority may require notice of the ~~((construction, installation, or))~~ establishment of any proposed new ~~((air contaminant))~~ sources except single family and duplex dwellings. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FURTHER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further ~~((notice))~~ submittal of a duplicate application to ~~((be given to))~~ any ~~((other))~~ board or to the department of ecology. Within thirty days of ~~((its))~~ receipt of ~~((such notice))~~ a notice of construction application, the department of ecology or board may require, as a condition precedent to the ~~((construction, installation, or))~~ establishment of the ~~((air contaminant))~~ new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary ((i...

order)) to determine whether the proposed ((construction, installation, or establishment)) new source will be in accord with applicable rules and regulations in force ((pursuant to)) under this chapter((, and will provide all known available and reasonable methods of emission control)). If on the basis of plans, specifications, or other information required ((pursuant to)) under this section the department of ecology or board determines that the proposed ((construction, installation, or establishment)) new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted ((pursuant thereto, or will not provide all known available and reasonable means of emission control)) under this chapter, it shall issue an order ((for the prevention of the construction, installation, or establishment of the air contaminant source or sources)) denying permission to establish the new source. If on the basis of plans, specifications, or other information required ((pursuant to)) under this section, the department of ecology or board determines that the proposed ((construction, installation, or establishment)) new source will be in accord with this chapter, and the applicable ((ordinances, resolutions,)) rules(;) and regulations adopted ((pursuant thereto and will provide all known available and reasonable methods of emission control)) under this chapter, it shall issue an order of approval ((of)) for the ((construction, installation, and)) establishment of the ((air contaminant)) new source or sources, which order may provide such conditions ((of operation)) as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable ((ordinances, resolutions,)) rules(;) and regulations adopted ((pursuant thereto)) under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

(2) ((For the purposes of this chapter, addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction or installation or establishment of a new air contaminant source.)) The determination(;) required under subsection (1) of this section((, of whether a proposed construction, installation, or establishment will be in accord with this chapter and the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto)) shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(3) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(4) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment

or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

~~((4))~~ (5) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) ~~((hereof))~~ of this section shall be maintained and operate in good working order.

~~((5))~~ (6) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his or her obligation to comply with ~~((any))~~ applicable emission control requirements or with any other provision of law.

(7) Within thirty days of receipt of a notice of construction application the department of ecology or board shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision.

NEW SECTION. Sec. 303. A new section is added to chapter 70.94 RCW to read as follows:

Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall file a notice of construction application with the jurisdictional permitting authority. For projects not otherwise reviewable under RCW 70.94-.152, the permitting authority may (1) require that the owner or operator employ reasonably available control technology for the affected emission unit and (2) may prescribe reasonable operation and maintenance conditions for the control equipment. Within thirty days of receipt of an application for notice of construction under this section the permitting authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty days of receipt of a complete application the permitting authority shall either issue an order of approval or a proposed RACT determination for the proposed project. Construction shall not commence on a project subject to review under this section until the permitting authority issues a final order of approval. However, any notice of construction application filed under this section shall be deemed to be approved without conditions if the permitting authority takes no action within thirty days of receipt of a complete application for a notice of construction.

NEW SECTION. Sec. 304. A new section is added to chapter 70.94 RCW to read as follows:

The department shall prepare recommendations to reduce air emissions for source categories not generally required to have a permit under section 301 of this act. Such recommendations shall not require any action by the

owner or operator of a source and shall be consistent with rules adopted under chapter 70.95C RCW. The recommendations shall include but not be limited to: Process changes, product substitution, equipment modifications, hazardous substance use reduction, recycling, and energy efficiency.

Sec. 305. RCW 70.94.155 and 1981 c 224 s 1 are each amended to read as follows:

(1) As used in subsection (3) of this section, the term "bubble" means an air pollution control system which permits aggregate measurements of allowable emissions, for a single category of pollutant, for emissions points from a specified emissions-generating facility or facilities. Individual point source emissions levels from such specified facility or facilities may be modified provided that the aggregate limit for the specified sources is not exceeded.

(2) Whenever any regulation relating to emission standards or other requirements for the control of emissions is adopted which provides for compliance with such standards or requirements no later than a specified time after the date of adoption of the regulation, the appropriate activated air pollution control authority or, if there be none, the department of ecology shall, by permit or regulatory order, issue to air contaminant sources subject to the standards or requirements, schedules of compliance setting forth timetables for the achievement of compliance as expeditiously as practicable, but in no case later than the time specified in the regulation. Interim dates in such schedules for the completion of steps of progress toward compliance shall be as enforceable as the final date for full compliance therein.

(3) Wherever requirements necessary for the attainment of air quality standards or, where such standards are not exceeded, for the maintenance of air quality can be achieved through the use of a control program involving the bubble concept, such program may be authorized by a regulatory order or orders or permit issued to the air contaminant source or sources involved. Such order or permit shall only be authorized after the control program involving the bubble concept is accepted by United States environmental protection agency as part of an approved state implementation plan. Any such order or permit provision shall restrict total emissions within the bubble to no more than would otherwise be allowed in the aggregate for all emitting processes covered. The orders or permits provided for by this subsection shall be issued by the department or the authority with jurisdiction. If the bubble involves interjurisdictional approval, concurrence in the total program must be secured from each regulatory entity concerned.

Sec. 306. RCW 70.94.181 and 1983 c 3 s 176 are each amended to read as follows:

(1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment may apply to the department of

ecology (~~((where it has regulatory authority under RCW 70.94.390, 70.94.395, 70.94.410, and 70.94.420;))~~) or appropriate local authority board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the department of ecology or board may require. The department of ecology or board may grant such variance, provided that variances to state rules shall require the department's approval prior to being issued by a local authority board. The total time period for a variance and renewal of such variance shall not exceed one year. Variances may be issued by either the department or a local board but only after public hearing or due notice, if ((it)) the department or board finds that:

(a) The emissions occurring or proposed to occur do not endanger public health or safety or the environment; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the department of ecology or board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) (~~(and for time periods)~~) of this section and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the department of ecology or board may prescribe.

(b) (~~((If the application for variance shows that there is no automobile fragmentizer within a reasonable distance of the wrecking yard for which the variance is sought, a variance will be granted for a period not to exceed three years for commercial burning of automobile hulks, subject to such conditions as the department of ecology may impose as to climatic conditions and hours during which burning of such hulks may be carried out: PROVIDED, HOWEVER, That any variance granted hereunder shall be of no force and effect after July 1, 1970:~~

(~~c~~)) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the department of ecology or board is requisite for the taking of the necessary measures. A variance

granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

~~((d))~~ (c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in ~~((item))~~ (a)~~((b))~~ and ~~((c))~~ (b) of this ~~((subparagraph))~~ subsection, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the department of ecology or board on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the ~~((state board))~~ department or board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the department of ecology or board shall give public notice of such application in accordance with rules ~~((and regulations))~~ of the department of ecology or board.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the department of ecology or board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the department of ecology or board may obtain judicial review thereof under the provisions of chapter 34.05 RCW as now or hereafter amended.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.710 through 70.94.730 to any person or his or her property.

(7) An application for a variance, or for the renewal thereof, submitted to the department of ecology or board pursuant to this section shall be approved or disapproved by the department or board within sixty-five days of receipt unless the applicant and the department of ecology or board agree to a continuance.

(8) Variances approved under this section shall not be included in orders or permits provided for in section 301 of this act or RCW 70.94.152 until such time as the variance has been accepted by the United States environmental protection agency as part of an approved state implementation plan.

Sec. 307. RCW 70.94.205 and 1973 1st ex.s. c 193 s 4 are each amended to read as follows:

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the department of ecology or the board of any authority ~~((pursuant to any sections in chapter~~

~~70.94 RCW~~) under this chapter, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the department of ecology or board. Nothing herein shall be construed to prevent the use of records or information by the department of ecology or board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section: PROVIDED FURTHER, That emission data furnished to or obtained by the department of ecology or board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the department of ecology or board.

NEW SECTION. Sec. 308. A new section is added to chapter 70.94 RCW to read as follows:

The department shall establish a technical assistance unit within its air quality program, consistent with the federal clean air act, to provide the regulated community, especially small businesses with:

- (1) Information on air pollution laws, rules, compliance methods, and technologies;
- (2) Information on air pollution prevention methods and technologies, and prevention of accidental releases;
- (3) Assistance in obtaining permits and developing emission reduction plans;
- (4) Information on the health and environmental effects of air pollution.

No representatives of the department designated as part of the technical assistance unit created in this section may have any enforcement authority. Staff of the technical assistance unit who provide on-site consultation at an industrial or commercial facility and who observe violations of air quality rules shall immediately inform the owner or operator of the facility of such violations. On-site consultation visits shall not be regarded as an inspection or investigation and no notices or citations may be issued or civil penalties assessed during such a visit. However, violations shall be reported to the appropriate enforcement agency and the facility owner or operator shall be notified that the violations will be reported. No enforcement action shall be taken by the enforcement agency for violations reported by technical assistance unit staff unless and until the facility owner or operator has been provided reasonable time to correct the violation. Violations that place any person in imminent danger of death or substantial bodily harm or cause physical damage to the property of another in an

amount exceeding one thousand dollars may result in immediate enforcement action by the appropriate enforcement agency.

Sec. 309. RCW 70.94.211 and 1974 ex.s. c 69 s 4 are each amended to read as follows:

~~((Whenever the board or the control officer has reason to believe that any provision of this chapter or any ordinance, resolution, rule or regulation relating to the control or prevention of air pollution has been violated, such board or control officer may))~~ At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431 a local air authority shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the ((ordinance, resolution,)) rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the board or the control officer may require that the alleged violator or violators appear before the board for a hearing((; or in addition to or in place of an order or hearing, the board may initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435)). Every notice of violation shall offer to the alleged violator an opportunity to meet with the local air authority prior to the commencement of enforcement action.

Sec. 310. RCW 70.94.430 and 1984 c 255 s 1 are each amended to read as follows:

(1) Any person who knowingly violates any of the provisions of ~~((this))~~ chapter 70.94 or 70.120 RCW, or any ordinance, resolution, ~~((rule))~~ or regulation in force pursuant thereto shall be guilty of a ~~((misdemeanor))~~ crime and upon conviction thereof shall be punished by a fine of not more than ~~((one))~~ ten thousand dollars, or by imprisonment in the county jail for not more than ~~((ninety days))~~ one year, or by both ~~((fine and imprisonment))~~ for each separate violation.

~~((Any person who wilfully violates any of the provisions of this chapter or any ordinance, resolution, rule or regulation in force pursuant thereto shall be guilty of a gross misdemeanor. Upon conviction the offender shall be punished by a fine of not less than one hundred dollars for each offense or by imprisonment for a term of not more than one year or by both fine and imprisonment.~~

~~In case of a continuing violation, whether or not wilfully committed, each day's continuance shall be a separate and distinct violation.))~~

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm shall be guilty of a crime and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, shall be guilty of a crime and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine or not more than five thousand dollars.

Sec. 311. RCW 70.94.431 and 1990 c 157 s 1 are each amended to read as follows:

(1) In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW, chapter 70.120 RCW, or any of the rules ~~((and regulations of the department or the board shall))~~ in force under such chapters may incur a civil penalty in an amount not to exceed ~~((one))~~ ten thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. ~~((For the purposes of this subsection, the maximum daily fine imposed by a local board for violations of standards by a specific emissions unit is one thousand dollars.))~~

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

~~((2) Further, the person is subject to a fine of up to five thousand dollars to be levied by the director of the department of ecology if requested by the board of a local authority or if the director determines that the penalty is needed for effective enforcement of this chapter. A local board shall not make such a request until notice of violation and compliance order procedures have been exhausted, if such procedures are applicable. For the~~

~~purposes of this subsection, the maximum daily fine imposed by the department of ecology for violations of standards by a specific emissions unit is five thousand dollars.))~~

(3) Each 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 same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4) All penalties recovered under this section by the department shall be paid into the state treasury and credited to the ~~((general fund))~~ air pollution control account established in section 228 of this act or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection ~~((2))~~ (1) of this section shall be reduced by the amount of the payment. ~~((Notwithstanding any other provisions of this chapter, no penalty may be levied for the violation of any opacity standard in an amount exceeding four hundred dollars per day.))~~

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan.

Sec. 312. RCW 70.94.860 and 1984 c 164 s 2 are each amended to read as follows:

The department of ecology may accept delegation of ~~((the prevention of significant deterioration program pursuant to Part C, Subpart 1 of))~~ programs as provided for in the federal clean air act. Subject to federal approval, the department may, in turn, delegate ((this)) such programs to the local authority with jurisdiction in a given area.

Sec. 313. RCW 70.94.875 and 1985 c 456 s 3 are each amended to read as follows:

The department of ecology, in consultation with the (~~joint legislative committee on science and technology or the~~) appropriate committees of the house of representatives and of the senate, shall:

- (1) Continue evaluation of information and research on acid deposition in the Pacific Northwest region;
- (2) Establish critical levels of acid deposition and lake, stream, and soil acidification; and
- (3) Notify the legislature if acid deposition or lake, stream, and soil acidification reaches the levels established under subsection (2) of this section.

NEW SECTION. Sec. 314. A new section is added to chapter 70.94 RCW to read as follows:

(1) The science advisory board is hereby created to advise the department on procedures for assessing and managing the risks associated with air contaminant emissions. The board shall consist of five members knowledgeable in the fields of risk assessment or risk management. Members shall be appointed by the director of the department. The board shall be staffed by the department.

(2) The board shall:

(a) Advise the department on the most appropriate methods for identifying and measuring cancer risks or other chronic health effects resulting from exposure to air contaminant emissions; and

(b) Identify, evaluate, and recommend procedures relating to managing the risks associated with exposure to air contaminant emissions.

(3) In fulfilling its duties under subsection (2) of this section, the board shall consider all appropriate studies and reports relating to risk assessment or risk management including but not limited to reports authorized by the federal clean air act from the national academy of sciences and the risk assessment and risk management commission.

(4) Members shall be compensated as provided in RCW 43.03.250 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The duties of the board shall terminate on July 1, 1996.

NEW SECTION. Sec. 315. A new section is added to chapter 70.94 RCW to read as follows:

The department and local air pollution control authorities shall preempt the application of chapter 9 of the uniform building code and article 80 of the uniform fire code by other state agencies and local governments for the purposes of controlling outdoor air pollution from industrial and commercial sources, except where authorized by this act. Actions by other state agencies and local governments under article 80 of the uniform fire code to take immediate action in response to an emission that presents a physical hazard or imminent health hazard are not preempted.

IV.
OUTDOOR BURNING

Sec. 401. RCW 70.94.745 and 1972 ex.s. c 136 s 2 are each amended to read as follows:

It shall be the responsibility and duty of the department of natural resources, department of ecology, department of agriculture, fire districts, and local air pollution control authorities to establish, through regulations, ordinances, or policy, a limited burning program for the people of this state, consisting of a one-permit system, until such time as ~~((an))~~ alternate technology or methods of disposing of the organic refuse ~~((described in this chapter shall))~~ have been developed ~~((which is))~~ that are reasonably economical and less harmful to the environment. It is the policy of this state to ~~((encourage the fostering and development of such))~~ foster and encourage development of alternate methods or technology for disposing of or reducing the amount of organic refuse.

NEW SECTION. Sec. 402. A new section is added to chapter 70.94 RCW to read as follows:

(1) Consistent with the policy of the state to reduce outdoor burning to the greatest extent practical:

(a) Outdoor burning shall not be allowed in any area of the state where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning.

(b) Outdoor burning shall not be allowed in any urban growth area as defined by RCW 36.70A.030, or any city of the state having a population greater than ten thousand people if such cities are threatened to exceed state or federal air quality standards, and alternative disposal practices consistent with good solid waste management are reasonably available or practices eliminating production of organic refuse are reasonably available. In no event shall such burning be allowed after December 31, 2000.

(2) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

(3) This section shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

NEW SECTION. Sec. 403. A new section is added to chapter 70.94 RCW to read as follows:

(1) The department of natural resources shall administer a program to reduce state-wide emissions from silvicultural forest burning so as to achieve the following minimum objectives:

(a) Twenty percent reduction by December 31, 1994 providing a ceiling for emissions until December 31, 2000; and

(b) Fifty percent reduction by December 31, 2000 providing a ceiling for emissions thereafter.

Reductions shall be calculated from the average annual emissions level from calendar years 1985 to 1989, using the same methodology for both reduction and base year calculations.

(2) The department of natural resources, within twelve months after the effective date of this section, shall develop a plan, based upon the existing smoke management agreement to carry out the programs as described in this section in the most efficient, cost-effective manner possible. The plan shall be developed in consultation with the department of ecology, public and private landowners engaged in silvicultural forest burning, and representatives of the public.

The plan shall recognize the variations in silvicultural forest burning including, but not limited to, a landowner's responsibility to abate an extreme fire hazard under chapter 76.04 RCW and other objectives of burning, including abating and preventing a fire hazard, geographic region, climate, elevation and slope, proximity to populated areas, and diversity of land ownership. The plan shall establish priorities that the department of natural resources shall use to allocate allowable emissions, including but not limited to, silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. The plan shall also recognize the real costs of the emissions program and recommend equitable fees to cover the costs of the program.

The emission reductions in this section are to apply to all forest lands including those owned and managed by the United States. If the United States does not participate in implementing the plan, the departments of natural resources and ecology shall use all appropriate and available methods or enforcement powers to ensure participation.

The plan shall include a tracking system designed to measure the degree of progress toward the emission reductions goals set in this section. The department of natural resources shall report annually to the department of ecology and the legislature on the status of the plan, emission reductions and progress toward meeting the objectives specified in this section, and the goals of this chapter and chapter 76.04 RCW.

(3) If the December 31, 1994, emission reductions targets in this section are not met, the department of natural resources, in consultation with the department of ecology, shall use its authority granted in this chapter and chapter 76.04 RCW to immediately limit emissions from such burning to the 1994 target levels and limit silvicultural forest burning in subsequent years to achieve equal annual incremental reductions so as to achieve the December 31, 2000, target level. If, as a result of the program established in this section, the emission reductions are met in 1994, but are not met by December 31, 2000, the department of natural resources in consultation

with the department of ecology shall immediately limit silvicultural forest burning to reduce emissions from such burning to the December 31, 2000, target level in all subsequent years.

Sec. 404. RCW 70.94.660 and 1971 ex.s. c 232 s 2 are each amended to read as follows:

(1) The department of natural resources shall have the responsibility for issuing and regulating burning permits required by it relating to the following activities ~~((declared to be))~~ for the protection of life or property and/or ~~((in))~~ for the public health, safety, and welfare:

~~((1))~~ (a) Abating a forest fire hazard;

~~((2))~~ (b) Prevention of a fire hazard;

~~((3))~~ (c) Instruction of public officials in methods of forest fire fighting; ~~((and~~

~~((4))~~ (d) Any silvicultural operation to improve the forest lands of the state; and

(e) Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

(2) The department of natural resources shall not retain such authority, but it shall be the responsibility of the appropriate fire protection agency for permitting and regulating outdoor burning on lands where the department of natural resources does not have fire protection responsibility.

(3) Permit fees shall be assessed for silvicultural burning under the jurisdiction of the department of natural resources and collected by the department of natural resources as provided for in this section. All fees shall be deposited in the air pollution control account, created in section 228 of this act. The legislature shall appropriate to the department of natural resources funds from the air pollution control account to enforce and administer the program under section 403 of this act and RCW 70.94.660, 70.94.670, and 70.94.690. Fees shall be set by rule by the department of natural resources at the level necessary to cover the costs of the program after receiving recommendations on such fees from the public and the forest fire advisory board established by RCW 76.04.145.

Sec. 405. RCW 70.94.670 and 1971 ex.s. c 232 s 3 are each amended to read as follows:

The department of natural resources in granting burning permits for fires for the purposes set forth in RCW 70.94.660 shall condition the issuance and use of such permits to comply with air quality standards established by the department of ecology after full consultation with the department of natural resources. Such burning shall not cause the state air quality standards ~~((for suspended particulate matter))~~ to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution

from other sources. Air quality standards (~~((for suspended particulate matter))~~) shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when ~~((the))~~ and where air contaminant levels exceed((s)) or threaten((s)) to exceed the ambient air standards over such critical areas. The ~~((suspended particulate matter))~~ air quality shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established ((primary air mass stations or primary ground level)) monitoring stations over such designated areas. Further, such permitted burning shall not cause damage to public health or the environment. All permits issued under this section shall be subject to all applicable fees, permitting, penalty, and enforcement provisions of this chapter. The department of natural resources shall set forth smoke dispersal objectives designed consistent with this section to minimize any air pollution (~~((from smoke))~~) from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging and alternative silviculture practices to reduce ~~((forest fire hazards and shall encourage development and use of procedures and equipment to burn forest debris in a manner that will produce less smoke))~~ the need for burning. The department of natural resources shall, whenever practical, encourage ~~((development))~~ landowners to develop and use ((of)) alternative acceptable disposal methods subject to the following priorities: (1) Slash production minimization, (2) slash utilization, (3) nonburning disposal, (4) silvicultural burning. Such alternative methods shall be evaluated as to the relative impact on air, water, and land pollution, public health, and their financial feasibility.

The department of natural resources shall not issue burning permits and shall revoke previously issued permits at any time in any area where the department of ecology or local board has declared a stage of impaired air quality as defined in RCW 70.94.473.

Sec. 406. RCW 70.94.690 and 1971 ex.s. c 232 s 5 are each amended to read as follows:

In the regulation of outdoor burning not included in RCW 70.94.660 requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while still accomplishing the objectives and responsibilities of the respective agencies. The department of natural resources shall include any local authority's burning regulations with permits issued where applicable pursuant to RCW 70.94.740 through 70.94.775. The department shall develop agreements with all local authorities to coordinate regulations.

Permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning, or emergency condition exists as defined in the episode criteria of the department of ecology.

NEW SECTION. Sec. 407. A new section is added to chapter 70.94 RCW to read as follows:

Nothing contained in this chapter shall prohibit fires necessary: (1) To promote the regeneration of rare and endangered plants found within natural area preserves as identified under chapter 79.70 RCW; and (2) for Indian ceremonies or for the sending of smoke signals if part of a religious ritual. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions.

Sec. 408. RCW 70.94.650 and 1971 ex.s. c 232 s 1 are each amended to read as follows:

(1) Any person who proposes to set fires in the course of ~~((the following:~~

~~((1))~~ (a) weed abatement,

~~((2))~~ (b) instruction in methods of fire fighting (except forest fires),

or

~~((3) Disease prevention relating to))~~ (c) agricultural activities, shall, prior to carrying out the same, obtain a permit from an air pollution control authority or the department of ecology, as appropriate. Each such authority and the department of ecology shall, by rule or ordinance, establish a permit system to carry out the provisions of this section except as provided in RCW 70.94.660. General criteria of state-wide applicability for ruling on such permits shall be established by the department, by rule ~~((or regulation))~~, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both ~~((PROVIDED, That))~~. All permits so issued shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged ~~((in))~~, or both. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section shall relieve the applicant from obtaining permits, licenses, or other approvals required by any other law ~~((PROVIDED FURTHER, That))~~. An application for a permit to set fires in the course of agricultural burning for controlling diseases, insects,

~~((and)) weed abatement or development of physiological conditions conducive to increased crop yield, shall be ((granted)) acted upon within ((fourteen)) seven days from the date such application is filed((:-PROVIDED; That nothing herein shall prevent a householder from setting fire in the course of burning leaves, clippings or trash when otherwise permitted locally. Nothing contained herein shall prohibit Indian campfires or the sending of smoke signals if part of a religious ritual)).~~

(2) Except as provided in RCW 70.94.780 permit fees shall be assessed for outdoor burning under this section and shall be collected by the department of ecology or the appropriate local air authority at the time the permit is issued. All fees collected shall be deposited in the air pollution control account created in section 228 of this act. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (4) of this section, but shall not exceed two dollars and fifty cents per acre to be burned. After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.

(3) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental affects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(4) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities. The task force shall determine the level of fees to be assessed by the permitting agency pursuant to subsection (2) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions. The task force shall identify research needs related to minimizing

emissions from agricultural burning and alternatives to such burning. Further, the task force shall make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

Sec. 409. RCW 70.94.654 and 1973 1st ex.s. c 193 s 6 are each amended to read as follows:

Whenever the department of ecology shall find that any fire protection agency, county, or conservation district which is outside the jurisdictional boundaries of an activated air pollution control authority is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70.94.650 ~~((1) and (3))~~ and desirous of doing so, the department of ecology may delegate ~~((all))~~ powers necessary for the issuance ~~((and))~~ or enforcement, or both, of permits for any or all of the kinds of burning to the fire protection agency, county ~~((: PROVIDED, That))~~, or conservation district. Such delegation may be withdrawn by the department of ecology upon ~~((a))~~ its finding that the fire protection agency, county, or conservation district is not effectively administering the permit program.

Sec. 410. RCW 70.94.775 and 1974 ex.s. c 164 s 1 are each amended to read as follows:

No person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation ~~((which))~~ that normally emits dense smoke or obnoxious odors ~~((except as provided in RCW 70.94.650. PROVIDED, That)).~~ Agricultural heating devices ~~((which))~~ that otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715(;

~~(3) In any area which has been designated by the department of ecology or board of an activated authority as an area exceeding or threatening to exceed state or federal ambient air quality standards, or after July 1, 1976, state ambient air quality goals for particulates, except instructional fires permitted by RCW 70.94.650(2))~~ or impaired air quality condition as defined in RCW 70.94.473.

Sec. 411. RCW 70.94.780 and 1973 1st ex.s. c 193 s 10 are each amended to read as follows:

In addition to any other powers granted to them by law, the fire protection agency ~~((authorized to issue)),~~ county, or conservation district issuing burning permits ~~((may))~~ shall regulate or prohibit outdoor burning ~~((in order))~~ as necessary to prevent or abate the nuisances caused by such burning. No fire protection agency, county, or conservation district may issue a burning permit in an area where the department or local board has declared

any stage of impaired air quality per RCW 70.94.473 or any stage of an air pollution episode. All burning permits issued shall be subject to all applicable fee, permitting, penalty, and enforcement provisions of this chapter. The permitted burning shall not cause damage to public health or the environment.

Any entity issuing a permit under this section may charge a fee at the level necessary to recover the costs of administering and enforcing the permit program.

Sec. 412. RCW 70.94.750 and 1972 ex.s. c 136 s 3 are each amended to read as follows:

The following outdoor fires described in this section may be burned subject to the provisions of ~~((the program established pursuant to RCW 70.94.755 for any area))~~ this chapter and also subject to city ordinances, county resolutions, ~~((and))~~ rules ~~((and regulations))~~ of fire districts and laws, and rules ~~((and regulations))~~ enforced by the department of natural resources if a permit has been issued by a fire protection agency, county, or conservation district:

(1) Fires consisting of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee.

(2) Fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects or agricultural pursuits for pest or disease control; provided the fires described in this subsection may be prohibited in those areas having a general population density of one thousand or more persons per square mile.

Sec. 413. RCW 70.94.656 and 1990 c 113 s 1 are each amended to read as follows:

It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Prior to the issuance of any permit for such burning under RCW 70.94.650, there shall be collected a fee not to exceed one dollar per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the state treasury. All earnings of investments of balances in the special grass seed burning research account shall be credited to the general

fund. The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in this subsection. For the conduct of any such study or studies, the department may contract with public or private entities: **PROVIDED**, That whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund.

The fee collected under this subsection shall constitute the research portion of fees required under RCW 70.94.650 for open burning of grass grown for seed.

(2) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(3) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(4) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions.

V.

WOODSTOVES AND FIREPLACES

Sec. 501. RCW 70.94.457 and 1987 c 405 s 4 are each amended to read as follows:

~~((Before January 1, 1988;))~~ The department of ecology shall establish by rule under chapter 34.05 RCW:

(1) State-wide emission performance standards for new ~~((wood stoves))~~ solid fuel burning devices. Notwithstanding any other provision of this chapter which allows an authority to adopt more stringent emission standards, no authority shall adopt any emission standard for new ~~((wood stoves))~~ solid fuel burning devices other than the state-wide standard adopted by the department under this section.

(a) ~~((For new wood stoves sold after July 1, 1988, the state-wide performance standard, by rule, shall be the equivalent of and consistent with state-wide emission standards in effect in bordering states on or before~~

January 1, 1987. For solid fuel burning devices for which bordering states have not established emission standards, the department may temporarily exempt or establish, by rule, state-wide standards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new wood stoves regulated by this subsection)) After January 1, 1995, no solid fuel burning device shall be offered for sale that does not meet the following particulate air contaminant emission standards under the test methodology of the United States environmental protection agency in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by the United States environmental protection agency subsequent to such date: (i) Two and one-half grams per hour for catalytic wood stoves; and (ii) four and one-half grams per hour for all other solid fuel burning devices. For purposes of this subsection, "equivalent" shall mean the emissions limits specified in this subsection multiplied by a statistically reliable conversion factor determined by the department that compares the difference between the emission test methodology established by the United States environmental protection agency prior to the effective date of this section, with the test methodology adopted subsequently by the agency. Subsection (a) of this subsection does not apply to fireplaces.

(b) After January 1, 1997, no fireplace, except masonry fireplaces, shall be offered for sale unless such fireplace meets the 1990 United States environmental protection agency standards for wood stoves or equivalent standard that may be established by the state building code council by rule. Prior to January 1, 1997, the state building code council shall establish by rule a methodology for the testing of factory-built fireplaces. The methodology shall be designed to achieve a particulate air emission standard equivalent to the 1990 United States environmental protection agency standard for wood stoves. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers.

(c) Prior to January 1, 1997, the state building code council shall establish by rule design standards for the construction of new masonry fireplaces in Washington state. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers. It shall be the goal of the council to develop design standards that generally achieve reductions in particulate air contaminant emissions commensurate with the reductions being achieved by factory-built fireplaces at the time the standard is established.

(d) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local

governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by this act.

(e) Subsection (1)(a) of this section shall not apply to fireplaces.

~~((b))~~ (f) Notwithstanding (a) of this subsection, the department is authorized to adopt, by rule, emission standards adopted by the United States environmental protection agency for new wood stoves sold at retail. For solid fuel burning devices for which the United States environmental protection agency has not established emission standards, the department may ~~((temporarily))~~ exempt or establish, by rule, state-wide standards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new wood stoves and fireplaces regulated under this subsection.

(2) A program to:

(a) Determine whether a new ~~((wood-stove))~~ solid fuel burning device complies with the state-wide emission performance standards established in subsection (1) of this section; and

(b) Approve the sale of ~~((stoves))~~ devices that comply with the state-wide emission performance standards.

Sec. 502. RCW 70.94.470 and 1987 c 405 s 5 are each amended to read as follows:

(1) ~~((Before January 1, 1988;))~~ The department shall establish, by rule under chapter 34.05 RCW, ((state-wide opacity levels for residential solid fuel burning devices as follows:

~~(a) A state-wide opacity level of twenty percent for the purpose of public education;~~

~~(b) Until July 1, 1990, a state-wide opacity level of forty percent for the purpose of enforcement on a complaint basis; and~~

~~(c) After July 1, 1990, a))~~ (a) a state-wide opacity level of twenty percent for residential solid fuel burning devices for the purpose of enforcement on a complaint basis and (b) a state-wide opacity of ten percent for purposes of public education.

(2) Notwithstanding any other provision of this chapter which may allow an authority to adopt a more stringent opacity level, no authority shall adopt or enforce an opacity level~~((:~~

~~(a) Lower than forty percent until July 1, 1990, and~~

~~(b) Lower than twenty percent after July 1, 1990))~~ for solid fuel burning devices other than established in this section.

(3) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by this act.

NEW SECTION. Sec. 503. A new section is added to chapter 70.94 RCW to read as follows:

After January 1, 1992, no used solid fuel burning device shall be installed in new or existing buildings unless such device is either Oregon department of environmental quality phase II or United States environmental protection agency certified or a pellet stove either certified or exempt from certification by the United States environmental protection agency.

(1) By July 1, 1992, the state building code council shall adopt rules requiring an adequate source of heat other than wood stoves in all new and substantially remodeled residential and commercial construction. This rule shall apply (a) to areas designated by a county to be an urban growth area under chapter 36.70A RCW; and (b) to areas designated by the environmental protection agency as being in nonattainment for particulate matter.

(2) For purposes of this section, "substantially remodeled" means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period.

Sec. 504. RCW 70.94.473 and 1990 c 128 s 2 are each amended to read as follows:

(1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which ~~((meet the standards set forth in RCW 70.94.457,))~~ are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption ~~((certificate))~~ by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area. A first stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of seventy-five micrograms per cubic meter measured on a twenty-four hour average or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight-hour average; and

(c) Not burn wood in any solid fuel burning device ~~((including those which meet the standards set forth in RCW 70.94.457,))~~ in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of one hundred five micrograms per cubic meter measured on a twenty-four hour average.

(2) ~~((When))~~ If a local air authority exercises the limitation on solid fuel burning devices specified under RCW 70.94.477(2), a single stage of

impaired air quality applies in the geographical area defined by the authority in accordance with RCW 70.94.477(2) and is reached when particulates ten microns and smaller in diameter are at an ambient level of ninety micrograms per cubic meter measured on a twenty-four hour average or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight-hour average.

~~((When))~~ If this single stage of impaired air quality is reached, no person in a residence or commercial establishment (~~((which))~~) that has an adequate source of heat without burning wood shall burn wood in any solid fuel burning device, including those which meet the standards set forth in RCW 70.94.457.

(3) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by this act.

Sec. 505. RCW 70.94.483 and 1990 c 128 s 5 are each amended to read as follows:

(1) The wood stove education and enforcement account is hereby created in the general fund. Money placed in the account shall include all money received under subsection (2) of this section and any other money appropriated by the legislature. Money in the account shall be spent for the purposes of the wood stove education program established under RCW 70.94.480 and for enforcement of the wood stove program, and shall be subject to legislative appropriation.

(2) The department of ecology, with the advice of the advisory committee, shall set a flat fee(~~((, not to exceed fifteen))~~) of thirty dollars, on the retail sale, as defined in RCW 82.04.050, of each solid fuel burning device(~~((, excepting masonry fireplaces,))~~) after January 1, (~~((1988))~~) 1992. The fee shall be imposed upon the consumer and shall not be subject to the retail sales tax provisions of chapters 82.08 and 82.12 RCW. The fee may be adjusted annually above (~~((fifteen))~~) thirty dollars (~~((according to changes in the consumer price index after January 1, 1989))~~) to account for inflation as determined by the state office of the economic and revenue forecast council. The fee shall be collected by the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW. If the seller fails to collect the fee herein imposed or fails to remit the fee to the department of revenue in the manner prescribed in chapter 82.08 RCW, the seller shall be personally liable to the state for the amount of the fee. The collection provisions of chapter 82.32 RCW shall apply. The department of revenue shall deposit fees collected under this section in the wood stove education and enforcement account.

Sec. 506. RCW 70.94.041 and 1983 c 3 s 175 are each amended to read as follows:

Except as otherwise provided in this section, any building or structure listed on the national register of historic sites, structures, or buildings established pursuant to 80 Stat. 915, 16 U.S.C. Sec. 470a, or on the state register established pursuant to RCW (~~(43.51A.080)~~) 27.34.220, shall be permitted to burn wood as it would have when it was a functioning facility as an authorized exception to the provisions of this chapter. Such burning of wood shall not be exempted from the provisions of RCW 70.94.710 through 70.94.730.

***NEW SECTION. Sec. 507. A new section is added to chapter 70.94 RCW to read as follows:**

(1) A task force is established for the purposes of recommending programs to:

(a) Encourage persons with wood stoves not meeting the requirements of RCW 70.94.457 or United States environmental protection agency certificate requirements to remove such wood stoves and install a less polluting certified wood stove or other source of heat; and

(b) Educate the public on wood stove emissions and methods to reduce such emissions.

(2) The task force shall be appointed by the speaker of the house of representatives and the president of the senate and shall consist of:

(a) Two members from the house of representatives committee on environmental affairs;

(b) Two members from the senate committee on environment and natural resources;

(c) Two members from the house of representatives committee on energy and utilities; and

(d) Two members from the senate committee on energy and utilities.

(3) In developing recommendations, the task force shall consult with representatives from the department of ecology, local air authorities, wood stove dealers, wood stove manufacturers, public and investor owned utilities, citizen organizations, environmental organizations, and public health organizations.

(4) By November 1, 1991, the task force shall report to the appropriate standing committees of the legislature. The report shall recommend methods to:

(a) Use public and private funds to provide credit toward purchasing old wood stoves not certified under RCW 70.94.457;

(b) Use public and private funds to implement public education programs designed to reduce emissions from wood stoves;

(c) Prevent fraud or abuse of the programs developed under this section; and

(d) Develop emissions' data collection and monitoring systems.

(5) The task force created in subsection (1) of this section shall terminate on July 1, 1995.

*Sec. 507 was vetoed, see message at end of chapter.

VI.

GLOBAL WARMING AND OZONE DEPLETION

NEW SECTION. Sec. 601. The legislature finds that:

(1) The release of chlorofluorocarbons and other ozone-depleting chemicals into the atmosphere contributes to the destruction of stratospheric ozone and threatens plant and animal life with harmful overexposure to ultraviolet radiation;

(2) The technology and equipment to extract and recover chlorofluorocarbons and other ozone-depleting chemicals from air conditioners, refrigerators, and other appliances are available;

(3) A number of nonessential consumer products contain ozone-depleting chemicals; and

(4) Unnecessary releases of chlorofluorocarbons and other ozone-depleting chemicals from these sources should be eliminated.

NEW SECTION. Sec. 602. A new section is added to chapter 70.94 RCW to read as follows:

(1) Regulated refrigerant means a class I or class II substance as listed in Title VI of section 602 of the federal clean air act amendments of November 15, 1990.

(2) A person who services or repairs or disposes of a motor vehicle air conditioning system; commercial or industrial air conditioning, heating, or refrigeration system; or consumer appliance shall use refrigerant extraction equipment to recover regulated refrigerant that would otherwise be released into the atmosphere. This subsection does not apply to off-road commercial equipment.

(3) Upon request, the department shall provide information and assistance to persons interested in collecting, transporting, or recycling regulated refrigerants.

(4) The willful release of regulated refrigerant from a source listed in subsection (2) of this section is prohibited.

NEW SECTION. Sec. 603. A new section is added to chapter 70.94 RCW to read as follows:

No person may sell, offer for sale, or purchase any of the following:

(1) A regulated refrigerant in a container designed for consumer recharge of a motor vehicle air conditioning system or consumer appliance during repair or service. This subsection does not apply to a regulated refrigerant purchased for the recharge of the air conditioning system of off-road commercial or agricultural equipment and sold or offered for sale at an establishment which specializes in the sale of off-road commercial or agricultural equipment or parts or service for such equipment;

(2) Nonessential consumer products that contain chlorofluorocarbons or other ozone-depleting chemicals, and for which substitutes are readily available. Products affected under this subsection shall include, but are not limited to, party streamers, tire inflators, air horns, noise makers, and chlorofluorocarbon-containing cleaning sprays designed for noncommercial or nonindustrial cleaning of electronic or photographic equipment.

NEW SECTION. Sec. 604. A new section is added to chapter 70.94 RCW to read as follows:

The department shall adopt rules to implement sections 602 and 603 of this act. Rules shall include but not be limited to minimum performance specifications for refrigerant extraction equipment, as well as procedures for enforcing sections 602 and 603 of this act.

Enforcement provisions adopted by the department shall not include penalties or fines in areas where equipment to collect or recycle regulated refrigerants is not readily available.

VII.

MISCELLANEOUS SECTIONS

Sec. 701. RCW 70.94.053 and 1987 c 505 s 60 and 1987 c 109 s 34 are each reenacted and amended to read as follows:

(1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) All authorities which are presently (~~or may hereafter be within counties of the first class, class A or class AA, are hereby designated as~~) activated authorities (~~and~~) shall carry out the duties and exercise the powers provided in this chapter. Those activated authorities (~~hereby activated~~) which encompass contiguous counties (~~located in one or the other of the two major areas determined in RCW 70.94.011~~) are declared to be and directed to function as a multicounty authority.

(3) Except as provided in RCW 70.94.232, all other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such appointees and/or county commissioners or other officers as is provided in RCW 70.94.100. (~~The first meeting of the boards of those authorities designated as activated authorities by this chapter shall be on or before sixty days after June 8, 1967.~~)

(5) ~~The department is directed to conduct the necessary evaluations and delineate appropriate air pollution regions throughout the state, taking into consideration:~~

~~(a) The natural climatic and topographic features affecting the potential for buildup of air contaminant concentrations:~~

~~(b) The degree of urbanization and industrialization and the existence of activities which are likely to cause air pollution:~~

~~(c) The county boundaries as related to the air pollution regions and the practicality of administering air pollution control programs:))~~

Sec. 702. RCW 70.94.055 and 1967 c 238 s 5 are each amended to read as follows:

The board of county commissioners of any county (~~other than a first class, class A or class AA county~~) may activate an air pollution control authority following a public hearing on its own motion, or upon a filing of a petition signed by one hundred property owners within the county. If the board of county commissioners determines as a result of the public hearing that:

(1) Air pollution exists or is likely to occur; and

(2) The city or town ordinances, or county resolutions, or their enforcement, are inadequate to prevent or control air pollution, they (~~shall~~) may by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority.

Sec. 703. RCW 70.94.092 and 1975 1st ex.s. c 106 s 1 are each amended to read as follows:

Notwithstanding the provisions of RCW 1.16.030, the budget year of each activated authority shall be the fiscal year beginning July 1st and ending on the following June 30th. (~~The current budget year shall be terminated June 30, 1975, and a budget for the fiscal year beginning July 1, 1975, shall be adopted pursuant to this section as now or hereafter amended:))~~ On or before the fourth Monday in June of each year, each activated authority shall adopt a budget for the following fiscal year. The activated authority budget shall contain adequate funding and provide for staff sufficient to carry out the provisions of all applicable ordinances, resolutions, and local regulations related to the reduction, prevention, and control of air pollution. The legislature acknowledges the need for the state to provide reasonable funding to local authorities to carry out the requirements of this chapter. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The remaining funds required to meet budget expenditures, if any, shall be designated as "supplemental income" and shall be obtained from the component cities, towns, and counties in the manner provided in this chapter. The affirmative vote of three-fourths of all members of the board shall be required to authorize emergency expenditures.

Sec. 704. RCW 70.94.100 and 1989 c 150 s 1 are each amended to read as follows:

(1) The governing body of each authority shall be known as the board of directors.

(2) In the case of an authority comprised of one county the board shall be comprised of two appointees of the city selection committee (~~as hereinafter provided~~), at least one of whom shall represent the city having the most population in the county, and two representatives to be designated by the board of county commissioners. In the case of an authority comprised of two (~~or~~), three, four, or five counties, the board shall be comprised of one appointee (~~of the city selection committee of~~) from each county (~~as hereinafter provided~~), who shall represent the city having the most population in such county, to be designated by the mayor and city council of such city, and one representative from each county to be designated by the board of county commissioners of each county making up the authority. (~~In the case of an authority comprised of four or five counties, the board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided who shall represent the city having the most population in such county, and one representative from each county to be designated by the board of county commissioners of each county making up the authority.~~) In the case of an authority comprised of six or more counties, the board shall be comprised of one representative from each county to be designated by the board of county commissioners of each county making up the authority, and (~~one~~) three appointees, one each from (~~each city with over one hundred thousand population~~) the three largest cities within the local authority's jurisdiction to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority. (~~All board members shall hold office at the pleasure of the appointing body.~~)

(4) The terms of office of board members shall be four years.

(5) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action.

Sec. 705. RCW 70.94.130 and 1969 ex.s. c 168 s 15 are each amended to read as follows:

The board shall exercise all powers of the authority except as otherwise provided. The board shall conduct its first meeting within thirty days after

all of its members have been appointed or designated as provided in RCW 70.94.100. The board shall meet at least ten times per year. All meetings shall be publicly announced prior to their occurrence. All meetings shall be open to the public. A majority of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a ~~((chairman))~~ chair and such other officers as may be necessary. Any member of the board may designate a regular alternate to serve on the board in his or her place with the same authority as the member when he or she is unable to attend. Each member of the board, or his or her representative, shall receive from the authority ~~((twenty-five dollars per day))~~ compensation consistent with such authority's rates (but not to exceed one thousand dollars per year) for ~~((each full day))~~ time spent in the performance of ~~((his))~~ duties under this chapter, plus the actual and necessary expenses incurred by ~~((him))~~ the member in such performance. The board may appoint ~~((an executive director))~~ a control officer, and any other personnel, and shall determine their salaries, and pay same, together with any other proper indebtedness, from authority funds.

Sec. 706. RCW 70.94.141 and 1970 ex.s. c 62 s 56 are each amended to read as follows:

The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own ~~((ordinances, resolutions, or))~~ rules and regulations, ~~((as the case may be,))~~ implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter ~~((42.32))~~ 42.30 RCW. Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, 34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by an authority shall be in accordance with Part V of chapter 34.05 RCW. An air pollution control authority shall not be deemed to be a state agency.

(2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

(8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of this chapter.

Sec. 707. RCW 70.94.170 and 1969 ex.s. c 168 s 21 are each amended to read as follows:

Any activated authority which has adopted an ordinance, resolution, or valid rules and regulations as provided herein for the control and prevention of air pollution shall appoint a full time control officer, ~~((who))~~ whose sole responsibility shall be to observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution.

Sec. 708. RCW 70.94.231 and 1969 ex.s. c 168 s 29 are each amended to read as follows:

Upon the date that an authority begins to exercise its powers and functions, all ~~((districts formed as a district under chapter 70.94 RCW prior to June 8, 1967 which previously were wholly or partially composed of one or more cities or towns located within such activated authority shall be considered to be dissolved but its))~~ rules and regulations in force on such date shall remain in effect until superseded by the rules and regulations of

the authority as provided in RCW 70.94.230. (~~In such event, the board of any such district shall proceed to wind up the affairs of the district in the same manner as if the district were dissolved as provided in RCW 70.94.260.~~)

Sec. 709. RCW 70.94.240 and 1969 ex.s. c 168 s 30 are each amended to read as follows:

The board of any authority (~~shall~~) may appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of this chapter. The council shall consist of at least five appointed members who are residents of the authority and who are preferably skilled and experienced in the field of air pollution control, (~~two~~) chemistry, meteorology, public health, or a related field, at least one of whom shall serve as a representative(s) of industry and one of whom shall serve as a representative of the environmental community. The (~~chairman~~) chair of the board of any such authority shall serve as ex officio member of the council and be its (~~chairman~~) chair. Each member of the council shall receive from the authority per diem and travel expenses in an amount not to exceed that provided for the state board in this chapter (but not to exceed one thousand dollars per year) for each full day spent in the performance of his or her duties under this chapter.

Sec. 710. RCW 70.94.331 and 1988 c 106 s 1 are each amended to read as follows:

(1) The department shall have all the powers as provided in RCW 70.94.141.

(2) The department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapters 42.30 (~~RCW~~) and (~~chapter~~) 34.05 RCW shall:

(a) Adopt rules (~~and regulations~~) establishing air quality objectives and air quality standards;

(b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, except for emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices which shall be state-wide, but in no event may less stringent standards be enacted by an authority without the prior approval of the department after public hearing and due notice to interested parties;

(c) Adopt by rule (~~and regulation~~) air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter. However, an industry, or the air pollution control authority having jurisdiction, can choose, subject to the

submittal of appropriate data that the industry has quantified, to have any limit on the opacity of emissions from a source whose emission standard is stated in terms of a weight of particulate per unit volume of air (e.g., grains per dry standard cubic foot) be based on the applicable particulate emission standard for that source, such that any violation of the opacity limit accurately indicates a violation of the applicable particulate emission standard. Any alternative opacity limit provided by this section that would result in increasing air contaminants emissions in any nonattainment area shall only be granted if equal or greater emission reductions are provided for by the same source obtaining the revised opacity limit. A reasonable fee may be assessed to the industry to which the alternate opacity standard would apply. The fee shall cover only those costs to the air pollution control authority which are directly related to the determination on the acceptability of the alternate opacity standard, including testing, oversight and review of data.

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area or source to source, except that emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices shall be state-wide, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or ~~((reasonable))~~ reasonably foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.

(4) The department is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(5) The department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants and conduct or cause to be conducted a program to determine the quantity of emissions to the atmosphere.

(6) The department shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The department shall encourage local units of government to handle air pollution problems within their respective jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The department shall have the power to require the addition to or deletion of a county or counties from an existing authority in order to carry out the purposes of this chapter ~~((PROVIDED, HOWEVER, That))~~. No

such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter 34.05 RCW.

(9) The department shall establish rules requiring sources or source categories to apply reasonable and available control methods. Such rules shall apply to those sources or source categories that individually or collectively contribute the majority of state-wide air emissions of each regulated pollutant. The department shall review, and if necessary, update its rules every five years to ensure consistency with current reasonable and available control methods. The department shall have adopted rules required under this subsection for all sources by July 1, 1996.

For the purposes of this section, "reasonable and available control methods" shall include but not be limited to, changes in technology, processes, or other control strategies.

Sec. 711. RCW 70.94.332 and 1987 c 109 s 18 are each amended to read as follows:

~~((Whenever the department of ecology has reason to believe that any provision of this chapter or any rule or regulation adopted by it or being enforced by it under RCW 70.94.410 relating to the control or prevention of air pollution has been violated, it may))~~ At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before it for the purpose of providing the department information pertaining to the violation or the charges complained of. ((In addition to or in place of an order or hearing, the department may initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435)) Every notice of violation shall offer to the alleged violator an opportunity to meet with the department prior to the commencement of enforcement action.

Sec. 712. RCW 70.94.385 and 1987 c 109 s 41 are each amended to read as follows:

(1) Any authority may apply to the department for state financial aid. The department shall ~~((by rule and regulation))~~ annually establish the ~~((ratio))~~ amount of state funds ~~((to))~~ available for the local ~~((funds))~~ authorities taking into consideration available federal and state funds. The establishment of funding amounts shall be consistent with federal requirements and local maintenance of effort necessary to carry out the provisions of this chapter. Any such aid shall be expended from the general fund or from ~~((such))~~ other appropriations as the legislature may provide for this purpose: PROVIDED, That federal funds shall be utilized to the

maximum unless otherwise approved by the department: ~~PROVIDED FURTHER, That the ((ratio)) amount of state funds provided to local ((funds-of)) authorities during the previous year shall not be ((changed)) reduced without a public notice or public hearing held by the department if requested by the affected local authority, unless such changes are the direct result of a reduction in the available federal funds for air pollution control programs.~~

(2) Before any such application is approved and financial aid is given or approved by the department, the authority shall demonstrate to the satisfaction of the department that it is fulfilling the requirements of ~~((RCW 70.94.380, or,)) this chapter.~~ If the department has not adopted ambient air quality standards and objectives as permitted by RCW 70.94.331, the authority shall demonstrate to the satisfaction of the department that it is acting in good faith and doing all that is possible and reasonable to control and prevent air pollution within its jurisdictional boundaries and to carry out the purposes of this chapter.

(3) The department shall adopt rules ~~((and regulations))~~ requiring the submission of such information by each authority including the submission of its proposed budget and a description of its program in support of the application for state financial aid as necessary to enable the department to determine the need for state aid.

Sec. 713. RCW 70.94.395 and 1987 c 109 s 43 are each amended to read as follows:

If the department finds, after public hearing upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a state-wide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules ~~((and regulations))~~ to control and/or prevent the emission of air contaminants from such source ~~((PROVIDED, That))~~. An authority may, after public hearing and a finding by the board of a need for more stringent rules ((and regulations)) than those adopted by the department under this section, propose the adoption of such rules ((and regulations)) by the department for the control of emissions from the particular type or class ((or)) of air contaminant source within the geographical area of the authority. The department shall hold a public hearing and shall adopt the proposed rules ((and regulations)) within the area of the requesting authority, unless it finds that the proposed rules ((and regulations)) are inconsistent with the rules ((and regulations)) adopted by the department under this section((PROVIDED, FURTHER, That)). When such standards are adopted by the department it shall delegate solely to the requesting authority all powers necessary for their enforcement at the request of the authority((PROVIDED, That the department may delegate the responsibility for the enforcement of such rules and regulations to any authority which it deems capable of enforcing such regulations. PROVIDED

~~FURTHER, That~~). If after public hearing the department finds that the regulation on a state-wide basis of a particular type ~~((of))~~ or class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of the state, the department may relinquish exclusive jurisdiction over such source.

Sec. 714. RCW 70.94.405 and 1987 c 109 s 45 are each amended to read as follows:

At any time after an authority has been activated for no less than one year, the department may, on its own motion, conduct a hearing held in accordance with chapters 42.30 ~~((RCW))~~ and ~~((chapter))~~ 34.05 RCW, ~~((as now or hereafter amended))~~ to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible ~~((under the circumstances))~~. If at such hearing the department finds that such authority is not carrying out its air pollution control or prevention program in good faith, ~~((or))~~ is not doing all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, or is not carrying out the provisions of this chapter, it shall set forth in a report or order to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and (2) guidelines which will assist the authority in carrying out the recommendations of the department.

Sec. 715. RCW 70.94.410 and 1987 c 109 s 46 are each amended to read as follows:

(1) If, after thirty days from the time that the department issues a report or order to an authority under RCW 70.94.400 and 70.94.405, such authority has not taken ~~((any))~~ action which indicates that it is attempting in good faith to implement the recommendations or actions of the department as set forth in the report or order, the department may, by order, declare as null and void any or all ordinances, resolutions, rules or regulations of such authority relating to the control and/or prevention of air pollution, and at such time the department shall become the sole body with authority to make and enforce rules and regulations for the control and/or prevention of air pollution within the geographical area of such authority. ~~((fn))~~ If this ((connection)) occurs, the department may assume all those powers which are given to it by law to effectuate the purposes of this chapter. The department may, by order, continue in effect and enforce ~~((those))~~ provisions of the ordinances, resolutions, or rules ~~((and regulations))~~ of such authority which are not less stringent than those requirements which the department may have found applicable to the area under RCW 70.94.331, until such time as the department adopts its own rules ~~((and regulations))~~. Any rules ~~((and regulations))~~ promulgated by the department shall be subject to the provisions of chapter 34.05 RCW ~~((as it now appears or may hereinafter be~~

amended)). Any enforcement actions shall be subject to RCW 43.21B.300 or 43.21B.310.

(2) No provision of this chapter is intended to prohibit any authority from reestablishing its air pollution control program which meets with the approval of the department and which complies with the purposes of this chapter and with applicable rules (~~and regulations~~) and orders of the department.

(3) Nothing in this chapter shall prevent the department from withdrawing the exercise of its jurisdiction over an authority upon its own motion(~~(-PROVIDED, That)~~) if the department has found at a hearing held in accordance with chapters 42.30 ((RCW)) and ((chapter)) 34.05 RCW ((as now or hereafter amended)), that the air pollution prevention and control program of such authority will be carried out in good faith ((or)), that such program will do all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, and that the program complies with the provisions of this chapter. Upon the withdrawal of the department, the department shall prescribe certain recommendations as to how air pollution prevention and/or control is to be effectively accomplished and guidelines which will assist the authority in carrying out the recommendations of the department.

Sec. 716. RCW 70.94.420 and 1987 c 109 s 47 are each amended to read as follows:

~~((+))~~ It is declared to be the intent of the legislature of the state of Washington that any state department or agency having jurisdiction over any building, installation, ~~((or)) other property, or other activity creating or likely to create significant air pollution~~ shall cooperate with the department and with air pollution control agencies in preventing and/or controlling the pollution of the air in any area insofar as the discharge of ~~((the matter)) air contaminants~~ from or by such building, installation, ~~((or)) other property, or activity~~ may cause or contribute to pollution of the air in such area. Such state department or agency shall comply with the provisions of this chapter and with any ordinance, resolution, rule or regulation issued hereunder in the same manner as any other person subject to such laws~~((:))~~ or rules ~~((or regulations))~~.

~~((2))~~ In addition to its other powers and duties prescribed by law, the department may establish classes of potential pollution sources for which any state department or agency having jurisdiction over any building, installation, or other property, which is not located within the geographical boundaries of any authority which has an air pollution control and/or prevention program in effect, shall, before discharging any matter into the air, obtain a permit from the department for such discharge, such permits to be issued for a specified period of time to be determined by the department and

~~subject to revocation if the department finds that such discharge is endangering the health and welfare of any persons. Such permits may also be required for any such building, installation, or other property which is located within the geographical boundaries of any authority which has an air pollution control and prevention program in effect if the standards set by the department for state departments and agencies are more stringent than those of the authority. In connection with the issuance of any permits under this section, there shall be submitted to the department such plans, specifications, and other information as it deems relevant thereto and under such other conditions as it may prescribe.))~~

NEW SECTION. Sec. 717. Sections 602 and 603 of this act shall take effect July 1, 1992. Sections 202 through 209 of this act shall take effect January 1, 1993. Sections 210 and 505 of this act shall take effect January 1, 1992.

The remainder 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 shall take effect immediately.

NEW SECTION. Sec. 718. The following acts or parts of acts are each repealed:

- (1) RCW 70.120.110 and 1989 c 240 s 7, 1985 c 7 s 131, & 1979 ex.s. c 163 s 12;
- (2) RCW 70.120.140 and 1987 c 505 s 62 & 1980 c 176 s 5;
- (3) RCW 70.120.900 and 1989 c 240 s 9;
- (4) RCW 70.94.232 and 1983 c 3 s 177 & 1967 c 238 s 40;
- (5) RCW 70.94.680 and 1971 ex.s. c 232 s 4;
- (6) RCW 70.94.740 and 1972 ex.s. c 136 s 1;
- (7) RCW 70.94.810 and 1984 c 277 s 3;
- (8) RCW 70.94.815 and 1984 c 277 s 5;
- (9) RCW 70.94.525 and 1984 c 277 s 7; and
- (10) RCW 70.94.870 and 1984 c 164 s 3.

NEW SECTION. Sec. 719. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 720. Captions and headings as used in this act constitute no part of the law.

NEW SECTION. Sec. 721. A new section is added to chapter 70.94 RCW to read as follows:

This chapter shall be known and may be cited as the clean air Washington act.

Passed the House March 15, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 15, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 15, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 204 and 507, Engrossed Substitute House Bill No. 1028 entitled:

"AN ACT Relating to reducing air contaminant emissions and improving air quality."

Section 204 of this bill establishes a task force to recommend a program to assist persons with vehicles failing to comply with emission standards. The task force will be appointed by the Speaker of the House and the President of the Senate; it will consist of members from each House and will report to the appropriate standing committees of the Legislature.

Section 507 establishes a task force to encourage the removal of wood stoves which do not meet current emission standards and replace such stoves with a less polluting, certified wood stove or other source of heat. This task force will also consist of members from each House and report back to the appropriate committees of the Legislature.

While these studies may provide useful information, the Legislature does not need statutory authorization to study these issues or authorization to report back to itself. For this reason I am vetoing sections 204 and 507 of the bill.

With the exception of sections 204 and 507, Engrossed Substitute House Bill No. 1028 is approved."

CHAPTER 200

[Engrossed Substitute House Bill 1027]

OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

Effective Date: 7/28/91 – Except Sections 101 through 429, 501 through 706, 805 through 807, 810 through 817, & 901 through 1118 which take effect on 5/15/91; Sections 801 through 804, 808, & 809 which take effect on 10/1/91; & Sections 430 through 436 which take effect on 7/1/97.

AN ACT Relating to oil and hazardous substances; amending RCW 90.48.315, 90.48.370, 90.48.365, 90.48.380, 90.48.378, 90.48.371, 90.48.373, 90.48.375, 90.48.376, 90.48.377, 90.48.325, 90.48.340, 90.48.350, 42.17.2401, 90.48.385, 90.48.510, 88.16.170, 88.16.180, 88.16.200, 88.40.005, 88.40.020, 88.40.030, 88.40.040, 90.48.142, 90.48.366, 90.48.367, 90.48.368, 90.48.400, 90.48.369, 88.44.010, 88.44.020, 88.44.030, 88.44.040, 88.44.080, 88.44.110, 88.44.160, 88.16.010, 88.16.105, 88.16.110, 88.16.155, 90.48.037, 90.48.095, 90.48.100, 90.48.156, 90.48.240, and 90.48.907; amending 1990 c 116 s 1 (uncodified); reenacting and amending RCW 90.48.390 and 88.16.090; adding a new section to chapter 90.48 RCW; adding new sections to chapter 88.16 RCW; adding a new section to chapter 90.70 RCW; adding a new section to chapter 80.50 RCW; adding a new chapter to Title 90 RCW; adding a new chapter to Title 82 RCW; adding a new chapter to Title 43 RCW; adding a new chapter to Title 88 RCW; creating new sections; recodifying RCW 90.48.315, 90.48.370, 90.48.365, 90.48.380, 90.48.378, 90.48.387, 90.48.388, 90.48.371, 90.48.372, 90.48.373, 90.48.374, 90.48.375, 90.48.360, 90.48.376, 90.48.377, 90.48.320, 90.48.350, 90.48.325, 90.48.330, 90.48.335, 90.48.336, 90.48.338, 90.48.340, 90.48.355, 90.48.343, 90.48.907, 90.48.385, and 90.48.510; repealing RCW 90.48.345, 90.48.381, 90.48.410, 88.40.010, 88.40.050, 90.48.910, 88.44.050, 88.44.060,

88.44.070, 90.48.383; prescribing penalties; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

PART I
GENERAL PROVISIONS

Sec. 101. 1990 c 116 s 1 (uncodified) is amended to read as follows:

(1) The legislature (~~((finds))~~) declares that the increasing reliance on water borne transportation as a source of supply for oil and hazardous substances poses special concern for the state of Washington. Each year billions of gallons of crude oil and refined petroleum products are transported by vessel on the navigable waters of the state. These shipments are expected to increase in the coming years. Vessels transporting oil into Washington travel on some of the most unique and special marine environments in the United States. These marine environments are a source of natural beauty, recreation, and economic livelihood for many residents of this state. As a result, the state has an obligation to assure the citizens of the state that the waters of the state ((used for water borne transportation)) will be protected from oil spills. ((The legislature declares that this act is the first step in developing a comprehensive approach to protecting this important and unique resource by developing a set of procedures to respond to spills of oil and hazardous substances into the state's waters.))

(2) The legislature (~~((also))~~) finds that prevention is the best method to protect the unique and special marine environments in this state. The technology for containing and cleaning up a spill of oil or hazardous substances is in the early stages of development. Preventing spills is more protective of the environment and more cost-effective when all the costs associated with responding to a spill are considered. ~~((The legislature declares that it will continue to develop this first step in a comprehensive approach to protecting our unique and special marine environment by adopting measures in future sessions of the legislature to reduce the likelihood that a spill of oil or hazardous substances will occur.))~~

(3) The legislature also finds that:

(a) Recent accidents in Washington, Alaska, southern California, Texas, and other parts of the nation have shown that the transportation, transfer, and storage of oil have caused significant damage to the marine environment;

(b) Even with the best efforts, it is nearly impossible to remove all oil that is spilled into the water;

(c) Washington's navigable waters are treasured environmental and economic resources that the state cannot afford to place at undue risk from an oil spill; and

(d) The state has a fundamental responsibility, as the trustee of the state's natural resources and the protector of public health and the environment to prevent the spill of oil.

(4) In order to establish a comprehensive prevention and response program to protect Washington's waters and natural resources from spills of oil, it is the purpose of this chapter:

(a) To establish state agency expertise in marine safety and to centralize state activities in spill prevention and response activities;

(b) To prevent spills of oil and to promote programs that reduce the risk of both catastrophic and small chronic spills;

(c) To ensure that responsible parties are liable, and have the resources and ability, to respond to spills and provide compensation for all costs and damages;

(d) To provide for state spill response and wildlife rescue planning and implementation;

(e) To support and complement the federal oil pollution act of 1990 and other federal law, especially those provisions relating to the national contingency plan for cleanup of oil spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resource trustees. The legislature intends this chapter to be interpreted and implemented in a manner consistent with federal law;

(f) To provide broad powers of regulation to the department of ecology relating to spill prevention and response;

(g) To provide for an independent oversight board to review the adequacy of spill prevention and response activities in this state; and

(h) To provide an adequate funding source for state response and prevention programs.

Sec. 102. RCW 90.48.315 and 1990 c 116 s 2 are each amended to read as follows:

For purposes of (~~RCW 90.48.315 through 90.48.410, 78.52.020, 78.52.125, 82.36.330, 90.48.903, 90.48.906, and 90.48.907~~) this chapter, the following definitions shall apply unless the context indicates otherwise:

(1) "Administrator" means the administrator of the office of marine safety created in section 402 of this 1991 act.

(2) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(3) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable

expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(4) "Board" ((~~shall~~)) means the pollution control hearings board.

((~~2~~)) (5) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, ((of)) greater than three hundred or more gross tons ((or more)), including but not limited to, commercial fish processing vessels and freighters.

((~~3~~)) (6) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(7) "Committee" ((~~shall~~)) means the preassessment screening committee established under RCW 90.48.368.

((~~4~~)) (8) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

((~~5~~)) (9) "Department" ((~~shall~~)) means the department of ecology.

((~~6~~)) (10) "Director" ((~~shall~~)) means the director of the department of ecology.

((~~7~~)) (11) "Discharge" ((~~shall~~)) means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

((~~8~~)) (12)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that ((receives)) transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk((, and is capable of storing ten thousand or more gallons of oil)).

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock ((used to transport)) while transporting oil over the highways or rail lines of this state; (ii) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; (iii) a motor vehicle motor fuel outlet; (iv) a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or (v) a marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

((~~9~~)) (13) "Fund" ((~~shall~~)) means the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

((~~10~~)) (14) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

~~((11)) "Maximum probable spill" means the maximum probable spill for a vessel operating in state waters considering the history of spills of vessels of the same class operating on the west coast of the United States, Alaska, and British Columbia:~~

~~(12)) (15) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.~~

(16) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

~~((13)) (17) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; (c) conducting actions necessary to clean up the discharge; (d) conducting predamage and damage assessment studies; and (e) enforcing the provisions of this chapter and collecting for damages caused by a discharge.~~

~~((14)) (18) "Oil" or "oils" ((shaft)) means ((oil)) naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including ((gasoline)), but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, ((lubricating oil)) oil sludge, oil refuse, ((liquid natural gas, propane, butane, oils distilled from coal, and other liquid hydrocarbons regardless of specific gravity, or any other petroleum related product)) and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.~~

~~((15)) (19) "Offshore facility" means any facility, as defined in subsection (12) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.~~

(20) "Onshore facility" means any facility, as defined in subsection (12) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(21)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore

facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(22) "Passenger vessel" means a ship of greater than three hundred or more gross tons or five hundred or more international gross tons carrying passengers for compensation.

~~((16))~~ (23) "Person" ((sh#)) means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever ((and any owner, operator, master, officer, or employee of a ship)).

~~((17))~~ (24) "Ship" ((sh#)) means any boat, ship, vessel, barge, or other floating craft of any kind.

~~((18))~~ (25) "Spill" means ((a)) an unauthorized discharge of oil or hazardous substances into the waters of the state.

~~((19))~~ (26) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

~~((20))~~ (27) "Technical feasibility" or "technically feasible" shall mean that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource prior to the injury.

~~((21))~~ (28) "Waters of the state" ((sh#)) includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

~~((22))~~ (29) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of ((a-tank)) the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

NEW SECTION. Sec. 103. DIRECTOR RESPONSIBLE FOR SPILL RESPONSE. Except as otherwise specifically provided in this chapter or other law, the director has the primary authority, in conformance with the state-wide master oil and hazardous substance spill prevention and contingency plan adopted pursuant to RCW 90.48.378 as recodified by this act and any applicable contingency plans prepared pursuant to this chapter and chapter 88.— RCW (sections 414 through 436 of this act), to oversee prevention, abatement, response, containment, and cleanup efforts with regard to any oil or hazardous substance spill in the navigable waters of the

state. The director is the head of the state incident command system in response to a spill of oil or hazardous substances and shall coordinate the response efforts of all state agencies and local emergency response personnel. If a discharge of oil or hazardous substances is subject to the national contingency plan, in responding to the discharge, the director shall to the greatest extent practicable act in accordance with the national contingency plan and cooperate with the federal on-scene coordinator or other federal agency or official exercising authority under the national contingency plan.

Sec. 104. RCW 90.48.370 and 1971 ex.s. c 180 s 2 are each amended to read as follows:

The powers, duties, and functions conferred by ~~((RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907))~~ this chapter shall be exercised by the department of ecology and shall be deemed an essential government function in the exercise of the police power of the state. Such powers, duties, and functions of the department ~~((and those conferred by RCW 90.48.315 through 90.48.365))~~ shall extend to all waters ~~((within the boundaries))~~ under the jurisdiction of the state.

Sec. 105. RCW 90.48.365 and 1987 c 109 s 153 are each amended to read as follows:

~~((RCW 90.48.315 through 90.48.365 shall))~~ This chapter grants authority to the department which is supplemental to and in no way reduces or otherwise modifies the powers ~~((heretofore))~~ granted to the department ~~((; except as it may directly conflict therewith))~~ by other statutes.

Sec. 106. RCW 90.48.380 and 1971 ex.s. c 180 s 3 are each amended to read as follows:

The department may adopt rules ~~((and regulations))~~ including but not limited to the following matters:

(1) Procedures and methods of reporting discharges and other occurrences prohibited by ~~((RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907))~~ this chapter;

(2) Procedures, methods, means, and equipment to be used by persons subject to regulation by ~~((RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907))~~ this chapter and such rules ~~((and regulations))~~ may prescribe the times, places, and methods of transfer of oil;

(3) Coordination of procedures, methods, means, and equipment to be used in the removal of oil ~~((pollutants))~~;

(4) Development and implementation of criteria and plans to meet oil ~~((pollution occurrences))~~ spills of various kinds and degrees;

(5) ~~((The establishment from time to time of control districts comprising sections of the state coast and the establishment of rules and regulations to meet the particular requirements of each such district;~~

~~(6)) When and under what circumstances, if any, chemical agents, such as coagulants, dispersants, and bioremediation, may be used in response to an oil spill;~~

~~(6) The disposal of oil recovered from a spill; and~~

~~(7) Such other rules and regulations as the exigencies of any condition may require or such as may be reasonably necessary to carry out the intent of ((RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907)) this chapter.~~

Sec. 107. RCW 90.48.378 and 1990 c 116 s 10 are each amended to read as follows:

(1) ~~((Not later than July 1, 1991,))~~ The department shall prepare and ((thereafter)) annually update a state-wide master oil and hazardous substance spill prevention and contingency plan. In preparing the plan, the department shall consult with an advisory committee representing diverse interests concerned with oil and hazardous substance spills, including the office of marine safety, the United States coast guard, the federal environmental protection agency, state agencies, local governments, port districts, private facilities, environmental organizations, oil companies, shipping companies, containment and cleanup contractors, tow companies, and hazardous substance manufacturers.

(2) The state master plan prepared under this section shall at a minimum:

(a) Take into consideration the elements of oil spill prevention and contingency plans approved or submitted for approval pursuant to ((RCW 90.48.371)) this chapter and chapter 88.— RCW (sections 414 through 436 of this 1991 act) and oil and hazardous substance spill contingency plans prepared pursuant to other state or federal law or prepared by federal agencies and regional entities;

(b) State the respective responsibilities as established by relevant statutes and rules of each of the following in the prevention of and the assessment, containment, and cleanup of a ((catastrophic oil)) worst case spill ((or of a significant spill)) of ~~((a))~~ oil or hazardous substances into the environment of the state: (i) State agencies; (ii) local governments; (iii) appropriate federal agencies; (iv) facility operators; (v) property owners whose land or other property may be affected by the oil or hazardous substance spill; and (vi) other parties identified by the department as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance spill;

(c) State the respective responsibilities of the parties identified in (b) of this subsection in an emergency response;

(d) Identify actions necessary to reduce the likelihood of ((catastrophic oil)) spills ((and significant spills)) of oil and hazardous substances; ((and))

(e) Identify and obtain mapping of environmentally sensitive areas at particular risk to oil and hazardous substance spills; and

(f) Establish an incident command system for responding to oil and hazardous substances spills.

(3) In preparing and updating the state master plan, the department shall:

(a) Consult with federal, provincial, municipal, and community officials, other state agencies, the state of Oregon, and with representatives of affected regional organizations;

(b) Submit the draft plan to the public for review and comment;

(c) Submit to the appropriate standing committees of the legislature for review, not later than November 1 of each year, the plan and any annual revision of the plan; and

(d) Require or schedule unannounced oil spill drills as required by RCW 90.48.374 as recodified by this 1991 act to test the sufficiency of oil spill contingency plans approved under RCW 90.48.371 as recodified by this 1991 act.

NEW SECTION. Sec. 108. COORDINATION WITH FEDERAL LAW. In carrying out the purposes of this chapter, including the adoption of rules for contingency plans, the department shall to the greatest extent practicable implement this chapter in a manner consistent with federal law.

NEW SECTION. Sec. 109. HAZARDOUS SUBSTANCES INCIDENT RESPONSE TRAINING AND EDUCATION PROGRAM. Not later than twelve months after the effective date of this section, the division of fire protection services shall establish and manage the Washington oil and hazardous substances incident response training and education program to provide approved classes in hazardous substance response, taught by trained instructors. To carry out this program, the division of fire protection services shall:

(1) Adopt rules necessary to implement the program;

(2) Establish a training and education program by developing the curriculum to be used in the program in colleges, academies, and other educational institutions;

(3) Provide training to local oil and hazardous materials emergency response personnel; and

(4) Establish and collect admission fees and other fees that may be necessary to the program.

NEW SECTION. Sec. 110. SMALL SPILL PREVENTION EDUCATION PROGRAM. (1) The Washington sea grant program, in consultation with the department, shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial

fishing vessels, ferries, cruise ships, ports, and marinas. Washington sea grant shall coordinate the spill prevention education program with recreational boater education performed by the state parks and recreation commission.

(2) The spill prevention education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of hydraulic fluid and other hazardous substances during routine maintenance, and reduce spillage during refueling. The program shall illustrate proper disposal of oil and hazardous substances and promote strategies to meet shoreside oil and hazardous substance handling, and disposal needs of the targeted groups. The program shall include a series of training workshops and the development of educational materials.

PART II FACILITY PLANS

NEW SECTION. Sec. 201. PREVENTION PLANS. (1) The owner or operator for each onshore and offshore facility shall prepare and submit to the department an oil spill prevention plan in conformance with the requirements of this chapter. The plans shall be submitted to the department in the time and manner directed by the department, but not later than January 1, 1993. The spill prevention plan may be consolidated with a spill contingency plan submitted pursuant to RCW 90.48.371 as recodified by this act. The department may accept plans prepared to comply with other state or federal law as spill prevention plans to the extent those plans comply with the requirements of this chapter. The department, by rule, shall establish standards for spill prevention plans. The rules shall be adopted not later than July 1, 1992.

(2) The spill prevention plan for an onshore or offshore facility shall:

(a) Establish compliance with the federal oil pollution act of 1990, if applicable, and financial responsibility requirements under federal and state law;

(b) Certify that supervisory and other key personnel in charge of transfer, storage, and handling of oil have received certification pursuant to section 203 of this act;

(c) Certify that the facility has an operations manual required by section 204 of this act;

(d) Certify the implementation of alcohol and drug use awareness programs;

(e) Describe the facility's maintenance and inspection program and contain a current maintenance and inspection record of the storage and transfer facilities and related equipment;

(f) Describe the facility's alcohol and drug treatment programs;

(g) Describe spill prevention technology that has been installed, including overflow alarms, automatic overflow cut-off switches, secondary

containment facilities, and storm water retention, treatment, and discharge systems;

(h) Describe any discharges of oil to the land or the water of more than twenty-five barrels in the prior five years and the measures taken to prevent a reoccurrence;

(i) Describe the procedures followed by the facility to contain and recover any oil that spills during the transfer of oil to or from the facility;

(j) Provide for the incorporation into the facility during the period covered by the plan of those measures that will provide the best achievable protection for the public health and the environment; and

(k) Include any other information reasonably necessary to carry out the purposes of this chapter required by rules adopted by the department.

(3) The department shall only approve a prevention plan if it provides the best achievable protection from damages caused by the discharge of oil into the waters of the state and if it determines that the plan meets the requirements of this section and rules adopted by the department.

(4) Upon approval of a prevention plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities covered by the plan, and other information the department determines should be included.

(5) The approval of a prevention plan shall be valid for five years. An owner or operator of a facility shall notify the department in writing immediately of any significant change of which it is aware affecting its prevention plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a prevention plan as a result of these changes.

(6) The department by rule shall require prevention plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(7) Approval of a prevention plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

(8) This section does not authorize the department to modify the terms of a collective bargaining agreement.

Sec. 202. RCW 90.48.371 and 1990 c 116 s 3 are each amended to read as follows:

(1) Each onshore and offshore facility (~~(and covered vessel)~~) shall have a contingency plan for the containment and cleanup of oil spills from the facility (~~(or covered vessel)~~) into the waters of the state and for the protection of fisheries and wildlife, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. (~~The rules for facilities and, except as otherwise provided in this subsection, for covered vessels shall be adopted not later than July 1, 1991. The department~~

~~shall exclude from the rules to be adopted by July 1, 1991, standards for tank vessels of less than twenty thousand deadweight tons, cargo vessels, and passenger vessels operating on the portion of the Columbia river for which the department determines that Washington and Oregon should cooperate in the adoption of standards for contingency plans. The department, after consultation with the appropriate state agencies in Oregon, shall adopt the rules for standards for contingency plans for this portion of the Columbia river at the earliest possible time, but not later than July 1, 1992:))~~ The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any (~~vessel, ship, or~~) facility which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department((:

~~(i) Removing oil and minimizing any damage to the environment resulting from a maximum probable spill, and~~

~~(ii)) removing oil and minimizing any damage to the environment resulting from a worst case spill;~~

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of oil spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, environmentally sensitive areas, and public facilities. The departments of ecology, fisheries, wildlife, and natural resources, upon request, shall provide information that they have available to assist in preparing this description;

(h) State the means of protecting and mitigating effects on the environment, including fish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

~~((h) Provide a detailed description of equipment and procedures to be used by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and the vessel/safety is assured, contain and clean up the spilled oil;))~~

(i) Provide arrangements for the repositioning of oil spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(j) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(k) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(l) Until a spill prevention plan has been submitted pursuant to section 201 of this 1991 act, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a ((vessel or)) facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(m) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(n) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

~~(2)(a) ((Contingency plans for facilities capable of storing one million gallons or more of oil and for tank vessels of twenty thousand deadweight tons or more shall be submitted to the department))~~ The following shall submit contingency plans to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section:

(i) Onshore facilities capable of storing one million gallons or more of oil; and

(ii) Offshore facilities.

~~(b) ((Except as otherwise provided in (c) of this subsection;))~~ Contingency plans for all other onshore and offshore facilities ((and covered vessels)) shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

~~((c) Contingency plans for covered vessels which are not required to submit plans within the six month period prescribed in (a) of this subsection and which operate on the portion of the Columbia river for which the department must adopt rules not later than July 1, 1992, shall be submitted to the department not later than January 1, 1993;))~~

(3)(a) The owner or operator of a facility shall submit the contingency plan for the facility.

~~(b) ((The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department,~~

~~the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility:~~

~~(c) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel or by the agent for the vessel resident in this state. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class:~~

~~(d)) A person who has contracted with a facility ((or covered vessel)) to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.48.372 as recodified by this 1991 act, may submit the plan for any facility ((or covered vessel)) for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one facility ((or covered vessel)).~~

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall assure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil ((and hazardous substance)) spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil ((or hazardous substances)) being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil ((and hazardous substances)) within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the department; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil (~~or hazardous substances~~) promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities or vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a (~~vessel, ship, or~~) facility shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

NEW SECTION. Sec. 203. FACILITY OPERATION STANDARDS. (1) The department by rule shall adopt standards for onshore and offshore facilities regarding the equipment and operation of the facilities with respect to the transfer, storage, and handling of oil to ensure that the best achievable protection of the public health and the environment is employed at all times. The department shall implement a program to provide for the inspection of all onshore and offshore facilities on a regular schedule to ensure that each facility is in compliance with the standards.

(2) The department shall adopt rules for certification of supervisory and other key personnel in charge of the transfer, storage, and handling of oil at onshore and offshore facilities. The rules shall include, but are not limited to:

(a) Minimum training requirements for all facility workers involved in the transfer, storage, and handling of oil at a facility;

(b) Provisions for periodic renewal of certificates for supervisory and other key personnel involved in the transfer, storage, and handling of oil at the facility; and

(c) Continuing education requirements.

(3) The rules adopted by the department shall not conflict with or modify standards imposed pursuant to federal or state laws regulating worker safety.

NEW SECTION. Sec. 204. OPERATIONS MANUALS. (1) Each owner or operator of an onshore or offshore facility shall prepare an operations manual describing equipment and procedures involving the transfer, storage, and handling of oil that the operator employs or will employ for best achievable protection for the public health and the environment and to prevent oil spills in the navigable waters. The operations manual shall also describe equipment and procedures required for all vessels to or from which oil is transferred through use of the facility. The operations manual shall be submitted to the department for approval.

(2) Every existing onshore and offshore facility shall prepare and submit to the department its operations manual within eighteen months after the department has adopted rules governing the content of the manual.

(3) The department shall approve an operations manual for an onshore or offshore facility if the manual complies with the rules adopted by the department. If the department determines a manual does not comply with the rules, it shall provide written reasons for the decision. The owner or operator shall resubmit the manual within ninety days of notification of the reasons for noncompliance, responding to the reasons and incorporating any suggested modifications.

(4) The approval of an operations manual shall be valid for five years. The owner or operator of the facility shall notify the department in writing immediately of any significant change in its operations affecting its operations manual. The department may require the owner or operator to modify its operations manual as a result of these changes.

(5) All equipment and operations of an operator's onshore or offshore facility shall be maintained and carried out in accordance with the facility's operations manual. The owner or operator of the facility shall ensure that all covered vessels docked at an onshore or offshore facility comply with the terms of the operations manual for the facility.

Sec. 205. RCW 90.48.373 and 1990 c 116 s 5 are each amended to read as follows:

The department shall annually publish an index of available, up-to-date descriptions of prevention plans and contingency plans for oil spills submitted and approved pursuant to section 201 of this 1991 act, RCW 90.48.371 as recodified by this 1991 act, and sections 417 and 419 of this 1991 act and an inventory of equipment available for responding to such spills.

Sec. 206. RCW 90.48.375 and 1990 c 116 s 7 are each amended to read as follows:

(1) The provisions of contingency plans approved by the department under RCW 90.48.371 as recodified by this 1991 act and prevention plans approved by the department pursuant to section 201 of this 1991 act shall be legally binding on those persons submitting them to the department and on their successors, assigns, agents, and employees. The superior court shall

have jurisdiction to restrain a violation of, compel specific performance of, or otherwise to enforce such plans upon application by the department. The department may issue an order pursuant to chapter 34.05 RCW requiring compliance with a contingency plan or a prevention plan and may impose administrative penalties under RCW 43.21B.300 for failure to comply with a plan. An order under this section is not subject to review by the pollution control hearings board as provided in RCW 43.21B.110.

(2)(a) Any person responsible or potentially responsible for a discharge, all of the agents and employees of that person, the operators of all vessels docked at an onshore or offshore facility that is a source of a discharge, and all state and local agencies shall carry out response and cleanup operations in accordance with applicable contingency plans, unless directed otherwise by the director or the coast guard. Except as provided in (b) of this subsection, the responsible party, potentially responsible parties, their agents and employees, the operators of all vessels docked at an onshore or offshore facility that is the source of the discharge, and all state and local agencies shall carry out whatever direction is given by the director in connection with the response, containment, and cleanup of the spill, if the directions are not in direct conflict with the directions of the coast guard.

(b) If a responsible party or potentially responsible party reasonably, and in good faith, believes that the directions or orders given by the director pursuant to (a) of this subsection will substantially endanger the public safety or the environment, the party may refuse to act in compliance with the orders or directions of the director. The responsible party or potentially responsible party shall state, at the time of the refusal, the reasons why the party refuses to follow the orders or directions of the director. The responsible party or potentially responsible party shall give the director written notice of the reasons for the refusal within forty-eight hours of refusing to follow the orders or directions of the director. In any civil or criminal proceeding commenced pursuant to this section, the burden of proof shall be on the responsible party or potentially responsible party to demonstrate, by clear and convincing evidence, why the refusal to follow the orders or directions of the director was justified under the circumstances.

PART III ENFORCEMENT

Sec. 301. RCW 90.48.376 and 1990 c 116 s 8 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, it shall be unlawful for ((any person)) the owner or operator to knowingly and intentionally operate in this state or on the waters of this state ((α)) an onshore or offshore facility ((or covered vessel)) without an approved contingency plan or an approved prevention plan as required by ((RCW 90.48.371)) this chapter, or financial responsibility in compliance with chapter 88.40 RCW

and the federal oil pollution act of 1990. The first conviction under this section shall be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent conviction shall be a class C felony under chapter 9A.20 RCW.

(2) It shall not be unlawful for ~~((a person))~~ the owner or operator to operate ((a)) an onshore or offshore facility ((or covered vessel)) if:

(a) The facility ~~((or covered vessel))~~ is not required to have a contingency plan, spill prevention plan, or financial responsibility; or

(b) ~~((A))~~ All required plans ((has)) have been submitted to the department as required by RCW 90.48.371 as recodified by this 1991 act and rules adopted by the department and the department is reviewing the plan and has not denied approval((; or

~~((c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress)).~~

(3) A ~~((facility))~~ person may rely on a copy of the statement issued by the department pursuant to RCW 90.48.371(7) as recodified by this 1991 act as evidence that ~~((the vessel))~~ a facility has an approved contingency plan and the statement issued pursuant to section 201(5) of this 1991 act that a facility has an approved prevention plan.

Sec. 302. RCW 90.48.377 and 1990 c 116 s 9 are each amended to read as follows:

(1) ~~((Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to enter the waters of the state without an approved contingency plan as provided in RCW 90.48.371. The department may deny entry onto the waters of the state to any covered vessel that does not have a contingency plan and is so required:~~

~~((2)))~~ Except as provided in subsection ((4)) (3) of this section, it shall be unlawful:

(a) For ~~((a))~~ the owner or operator to operate an onshore or offshore facility ((to operate)) without an approved contingency plan as required under RCW 90.48.371 as recodified by this 1991 act, a spill prevention plan required by section 201 of this 1991 act, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990;
or

(b) For ~~((a))~~ the owner or operator of an onshore or offshore facility ((or any other person)) to accept cargo or passengers from a covered vessel that does not have an approved contingency plan or an approved prevention plan required under ((RCW 90.48.371)) chapter 88.— RCW (sections 414 through 436 of this 1991 act) or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

~~((3))~~ (2) The department may notify the ((department of licensing)) secretary of state to suspend the business license of any onshore or offshore facility or other person that is in violation of this section. The department may assess a civil penalty under RCW 43.21B.300 of up to one hundred

thousand dollars against any person who is in violation of this section. Each day that a facility~~(;)~~ or person~~(, or covered vessel)~~ is in violation of this section shall be considered a separate violation.

~~((4))~~ (3) It shall not be unlawful for a ~~((covered vessel to operate on the waters of the state or a))~~ facility or other person to operate or accept cargo or passengers from a covered vessel if:

(a) A contingency plan, a prevention plan, or financial responsibility is not required for the facility ~~((or covered vessel));~~ or

(b) A contingency and prevention plan has been submitted to the department as required by ~~((RCW 90.48.371))~~ this chapter and rules adopted by the department and the department is reviewing the plan and has not denied approval~~(; or~~

~~(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress)).~~

~~((5))~~ (4) Any person may rely on a copy of the statement issued by the department pursuant to RCW 90.48.371(7) as recodified by this 1991 act as evidence that the ~~((vessel))~~ facility has an approved contingency plan and the statement issued pursuant to section 201(5) of this 1991 act as evidence that the facility has an approved spill prevention plan. Any person may rely on a copy of the statement issued by the office to section 419 of this 1991 act as evidence that the vessel has an approved contingency plan and the statement issued pursuant to section 417 of this 1991 act as evidence that the vessel has an approved prevention plan.

Sec. 303. RCW 90.48.325 and 1970 ex.s. c 88 s 3 are each amended to read as follows:

It shall be the obligation of any person owning or having control over oil entering waters of the state in violation of RCW 90.48.320 as recodified by this 1991 act to immediately collect and remove the same. If it is not feasible to collect and remove, said person shall take all practicable actions to contain, treat and disperse the same. The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to ~~((him))~~ the director that use thereof would be detrimental to the public interest.

NEW SECTION. Sec. 304. (1)(a) Notwithstanding any other provision of law, a person is not liable for removal costs or damages that result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the official within the department with responsibility for oil spill response. This subsection (1)(a) does not apply:

(i) To a responsible party;

(ii) With respect to personal injury or wrongful death; or

(iii) If the person is grossly negligent or engages in willful misconduct.

(b) A responsible party is liable for any removal costs and damages that another person is relieved of under (a) of this subsection.

(c) Nothing in this section affects the liability of a responsible party for oil spill response under state law.

(2) For the purposes of this section:

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(b) "Discharge" means any emission other than natural seepage, intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(c) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the national contingency plan.

(d) "National contingency plan" means the national contingency plan prepared and published under section 311(d) of the federal water pollution control act (33 U.S.C. Sec. 1321(d)), as amended by the oil pollution act of 1990 (P.L. 101-380, 104 Stat. 484 (1990)).

(e) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(f) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(g) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

(h) "Responsible party" means a person liable under RCW 90.48.336 as recodified by this act.

Sec. 305. RCW 90.48.340 and 1987 c 109 s 148 are each amended to read as follows:

The department shall investigate each activity or project conducted under RCW 90.48.330 as recodified by this 1991 act to determine, if possible, the circumstances surrounding the entry of oil into waters of the state and the person or persons allowing said entry or responsible for the act or acts which result in said entry. Whenever it appears to the department, after investigation, that a specific person or persons are responsible for the necessary expenses incurred by the state pertaining to a project or activity as specified in RCW 90.48.335 as recodified by this 1991 act, the department shall notify said person or persons by appropriate order (~~(-PROVIDED, That no order may be issued)~~). The department may not issue an order

pertaining to a project or activity which was completed more than five years prior to the date of the proposed issuance of the order. ~~((Said))~~ The order shall state the findings of the department, the amount of necessary expenses incurred ((by the department)) in conducting the project or activity, and a notice that said amount is due and payable immediately upon receipt of said order. The department may, upon application from the recipient of an order received within thirty days from the receipt of the order, reduce or set aside in its entirety the amount due and payable, when it appears from the application, and from any further investigation the department may desire to undertake, that a reduction or setting aside is just and fair under all the circumstances. If the amount specified in the order issued by the department notifying said person or persons is not paid within thirty days after receipt of notice imposing the same, or if an application has been made within thirty days as herein provided and the amount provided in the order issued by the department subsequent to such application is not paid within fifteen days after receipt thereof, the attorney general, upon request of the department, shall bring an action on behalf of the state in the superior court of Thurston county or any county in which the person to which the order is directed does business, or in any other court of competent jurisdiction, to recover the amount specified in the final order of the department. No order issued under this section shall be construed as an order within the meaning of RCW 43.21B.310 and shall not be appealable to the hearings board. In any action to recover necessary expenses as herein provided said person shall be relieved from liability for necessary expenses if ((he)) the person can prove that the oil to which the necessary expenses relate entered the waters of the state by causes set forth in RCW ~~((90.48.320(3)))~~ 90.48.320(2) as recodified by this 1991 act.

***Sec. 306. RCW 90.48.350 and 1990 c 116 s 20 are each amended to read as follows:**

(1) Except as otherwise provided in RCW 90.48.383, any person who negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation, and for each day the spill poses risks to the environment as determined by the director.

(2) An employee of the owner or operator of an offshore or onshore facility or covered vessel shall be indemnified by the owner or operator of an offshore or onshore facility or covered vessel for any liability and costs of defense for any action brought under subsection (1) of this section where the employee was acting in the course of employment, and in such case the owner or operator of the offshore or onshore facility or covered vessel shall be liable for the actions of such employee.

(3) Any person who intentionally or recklessly discharges or causes or permits the entry of oil into the waters of the state shall incur, in addition to

any other penalty authorized by law, a penalty of up to one hundred thousand dollars for every such violation and for each day the spill poses risks to the environment as determined by the director.

(4) The amount of the penalty shall be determined by the director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, the speed and thoroughness of the collection and removal of the oil, and such other considerations as the director deems appropriate. 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 herein provided for. The penalty herein provided for shall be imposed pursuant to RCW 43.21B.300.

*Sec. 306 was vetoed, see message at end of chapter.

PART IV OFFICE OF MARINE SAFETY

NEW SECTION. Sec. 401. The legislature declares that Washington's waters have irreplaceable value for the citizens of the state. These waters are vital habitat for numerous and diverse marine life and wildlife and the source of recreation, aesthetic pleasure, and pride for Washington's citizens. These waters are also vital for much of Washington's economic vitality.

The legislature finds that the transportation of oil on these waters creates a great potential hazard to these important natural resources. The legislature also finds that there is no state agency responsible for maritime safety to ensure this state's interest in preserving these resources.

The legislature therefore finds that in order to protect these waters it is necessary to establish an office of marine safety which will have the responsibility to promote the safety of marine transportation in Washington.

NEW SECTION. Sec. 402. (1) There is hereby created an agency of state government to be known as the office of marine safety. The office shall be vested with all powers and duties transferred to it and such other powers and duties as may be authorized by law. The main administrative office of the office shall be located in the city of Olympia. The administrator may establish administrative facilities in other locations, if deemed necessary for the efficient operation of the office, and if consistent with the principles set forth in subsection (2) of this section.

(2) The office of marine safety shall be organized consistent with the goals of providing state government with a focus in marine transportation and serving the people of this state. The legislature recognizes that the administrator needs sufficient organizational flexibility to carry out the office's various duties. To the extent practical, the administrator shall consider the following organizational principles:

(a) Clear lines of authority which avoid functional duplication within and between subelements of the office;

(b) A clear and simplified organizational design promoting accessibility, responsiveness, and accountability to the legislature, the consumer, and the general public; and

(c) Maximum span of control without jeopardizing adequate supervision.

(3) The office shall provide leadership and coordination in identifying and resolving threats to the safety of marine transportation and the impact of marine transportation on the environment:

(a) Working with other state agencies and local governments to strengthen the state and local governmental partnership in providing public protection;

(b) Providing expert advice to the executive and legislative branches of state government;

(c) Providing active and fair enforcement of rules;

(d) Working with other federal, state, and local agencies and facilitating their involvement in planning and implementing marine safety measures;

(e) Providing information to the public; and

(f) Carrying out such other related actions as may be appropriate to this purpose.

(4) In accordance with the administrative procedure act, chapter 34.05 RCW, the office shall ensure an opportunity for consultation, review, and comment before the adoption of standards, guidelines, and rules.

(5) Consistent with the principles set forth in subsection (2) of this section, the administrator may create such administrative divisions, offices, bureaus, and programs within the office as the administrator deems necessary. The administrator shall have complete charge of and supervisory powers over the office, except where the administrator's authority is specifically limited by law.

(6) The administrator shall appoint such personnel as are necessary to carry out the duties of the office in accordance with chapter 41.06 RCW.

NEW SECTION. Sec. 403. The executive head and appointing authority of the office shall be the administrator of marine safety. The administrator shall be appointed by, and serve at the pleasure of, the governor in accordance with RCW 43.17.020. The administrator shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040.

Sec. 404. RCW 42.17.2401 and 1991 c 3 s 293 are each amended to read as follows:

For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the administrator of the office of marine safety, the administrator of the Washington basic health plan, the director of the department of services for

the blind, the director of the state system of community colleges, the director of community development, the secretary of corrections, the director of ecology, the commissioner of employment security, the chairman of the energy facility site evaluation council, the director of the energy office, the secretary of the state finance committee, the director of financial management, the director of fisheries, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the director of the higher education personnel board, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the director of the interagency committee for outdoor recreation, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the director of trade and economic development, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the director of wildlife, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, board of trustees of each community college, each member of the state board for community college education, state convention and trade center board of directors, board of pilotage, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, higher education coordinating board, higher education facilities authority, higher education personnel board, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, information services board, interagency committee for outdoor recreation, state investment board, liquor control board, lottery commission, marine oversight board, oil and gas conservation committee,

Pacific Northwest electric power and conservation planning council, parks and recreation commission, personnel appeals board, personnel board, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, state employees' benefits board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and wildlife commission.

NEW SECTION. Sec. 405. In addition to any other powers granted the administrator, the administrator may:

(1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to carry out the provisions of this chapter and chapter 88.— RCW (sections 414 through 436 of this act);

(2) Appoint such advisory committees as may be necessary to carry out the provisions of this chapter and chapter 88.—RCW (sections 414 through 436 of this act). Members of such advisory committees are authorized to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. The administrator shall review each advisory committee within the jurisdiction of the office and each statutory advisory committee on a biennial basis to determine if such advisory committee is needed. The criteria specified in RCW 43.131.070 shall be used to determine whether or not each advisory committee shall be continued;

(3) Undertake studies, research, and analysis necessary to carry out the provisions of this chapter and chapter 88.—RCW (sections 414 through 436 of this act);

(4) Delegate powers, duties, and functions of the department to employees of the department as the secretary deems necessary to carry out the provisions of this chapter and chapter 88.— RCW (sections 414 through 436 of this act);

(5) Enter into contracts on behalf of the department to carry out the purposes of this chapter and chapter 88.— RCW (sections 414 through 436 of this act);

(6) Act for the state in the initiation of, or the participation in, any intergovernmental program for the purposes of this chapter and chapter 88.— RCW (sections 414 through 436 of this act); or

(7) Accept gifts, grants, or other funds.

NEW SECTION. Sec. 406. The powers and duties of the department of ecology and the director of ecology under chapter 90.48 RCW relating to adoption of rules and approval of contingency plans for covered vessels and adoption of model tow cable standards for tug boats and barges are hereby transferred to the office of marine safety and the administrator of the office of marine safety.

NEW SECTION. Sec. 407. (1) The administrator shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before the administrator together with all books, memoranda, papers, and other documents, articles or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(2) Subpoenas issued in adjudicative proceedings shall be governed by chapter 34.05 RCW.

(3) Subpoenas issued in the conduct of investigations required or authorized by other statutory provisions or necessary in the enforcement of other statutory provisions shall be governed by chapter 34.05 RCW.

NEW SECTION. Sec. 408. All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of ecology pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the office of marine safety. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of ecology in carrying out the powers, functions, and duties transferred shall be made available to the office of marine safety. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the office of marine safety.

Any appropriations made to the department of ecology for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the office of marine safety.

Whenever 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.

NEW SECTION. Sec. 409. All employees of the department of ecology engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the office of marine safety. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the office of marine safety 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.

NEW SECTION. Sec. 410. All rules and all pending business before the department of ecology pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the office of marine safety. All existing contracts and obligations shall remain in full force and shall be performed by the office of marine safety.

NEW SECTION. Sec. 411. The transfer of the powers, duties, functions, and personnel of the department of ecology shall not affect the validity of any act performed prior to the effective date of this section.

NEW SECTION. Sec. 412. If apportionments of budgeted funds are required because of the transfers directed by sections 408 through 411 of this act, 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. 413. Nothing contained in sections 406 and 408 through 412 of this act may 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 personnel board as provided by law.

NEW SECTION. Sec. 414. **DEFINITIONS.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrator" means the administrator of the office of marine safety created in section 402 of this act.

(2) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(3) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the administrator shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of greater than three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Bulk" means material that is stored or transported in a loose, un-packaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

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

(8) "Director" means the director of the department of ecology.

(9) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(10)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82-.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) a marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(11) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(12) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(13) "Office" means the office of marine safety established by section 402 of this act.

(14) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(15) "Offshore facility" means any facility, as defined in subsection (10) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility as defined in subsection (11) of this section.

(16) "Onshore facility" means any facility, as defined in subsection (10) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(17)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(18) "Passenger vessel" means a ship of greater than three hundred or more gross tons or five hundred or more international gross tons carrying passengers for compensation.

(19) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(20) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(21) "Spill" means an unauthorized discharge of oil into the waters of the state.

(22) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(23) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(24) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

NEW SECTION. Sec. 415. COORDINATION WITH FEDERAL LAW. In carrying out the purposes of this chapter, including the adoption of rules for contingency plans, the administrator shall to the greatest extent practicable implement this chapter in a manner consistent with federal law.

NEW SECTION. Sec. 416. TANK VESSEL INSPECTIONS. (1) All tank vessels entering the navigable waters of the state shall be subject to

inspection to assure that they comply with all applicable federal and state standards.

(2) The office shall review the tank vessel inspection programs conducted by the United States coast guard and other federal agencies to determine if the programs as actually operated by those agencies provide the best achievable protection to the waters of the state. If the office determines that the tank vessel inspection programs conducted by these agencies are not adequate to protect the state's waters, it shall adopt rules for a state tank vessel inspection program. The office shall adopt rules providing for a random review of individual tank vessel inspections conducted by federal agencies. The office may accept a tank vessel inspection report issued by another state if that state's tank vessel inspection program is determined by the office to be at least as protective of the public health and the environment as the program adopted by the office.

(3) The state tank vessel inspection program shall ensure that all tank vessels entering state waters are inspected at least annually. To the maximum extent feasible, the state program shall consist of the monitoring of existing tank vessel inspection programs conducted by the federal government. The office shall consult with the coast guard regarding the tank vessel inspection program. Any tank vessel inspection conducted pursuant to this section shall be performed during the vessel's scheduled stay in port.

(4) Any violation of coast guard or other federal regulations uncovered during a state tank vessel inspection shall be immediately reported to the appropriate agency.

NEW SECTION. Sec. 417. PREVENTION PLANS. (1) The owner or operator for each tank vessel shall prepare and submit to the office an oil spill prevention plan in conformance with the requirements of this chapter. The plans shall be submitted to the office in the time and manner directed by the office, but not later than January 1, 1993. The spill prevention plan may be consolidated with a spill contingency plan submitted pursuant to section 419 of this act. The office may accept plans prepared to comply with other state or federal law as spill prevention plans to the extent those plans comply with the requirements of this chapter. The office, by rule, shall establish standards for spill prevention plans. The rules shall be adopted not later than July 1, 1992.

(2) The spill prevention plan for a tank vessel or a fleet of tank vessels operated by the same operator shall:

(a) Establish compliance with the federal oil pollution act of 1990 and state and federal financial responsibility requirements, if applicable;

(b) State all discharges of oil of more than twenty-five barrels from the vessel within the prior five years and what measures have been taken to prevent a reoccurrence;

(c) Describe all accidents, collisions, groundings, and near miss incidents in which the vessel has been involved in the prior five years, analyze

the causes, and state the measures that have been taken to prevent a reoccurrence;

(d) Describe the vessel operations with respect to staffing standards;

(e) Describe the vessel inspection program carried out by the owner or operator of the vessel;

(f) Describe the training given to vessel crews with respect to spill prevention;

(g) Establish compliance with federal drug and alcohol programs;

(h) Describe all spill prevention technology that has been incorporated into the vessel;

(i) Describe the procedures used by the vessel owner or operator to ensure English language proficiency of at least one bridge officer while on duty in waters of the state;

(j) Describe relevant prevention measures incorporated in any applicable regional marine spill safety plan that have not been adopted and the reasons for that decision; and

(k) Include any other information reasonably necessary to carry out the purposes of this chapter required by rules adopted by the office.

(3) The office shall only approve a prevention plan if it provides the best achievable protection from damages caused by the discharge of oil into the waters of the state and if it determines that the plan meets the requirements of this section and rules adopted by the office.

(4) Upon approval of a prevention plan, the office shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the office determines should be included.

(5) The approval of a prevention plan shall be valid for five years. An owner or operator of a tank vessel shall notify the office in writing immediately of any significant change of which it is aware affecting its prevention plan, including changes in any factor set forth in this section or in rules adopted by the office. The office may require the owner or operator to update a prevention plan as a result of these changes.

(6) The office by rule shall require prevention plans to be reviewed, updated, if necessary, and resubmitted to the office at least once every five years.

(7) Approval of a prevention plan by the office does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

(8) This section does not authorize the office to modify the terms of a collective bargaining agreement.

NEW SECTION. Sec. 418. VESSEL SCREENING. (1) In order to ensure the safety of marine transportation within the navigable waters of the state and to protect the state's natural resources, the administrator shall

adopt rules by July 1, 1992, for determining whether cargo vessels and passenger vessels entering the navigable waters of the state pose a substantial risk of harm to the public health and safety and the environment.

(2) The rules adopted by the administrator pursuant to this section may include, but are not limited to:

(a) Available information to examine for evidence that a cargo or passenger vessel may pose a substantial risk to safe marine transportation or the state's natural resources, including, vessel casualty lists, United States coast guard casualty reports, maritime insurance ratings, the index of contingency plans compiled by the department of ecology, other data gathered by the office or the maritime commission, or any other resources;

(b) A request to the United States coast guard to deny a cargo vessel or passenger vessel entry into the navigable waters of the state, if the vessel poses a substantial environmental risk;

(c) A notice to the state's spill response system that a cargo or passenger vessel entering the state's navigable waters poses a substantial environmental risk;

(d) A vessel inspection for vessels that may pose a substantial environmental risk, to determine whether a cargo vessel or passenger vessel complies with applicable state or federal laws. Any vessel inspection conducted pursuant to this section shall be performed during the vessel's scheduled stay in port; and

(e) Enforcement actions.

NEW SECTION. Sec. 419. CONTINGENCY PLANS. (1) Each covered vessel shall have a contingency plan for the containment and clean-up of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, natural resources, and public and private property from such spills. The office shall by rule adopt and periodically revise standards for the preparation of contingency plans. The office shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the office removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, repositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, environmentally sensitive areas, and public facilities. The departments of ecology, fisheries, wildlife, and natural resources, upon request, shall provide information that they have available to assist in preparing this description;

(h) State the means of protecting and mitigating effects on the environment, including fish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the repositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to section 417 of this act, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and back-up systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(o) If the department of ecology has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The owner or operator of a tank vessel of three thousand gross tons or more shall submit a contingency plan to the office within six months after the office adopts rules establishing standards for contingency plans under subsection (1) of this section.

(b) Contingency plans for all other covered vessels shall be submitted to the office within eighteen months after the office has adopted rules under

subsection (1) of this section. The office may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the office, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by the Washington state maritime commission pursuant to RCW 88.44.020. Subject to conditions imposed by the office, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.48.372 as recodified by this act, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the office, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the office may be accepted by the office as a contingency plan under this section. The office shall assure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the office shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The office shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the office shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the office determines should be included.

(8) An owner or operator of a covered vessel shall notify the office in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the office. The office may require the owner or operator to update a contingency plan as a result of these changes.

(9) The office by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the office at least once every five years.

(10) Approval of a contingency plan by the office does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

NEW SECTION. Sec. 420. The provisions of prevention plans and contingency plans approved by the office pursuant to this chapter shall be legally binding on those persons submitting them to the office and on their successors, assigns, agents, and employees. The superior court shall have jurisdiction to restrain a violation of, compel specific performance of, or otherwise to enforce such plans upon application by the office. The office may issue an order pursuant to chapter 34.05 RCW requiring compliance with a contingency plan or a prevention plan and may impose administrative penalties for failure to comply with a plan.

NEW SECTION. Sec. 421. (1) Except as provided in subsection (2) of this section, it shall be unlawful for the owner or operator to knowingly and intentionally operate in this state or on the waters of this state a covered vessel without an approved contingency plan or an approved prevention plan as required by this chapter, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990. The first conviction under this section shall be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent conviction shall be a class C felony under chapter 9A.20 RCW.

(2) It shall not be unlawful for the owner or operator to operate a covered vessel if:

(a) The covered vessel is not required to have a contingency plan, spill prevention plan, or financial responsibility;

(b) All required plans have been submitted to the office as required by this chapter and rules adopted by the office and the office is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(3) A person may rely on a copy of the statement issued by the office pursuant to section 419 of this act as evidence that a vessel has an approved contingency plan and the statement issued pursuant to section 417 of this act that a vessel has an approved prevention plan.

NEW SECTION. Sec. 422. (1) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to enter the waters of the state without an approved contingency plan required by section 419 of this act, a spill prevention plan required by section 417 of this act, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990. The office may deny entry onto the waters of the state to any covered vessel that does not have a required contingency or spill prevention plan or financial responsibility.

(2) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to transfer oil to an onshore or offshore facility that does not have an approved contingency plan required under RCW 90.48.371 as recodified by this act, a spill prevention plan required by section 201 of this act, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(3) The administrator may assess a civil penalty of up to one hundred thousand dollars against the owner or operator of a vessel who is in violation of this section. Each day that the owner or operator of a covered vessel is in violation of this section shall be considered a separate violation.

(4) It shall not be unlawful for a covered vessel to operate on the waters of the state if:

(a) A contingency plan, a prevention plan, or financial responsibility is not required for the covered vessel;

(b) A contingency plan and prevention plan has been submitted to the office as required by this chapter and rules adopted by the office and the office is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(5) Any person may rely on a copy of the statement issued by the office to section 419 of this act as evidence that the vessel has an approved contingency plan and the statement issued pursuant to section 417 of this act as evidence that the vessel has an approved spill prevention plan.

NEW SECTION. Sec. 423. NOTIFICATION OF ACCIDENTS AND NEAR MISS INCIDENTS. (1) In order to assist the state in identifying areas of the navigable waters of the state needing special attention, the owner or operator of a covered vessel shall notify the coast guard within one hour:

(a) Of the disability of the covered vessel if the disabled vessel is within twelve miles of the shore of the state; and

(b) Of a collision or a near miss incident within twelve miles of the shore of the state.

(2) The division of emergency management of the department of community development and the office shall request the coast guard to notify the division of emergency management as soon as possible after the coast guard receives notice of a disabled covered vessel or of a collision or near miss incident within twelve miles of the shore of the state. The office shall negotiate an agreement with the coast guard governing procedures for coast guard notification to the state regarding disabled covered vessels and collisions and near miss incidents.

(3) The office shall prepare a summary of the information collected under this section and provide the summary to the regional marine safety committees, the coast guard, and others in order to identify problems with the marine transportation system.

(4) For the purposes of this section:

(a) A tank vessel or cargo vessel is considered disabled if any of the following occur:

(i) Any accidental or intentional grounding;

(ii) The total or partial failure of the main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel;

(iii) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including but not limited to, fire, flooding, or collision with another vessel;

(iv) Any other occurrence that creates the serious possibility of an oil spill or an occurrence that may result in such a spill.

(b) A barge is considered disabled if any of the following occur:

(i) The towing mechanism becomes disabled;

(ii) The towboat towing the barge becomes disabled through occurrences defined in (a) of this subsection.

(c) A near miss incident is an incident that requires the pilot or master of a covered vessel to take evasive actions or make significant course corrections in order to avoid a collision with another ship or to avoid a grounding as required by the international rules of the road.

(5) Failure of any person to make a report under this section shall not be used as the basis for the imposition of any fine or penalty.

NEW SECTION. Sec. 424. REGIONAL MARINE SAFETY COMMITTEES. (1) The office shall establish regional marine safety committees at least for the Strait of Juan de Fuca/Northern Puget Sound, Southern Puget Sound, and Grays Harbor/Pacific coast. It is the intent of the legislature that the office also establish a regional marine safety committee jointly with the state of Oregon for the Columbia river. The office by rule shall establish the boundaries of the committees.

(2) The administrator shall appoint to each regional committee for a term of three years six persons representing a cross section of interests and the public with an interest in maritime transportation and environmental issues.

(3) The administrator or his or her designee shall chair each of the regional committees. Each member of the committee shall be reimbursed for actual and necessary expenses incurred in the performance of committee duties in accordance with RCW 43.03.250.

(4) Each regional committee shall be responsible for planning for the safe navigation and operation of tankers, barges, and other vessels within each region. Each committee shall prepare a regional marine safety plan, encompassing all vessel traffic within the region. The coast guard, the federal environmental protection agency, the army corps of engineers, and the navy shall be invited to attend the meetings of each marine regional safety committee.

(5) The administrator shall adopt rules and guidelines for regional marine safety plans in consultation with affected parties. The rules shall require the committees to establish subcommittees to involve all interested parties in the development of the plans and to require the committees to include a summary of public comments and any minority reports with recommendations submitted to the administrator. The rules shall also require the plans to consider all of the following:

(a) Requirements for tug escorts of tankers and other commercial vessels, and speed limits for tankers and other vessels in addition to the requirements imposed by statute;

(b) A review and evaluation of the adequacy of and any changes needed in:

(i) Anchorage designations and sounding checks;

(ii) Communications systems;

(iii) Commercial and recreational fishing, recreational boaters, and other small vessel congestion in shipping lanes; and

(iv) Placement and effectiveness of navigational aids, channel design plans, and the traffic and routings from port construction and dredging projects;

(c) Procedures for routing vessels during emergencies that impact navigation;

(d) Management requirements for control bridges;

(e) Special protection for environmentally sensitive areas;
(f) Suggested mechanisms to ensure that the provisions of the plan are fully and regularly enforced; and

(g) A recommendation as to whether establishing or expanding vessel traffic safety systems within the regions is desirable.

(6) Each regional marine safety plan shall be submitted to the office for approval within one year after the regional marine safety committee is established. The office shall review the plans for consistency with the rules and guidelines and shall approve the plans or give reasons for their disapproval. If a regional marine safety committee does not submit a regional marine safety plan to the office within one year after the committee is established, the office, after consulting with affected interests, may adopt a plan for the region that meets the requirements of subsection (5) of this section.

(7) Upon approval of a plan, the office shall implement those elements of the plan over which the state has authority. If federal authority or action is required, the office shall petition the appropriate agency or congress.

(8) Not later than July 1st of each even-numbered year each regional marine safety committee shall report its findings and recommendations to the marine oversight board established in section 501 of this act and the office concerning vessel traffic safety in its region and any recommendations for improving tanker, barge, and other vessel safety in the region by amending the regional marine safety plan. The regional committees shall also provide technical assistance to the marine oversight board.

(9) The regional safety committees shall recommend to the office the need for, and the structure and design of, an emergency response system for the Strait of Juan de Fuca and the Pacific coast.

NEW SECTION. Sec. 425. TANK VESSEL RESPONSE EQUIPMENT STANDARDS. The office may adopt rules including but not limited to standards for spill response equipment to be maintained on tank vessels. The standards adopted under this section shall be consistent with spill response equipment standards adopted by the United States coast guard.

NEW SECTION. Sec. 426. EMERGENCY RESPONSE SYSTEM. An emergency response system for the Strait of Juan de Fuca shall be established by July 1, 1992. In establishing the emergency response system, the administrator shall consider the recommendations of the regional marine safety committees. The administrator shall also consult with the province of British Columbia regarding its participation in the emergency response system.

NEW SECTION. Sec. 427. CAPTIONS NOT LAW. Section headings as used in this chapter do not constitute any part of the law.

NEW SECTION. Sec. 428. **UNIFIED AND CONSISTENT PLANNING.** The office and the department shall adopt an interagency agreement in accordance with chapter 39.34 RCW to divide responsibilities for the regulation of marine facilities to ensure that no duplication of regulatory responsibilities occurs.

NEW SECTION. Sec. 429. On or before November 15, 1996, the legislative budget committee shall prepare a report to the legislature on the means for future implementation of the provisions in chapter 88.— RCW (sections 414 through 436 of this act).

NEW SECTION. Sec. 430. The office of marine safety is hereby abolished and its powers, duties, and functions are hereby transferred to the department of ecology. All references to the administrator or office of marine safety in the Revised Code of Washington shall be construed to mean the director or department of ecology.

NEW SECTION. Sec. 431. All reports, documents, surveys, books, records, files, papers, or written material in the possession of the office of marine safety shall be delivered to the custody of the department of ecology. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the office of marine safety shall be made available to the department of ecology. All funds, credits, or other assets held by the office of marine safety shall be assigned to the department of ecology.

Any appropriations made to the office of marine safety shall, on the effective date of this section, be transferred and credited to the department of ecology.

Whenever 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.

NEW SECTION. Sec. 432. All employees of the office of marine safety are transferred to the jurisdiction of the department of ecology. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of ecology 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.

NEW SECTION. Sec. 433. All rules and all pending business before the office of marine safety shall be continued and acted upon by the department of ecology. All existing contracts and obligations shall remain in full force and shall be performed by the department of ecology.

NEW SECTION. Sec. 434. The transfer of the powers, duties, functions, and personnel of the office of marine safety shall not affect the validity of any act performed prior to the effective date of this section.

NEW SECTION. Sec. 435. If apportionments of budgeted funds are required because of the transfers directed by sections 431 through 434 of this act, 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. 436. Nothing contained in sections 430 through 435 of this act may 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 personnel board as provided by law.

Sec. 437. RCW 90.48.385 and 1990 c 116 s 16 are each amended to read as follows:

~~((The department of ecology shall study standards for the manner in which, and the equipment with which, tow boats may tow barges carrying oil or hazardous substances as cargo or cargo residue.))~~ The regional marine safety committees established pursuant to section 424 of this 1991 act shall study federal requirements for tow equipment for barges carrying oil in bulk. The committees shall review standards ((shall address but are not limited to)) for: Wire rope specifications, catenary, the design of related on-board equipment, number of cables, ((and)) back-up or barge retrieval systems in case of cable break, and the operation, maintenance, and inspection of cables and other tow equipment.

~~((The department shall seek voluntary compliance with such standards. Finally, the department shall study state jurisdiction over and liability of mandatory compliance with such standards. The department shall report to the appropriate standing committees of the legislature by July 1, 1991, recommendations regarding mandatory compliance with such standards.))~~

The committees shall submit their report to the office within one year after the committees are established. The report shall include a recommendation on whether the office should adopt standards for tow equipment and its maintenance, operation, and inspection. If there is a recommendation that the office adopt standards, the recommended standards shall also be included in the report.

Sec. 438. RCW 90.48.510 and 1987 c 479 s 2 are each amended to read as follows:

~~((After June 30, 1988,))~~ Any person or facility conducting ship refueling and bunkering operations, or the lightering of petroleum products, and any person or facility transferring oil between an onshore or offshore facility

and a tank vessel shall have containment and recovery equipment readily available for deployment in the event of the discharge of oil into the waters of the state and shall deploy the containment and recovery equipment in accordance with standards adopted by the office. All persons conducting refueling, bunkering, or lightering operations, or oil transfer operations shall be trained in the use and deployment of oil spill containment and recovery equipment. ~~((After examining existing equipment locations, the methods and conditions of deployment, and accessibility of any federal or other publicly or privately owned and operated containment and recovery equipment or systems, and reviewing federal, state, or local laws, rules, or regulations and ordinances governing refueling, bunkering, or lightering of petroleum products,))~~. The ((department of ecology may)) office shall adopt rules as necessary to carry out the provisions of this section. The rules shall include standards for the circumstances under which containment equipment should be deployed. An onshore or offshore facility shall include the procedures used to contain and recover discharges in the facility's contingency plan. It is the responsibility of the person providing bunkering, refueling, or lightering services to provide any containment or recovery equipment required under this section. This section does not apply to a person operating a ship for personal pleasure or for recreational purposes.

PART V MARINE OVERSIGHT BOARD

NEW SECTION. Sec. 501. MARINE OVERSIGHT BOARD. (1) The oil marine oversight board is established to provide independent oversight of the actions of the federal government, industry, the department, the office, and other state agencies with respect to oil spill prevention and response for covered vessels and onshore and offshore facilities.

(2)(a) The board may, at its own discretion, study any aspect of oil spill prevention and response for covered vessels and onshore and offshore facilities in the state. The board shall report to the governor and make recommendations to the department and the office on activities of the federal government and industry with respect to oil spill prevention and response for covered vessels and onshore and offshore facilities, including recommendations for the state's response to those actions. The board shall specifically review the need for, and the structure and design of an emergency response system for the Strait of Juan de Fuca and the Pacific coast. The board shall also make recommendations to the legislature and other state agencies on any provision of this chapter, other state laws, and rules, policies, and guidelines adopted by the department, the office, or, other state agencies relating to the prevention and cleanup of oil spills into the waters of the state from covered vessels and onshore and offshore facilities.

(b) To minimize duplication of effort, reviews conducted by the board shall be coordinated with related activities of the federal government, the

department, the office, and other appropriate state and international entities. The Puget Sound water quality authority shall ensure that studies and recommendations by the board shall not be duplicated by any recommendations prepared and adopted pursuant to chapter 90.70 RCW after the effective date of this section.

(c) The board shall evaluate and report at least annually to the governor and the appropriate standing committees of the legislature on oil spill prevention, response, and preparedness programs within the state for covered vessels and onshore and offshore facilities.

(3) There shall be five members of the board appointed by the governor for terms of five years. Members' terms shall be staggered. The members of the board shall be representative of the public and shall have demonstrable knowledge of environmental protection and the study of marine ecosystems, or have familiarity with marine transportation systems.

(4) A chair shall be selected by majority vote of the board. The board shall meet as often as required, but at least four times per year. Members shall be reimbursed for travel and expenses for attending meetings as provided in RCW 43.03.050 and 43.03.060.

(5) The chair may hire staff as necessary for the board to fulfill its responsibilities.

NEW SECTION. Sec. 502. A new section is added to chapter 90.70 RCW to read as follows:

Authority recommendations for oil spill prevention and response shall not be duplicative of those responsibilities given to the marine oversight board under section 501 of this act. The authority may incorporate the findings and recommendations of the marine oversight board into the plan or revisions of the plan submitted to the United States environmental protection agency pursuant to the federal clean water act, 33 U.S.C. Sec. 1330.

PART VI TANKER REQUIREMENTS

Sec. 601. RCW 88.16.170 and 1975 1st ex.s. c 125 s 1 are each amended to read as follows:

Because of the danger of spills, the legislature finds that the transportation of crude oil and refined petroleum products by tankers on the Columbia river and on Puget Sound and adjacent waters creates a great potential hazard to important natural resources of the state and to jobs and incomes dependent on these resources.

The legislature recognizes that the Columbia river has many natural obstacles to navigation and shifting navigation channels that create the risk of an oil spill. The legislature also recognizes Puget Sound and adjacent waters are a relatively confined salt water environment with irregular shorelines and therefore there is a greater than usual likelihood of long-term damage from any large oil spill.

The legislature further recognizes that certain areas of the Columbia river and Puget Sound and adjacent waters have limited space for maneuvering a large oil tanker and that these waters contain many natural navigational obstacles as well as a high density of commercial and pleasure boat traffic.

For these reasons, it is important that large oil tankers be piloted by highly skilled persons who are familiar with local waters and that such tankers have sufficient capability for rapid maneuvering responses.

It is therefore the intent and purpose of RCW 88.16.180 and 88.16.190 to decrease the likelihood of oil spills on the Columbia river and on Puget Sound and its shorelines by requiring all oil tankers above a certain size to employ (~~(Washington state)~~) licensed pilots and(~~(, if lacking certain safety and maneuvering capability requirements,)~~) to be escorted by a tug or tugs while navigating on certain areas of Puget Sound and adjacent waters.

Sec. 602. RCW 88.16.180 and 1983 c 3 s 231 are each amended to read as follows:

Notwithstanding the provisions of RCW 88.16.070, any registered oil tanker(~~(, whether enrolled or registered,)~~) of (~~(fifty)~~) five thousand (~~(deadweight)~~) gross tons or greater, shall be required:

(1) To take a Washington state licensed pilot while navigating Puget Sound and adjacent waters and shall be liable for and pay pilotage rates pursuant to RCW 88.16.035; and

(2) To take a licensed pilot while navigating the Columbia river.

Sec. 603. RCW 88.16.200 and 1977 ex.s. c 337 s 16 are each amended to read as follows:

Any vessel designed for the purpose of carrying as its cargo liquefied natural or propane gas shall adhere to the provisions of RCW 88.16.190(2) as though it (~~(was)~~) were an oil tanker.

NEW SECTION. Sec. 604. RECKLESS OPERATION OF A VESSEL. (1) A person commits the crime of reckless operation of a tank vessel if, while (a) navigating a tank vessel, (b) piloting a tank vessel, or (c) on the vessel control bridge and in control of the motion, direction, or speed of a tank vessel, the person, with recklessness as defined in RCW 9A.08.010, causes a release of oil.

(2) Reckless operation of a tank vessel is a class C felony under chapter 9A.20 RCW.

NEW SECTION. Sec. 605. OPERATION OF A VESSEL WHILE UNDER INFLUENCE OF LIQUOR OR DRUGS. (1) A person is guilty of operating a vessel while under the influence of intoxicating liquor or drugs if the person operates a covered vessel within this state while:

(a) The person has 0.06 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under section 606 of this act; or

(b) The person has 0.06 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood made under section 606 of this act; or

(c) The person is under the influence of or affected by intoxicating liquor or drugs; or

(d) The person is under the combined influence of or affected by intoxicating liquor or drugs.

(2) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(3) Operating a vessel while intoxicated is a class C felony under chapter 9A.20 RCW.

NEW SECTION. Sec. 606. BREATH OR BLOOD ANALYSIS. (1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a vessel while under the influence of intoxicating liquor or drugs, if the amount of alcohol in the person's blood or breath at the time alleged as shown by analysis of his blood or breath is less than 0.06 percent by weight of alcohol in his blood or 0.06 grams of alcohol per two hundred ten liters of the person's breath, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or drugs.

(2) The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under this section shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist shall approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits that are subject to termination or revocation at the discretion of the state toxicologist.

(4) If a blood test is administered under this section, the withdrawal of blood for the purpose of determining its alcoholic content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

(5) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an

additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(6) Upon the request of the person who submits to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to the person or his or her attorney.

NEW SECTION. Sec. 607. LIMITED IMMUNITY FOR BLOOD WITHDRAWAL. No physician, registered nurse, qualified technician, or hospital, or duly licensed clinical laboratory employing or using services of the physician, registered nurse, or qualified technician, may incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under section 606 of this act. This section shall not relieve any physician, registered nurse, qualified technician, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care.

PART VII FINANCIAL RESPONSIBILITY

Sec. 701. RCW 88.40.005 and 1990 c 116 s 29 are each amended to read as follows:

The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters.

NEW SECTION. Sec. 702. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrator" means the administrator of the office of marine safety created in section 402 of this act.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of greater than three hundred gross tons, including but not limited to, commercial fish processing vessels and freighters.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

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

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82-.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) a marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Hazardous substances" means any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(9) "Inland barge" means any barge operating on the waters of the state and certified by the coast guard as an inland barge.

(10) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(11) "Office" means the office of marine safety established by section 402 of this act.

(12) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility, as defined in subsection (7) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(14) "Onshore facility" means any facility, as defined in subsection (7) of this section, any part of which is located in, on, or under any land of the

state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of greater than three hundred or more gross tons or five hundred or more international gross tons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Sec. 703. RCW 88.40.020 and 1990 c 116 s 31 are each amended to read as follows:

(1) Any ((vessel over three hundred gross tons, that transports petroleum products as cargo, and any)) inland barge that transports ((oil or)) hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall establish((, under rules prescribed by the director of the department of ecology,)) evidence of financial responsibility in the amount of the greater of one million dollars, or one hundred fifty dollars per gross ton of such vessel((, to meet the liability to the state of Washington for the following: (1) The actual costs for removal of spills of petroleum products or hazardous substances; (2) civil penalties and fines; and (3) natural resource damages)).

(2)(a) Except as provided in (c) of this subsection, a tank vessel that carries oil as cargo in bulk shall demonstrate financial responsibility to pay at least five hundred million dollars.

(b) The administrator by rule may establish a lesser standard of financial responsibility for barges of three hundred gross tons or less. The standard shall set the level of financial responsibility based on the quantity of cargo the barge is capable of carrying. The administrator shall not set the standard for barges of three thousand gross tons or less below that required under federal law.

(c) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter.

(3) A cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay the greater of at least six hundred dollars per gross ton or five hundred thousand dollars.

(4) The documentation of financial responsibility shall demonstrate the ability of the document holder to meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and necessary expenses.

(5) The office may by rule set a lesser amount of financial responsibility for a tank vessel that meets standards for construction, propulsion, equipment, and personnel established by the office. The office shall require as a minimum level of financial responsibility under this subsection the same level of financial responsibility required under federal law.

(6) This section shall not apply to a covered vessel owned or operated by the federal government or by a state or local government.

NEW SECTION. Sec. 704. An onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected counties and cities for damages that might occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state. The department shall consider such matters as the amount of oil that could be spilled into the navigable waters from the facility, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill and the commercial availability and affordability of financial responsibility. This section shall not apply to an onshore or offshore facility owned or operated by the federal government or by the state or local government.

Sec. 705. RCW 88.40.030 and 1990 c 116 s 32 are each amended to read as follows:

Financial responsibility required by this chapter may be established by any one of, or a combination of, the following methods acceptable to the ((director of)) office of marine safety or the department of ecology: (1) Evidence of insurance; (2) surety bonds; (3) qualification as a self-insurer; or (4) other evidence of financial responsibility. Any bond filed shall be issued

by a bonding company authorized to do business in the United States. Documentation of such financial responsibility shall be kept on any ~~((barge or tank))~~ covered vessel ~~((transporting petroleum products or hazardous substances as cargo))~~ and filed with the ~~((department. The owner or operator of any other vessel shall maintain on the vessel a certificate issued by the United States coast guard evidencing compliance with the requirements of section 311 of the federal clean water act, 33 U.S.C. Sec. 1251 et seq))~~ office at least twenty-four hours before entry of the vessel into the navigable waters of the state. A covered vessel is not required to file documentation of financial responsibility twenty-four hours before entry of the vessel into the navigable waters of the state, if the vessel has filed documentation of financial responsibility with the federal government, and the level of financial responsibility required by the federal government is the same as or exceeds state requirements. The owner or operator of the vessel may file with the office a certificate evidencing compliance with the requirements of another state's or federal financial responsibility requirements if the state or federal government requires a level of financial responsibility the same as or greater than that required under this chapter.

Sec. 706. RCW 88.40.040 and 1989 1st ex.s. c 2 s 5 are each amended to read as follows:

(1) The office shall deny entry to the waters of the state to any vessel that does not meet the financial responsibility requirements of this chapter. Any vessel owner or operator that does not meet the financial responsibility requirements of this chapter and any rules prescribed thereunder or the federal oil pollution act of 1990 shall be reported by the office to the ((secretary of transportation who shall suspend the privilege of operating said vessel until financial responsibility is demonstrated)) United States coast guard.

(2) The office shall enforce section 1016 of the federal oil pollution act of 1990 as authorized by section 1019 of the federal act.

(3) Any onshore or offshore facility owner or operator who does not meet the financial responsibility requirements of section 704 of this 1991 act and any rules adopted by the department or office shall be reported to the secretary of state. The secretary of state shall suspend the facility's privilege of operating in this state until financial responsibility is demonstrated.

PART VIII FUNDS

NEW SECTION. Sec. 801. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(2) "Crude oil" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline.

(3) "Department" means the department of revenue.

(4) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

(5) "Navigable waters" means those waters of the state and their adjoining shorelines that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

(6) "Person" has the meaning provided in RCW 82.04.030.

(7) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as a fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

(8) "Taxpayer" means the person owning crude oil or petroleum products immediately before the same are off-loaded at a marine terminal in this state and who is liable for the taxes imposed by this chapter.

(9) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of travelling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

NEW SECTION. Sec. 802. (1) An oil spill response tax is imposed on the privilege of off-loading crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately before off-loading begins at the rate of two cents per barrel of crude oil or petroleum product off-loaded.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of off-loading crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately before off-loading begins at the rate of three cents per barrel of crude oil or petroleum product off-loaded.

(3) The taxes imposed by this chapter shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products off-loaded at the marine terminal. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the imposition of the taxes, or having

collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine terminal operator shall relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter shall be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected shall be stated separately from other charges made by the marine terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine terminal operator or to the department, shall constitute a debt from the taxpayer to the marine terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter, shall be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the owner of crude oil or petroleum products off-loaded in this state may pay the taxes imposed by this chapter directly to the department. The department shall give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department shall provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator shall relieve the marine terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section shall be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the state oil spill administration account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management shall determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and shall not be used to challenge the validity of any tax imposed under this chapter. The office of financial management shall promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than twenty-five million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than fifteen million dollars.

(11) The office of marine safety, the department of revenue, and the department of trade and economic development shall study tax credits for taxpayers employing vessels with the best achievable technology and the best available protection to reduce the risk of oil spills to the navigable waters of the state and submit the study to the appropriate standing committees of the legislature by December 1, 1992.

NEW SECTION. Sec. 803. The taxes imposed under this chapter shall only apply to the first off-loading of crude oil or petroleum products at a marine terminal in this state and not to the later transporting and subsequent off-loading of the same oil or petroleum product, whether in the form originally off-loaded in this state or after refining or other processing.

NEW SECTION. Sec. 804. Credit shall be allowed against the taxes imposed under this chapter for any crude oil or petroleum products off-loaded at a marine terminal and subsequently exported from or sold for export from the state.

NEW SECTION. Sec. 805. The state oil spill response account is created in the state treasury. All receipts from section 802(1) of this act shall be deposited in the account. All costs reimbursed to the state by a responsible party or any other person for responding to a spill of oil shall also be deposited in the account. Moneys in the account shall be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. The account shall be used exclusively to pay for the costs associated with the response to spills of crude oil or petroleum products into the navigable waters of the state. Payment of response costs under this section shall be limited to spills which the director has determined are likely to exceed fifty thousand dollars. Before expending moneys from the account, the director shall make reasonable efforts to obtain funding for response

costs from the person responsible for the spill and from other sources, including the federal government. Reimbursement for response costs shall be allowed only for costs which are not covered by funds appropriated to the agencies responsible for response activities. Costs associated with the response to spills of crude oil or petroleum products shall include:

- (1) Natural resource damage assessment and related activities;
- (2) Spill related response, containment, wildlife rescue, cleanup, disposal, and associated costs;
- (3) Interagency coordination and public information related to a response; and
- (4) Appropriate travel, goods and services, contracts, and equipment.

NEW SECTION. Sec. 806. The state oil spill administration account is created in the state treasury. All receipts from section 802(2) of this act shall be deposited in the account. Moneys from the account may be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. On July 1 of each odd-numbered year, if receipts deposited in the account from the tax imposed by section 802(2) of this act for the previous fiscal biennium exceed the amount appropriated from the account for the previous fiscal biennium, the state treasurer shall transfer the amount of receipts exceeding the appropriation to the oil spill response account. If, on the first day of any calendar month, the balance of the spill response account is greater than twenty-five million dollars and the balance of the administration account exceeds the unexpended appropriation for the current biennium, then the tax under section 802(2) of this act shall be suspended on the first day of the next calendar month until the beginning of the following biennium, provided that the tax shall not be suspended during the last six months of the biennium. If the tax imposed under section 802(2) of this act is suspended during two consecutive biennia, the department shall by November 1st after the end of the second biennium, recommend to the appropriate standing committees an adjustment in the tax rate. For the period 1991-93 the state treasurer may transfer funds from the oil spill response account to the oil spill administration account in amounts necessary to support appropriations made from the oil spill administration account in the omnibus appropriations act. Expenditures from the oil spill administration account shall be used exclusively for the administrative costs related to the purposes of this chapter, and chapters 90.48, 88.40, and 88.— (sections 414 through 436 of this act) RCW. Costs of administration include the costs of:

- (1) Routine responses not covered under section 805 of this act;
- (2) Management and staff development activities;
- (3) Development of rules and policies and the state-wide plan provided for in RCW 90.48.378 as recodified by this act;
- (4) Facility and vessel plan review and approval, drills, inspections, investigations, enforcement, and litigation;

- (5) Interagency coordination and public outreach and education;
- (6) Collection and administration of the tax provided for in chapter 82.— RCW (sections 801 through 804, 808, and 809 of this act); and
- (7) Appropriate travel, goods and services, contracts, and equipment.

NEW SECTION. Sec. 807. The director of the department of ecology shall submit a report to the appropriate standing committees of the legislature by November 1 of each even-numbered year showing detailed information regarding expenditures authorized by the director under section 805 of this act. The report shall include, but not be limited to:

- (1) The total amount spent for each response for which the director has approved expenditures and the amount paid for from the spill prevention and response account;
- (2) The amount recovered from a responsible party for each spill;
- (3) The amount of time between a spill and the time a responsible party assumes responsibility for the response costs related to a spill;
- (4) The number of incidents for which the director has determined that the responsible party or another source was available to pay for the response; and
- (5) A recommendation concerning the need to continue collecting the tax under section 802(1) of this act.

This section shall expire December 31, 1996.

NEW SECTION. Sec. 808. The department shall adopt such rules as may be necessary to enforce and administer the provisions of this chapter. Chapter 82.32 RCW applies to the administration, collection, and enforcement of the taxes levied under this chapter.

NEW SECTION. Sec. 809. The taxes imposed in this chapter shall take effect October 1, 1991.

Sec. 810. RCW 90.48.142 and 1989 c 262 s 2 are each amended to read as follows:

- (1) Any person who:
 - (a)(i) Violates any of the provisions of this chapter(;) or chapter 90.56 RCW;
 - (ii) Fails to perform any duty imposed by this chapter(;) or chapter 90.56 RCW;
 - (iii) Violates an order or other determination of the department or the director made pursuant to the provisions of this chapter(,including) or chapter 90.56 RCW;
 - (iv) Violates the conditions of a waste discharge permit issued pursuant to RCW 90.48.160(,and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state.); or
 - (v) Otherwise causes a reduction in the quality of the state's waters below the standards set by the department or, if no standards have been set,

causes significant degradation of water quality, thereby damaging the same((-)); and

(b) Causes the death of, or injury to, fish, animals, vegetation, or other resources of the state;

shall be liable to pay the state and affected counties and cities damages in an amount ((equal to the sum of money necessary to: (a) Restore any damaged resource to its condition prior to the injury, to the extent technically feasible, and compensate for the lost value incurred during the period between injury and restoration; or (b) compensate for the lost value throughout the duration of the injury that the resource previously provided if restoration is not technically feasible and, when only partial restoration is technically feasible, compensate for the remaining lost value. "Technical feasibility" or "technically feasible" shall mean for the purposes of this subsection, that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource prior to the injury.

(2) Restoration shall include the cost to restock such waters, replenish or replace such resources, and otherwise restore the stream, lake or other waters of the state, including any estuary, ocean area, submerged lands, shoreline, bank, or other lands adjoining such waters to its condition prior to the injury, as such condition is determined by the department. The lost value of a damaged resource shall be equal to the sum of consumptive, non-consumptive, and indirect use values, as well as lost taxation, leasing, and licensing revenues. Indirect use values may include existence, bequest, option, and aesthetic values. Damages shall be determined by generally accepted and cost-effective procedures.

(3) Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of Thurston county or the county in which such damages occurred. PROVIDED, That if damages occurred in more than one county the attorney general may bring action in any of the counties where the damages occurred. Any money so recovered by the attorney general shall be transferred to the coastal protection fund established under RCW 90.48-.390. A steering committee consisting of representatives of the departments of ecology, fisheries, wildlife, natural resources, and the parks and recreation commission shall authorize the expenditure of the moneys collected under this section after consulting impacted local agencies and local and tribal governments. The department shall chair the steering committee. The moneys collected under this section shall only be used for the following purposes: (a) Environmental restoration and enhancement projects intended to restore or enhance environmental, recreational, or aesthetic resources for the benefit of Washington's citizens; (b) investigations of the long-term effects of discharges, including sewer sludge, on state resources; and (c) reimbursement of agencies for reasonable reconnaissance and damage

~~assessment costs under this chapter. Agencies may not be reimbursed under this section for the salaries and benefits of permanent employees for routine operational support. Agencies may only be reimbursed under this section if money for reconnaissance and damage assessment activities is unavailable from other sources. In authorizing restoration or enhancement projects, preference shall be given to projects within counties where the injury occurred)) determined pursuant to RCW 90.48.367.~~

(2) No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to RCW 90.48.160.

NEW SECTION. Sec. 811. A new section is added to chapter 90.48 RCW to read as follows:

For the purposes of this chapter, "technical feasibility" or "technically feasible" means that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource before the injury.

Sec. 812. RCW 90.48.366 and 1989 c 388 s 2 are each amended to read as follows:

By July 1, 1991, the department, in consultation with the departments of fisheries, wildlife, and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the discharge of oil in violation of (~~RCW 90.48.320, by persons liable under RCW 90.48.336~~) this chapter and chapter 90.56 RCW. The department shall establish a scientific advisory board to assist in establishing the compensation schedule. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than fifty dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the (~~oil~~) spill and shall take into account:

(1) Characteristics of (~~the~~) any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensitivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; and (f) other areas of special ecological or recreational importance, as determined by the department; and

(3) Actions taken by the party who spilled ~~((the))~~ oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the ~~((number of gallons))~~ quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as ~~((oiled))~~ injured fish or wildlife.

Sec. 813. RCW 90.48.367 and 1989 c 388 s 3 are each amended to read as follows:

(1) ~~((Prior to assessing compensation under RCW 90.48.366))~~ After a spill or other incident causing damages to the natural resources of the state, the department shall conduct a formal preassessment screening as provided in RCW 90.48.368.

(2) The department shall use the compensation schedule established under RCW 90.48.366 to determine the amount of damages if the preassessment screening committee determines that: (a) Restoration or enhancement of the injured resources is not technically feasible; (b) damages are not quantifiable at a reasonable cost; and (c) the restoration and enhancement projects or studies proposed by the liable parties are insufficient to adequately compensate the people of the state for damages ~~((sustained as a result of the oil spill))~~.

~~((2) Compensation shall not be assessed under this section for oil spills for which damages have been or will be assessed under RCW 90.48.142)).~~

(3) If the preassessment screening committee determines that the compensation schedule should not be used, compensation shall be assessed for the amount of money necessary to restore any damaged resource to its condition before the injury, to the extent technically feasible, and compensate for the lost value incurred during the period between injury and restoration.

(4) Restoration shall include the cost to restock such waters, replenish or replace such resources, and otherwise restore the stream, lake, or other waters of the state, including any estuary, ocean area, submerged lands, shoreline, bank, or other lands adjoining such waters to its condition before the injury, as such condition is determined by the department. The lost value of a damaged resource shall be equal to the sum of consumptive, non-consumptive, and indirect use values, as well as lost taxation, leasing, and licensing revenues. Indirect use values may include existence, bequest, option, and aesthetic values. Damages shall be determined by generally accepted and cost-effective procedures, including, but not limited to, contingent valuation method studies.

(5) Compensation assessed under this section shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington and affected counties and cities in the superior court of

Thurston county or any county in which damages occurred. Moneys recovered by the attorney general under this section shall be deposited in the coastal protection fund established under RCW 90.48.390, and shall only be used for the purposes stated in RCW 90.48.400.

~~((4))~~ (6) Compensation assessed under this section ~~((for a particular oil spill))~~ shall preclude claims under this chapter by local governments for compensation for damages to publicly owned resources resulting from the same ~~((spill))~~ incident.

Sec. 814. RCW 90.48.368 and 1989 c 388 s 4 are each amended to read as follows:

(1) The department shall adopt rules establishing a formal process for preassessment screening of damages resulting from ~~((oil))~~ spills to the waters of the state causing the death of, or injury to, fish, animals, vegetation, or other resources of the state. The rules shall specify the conditions under which the department shall convene a preassessment screening committee. The preassessment screening process shall occur concurrently with reconnaissance activities. The committee shall use information obtained from ~~((oil spill))~~ reconnaissance activities as well as any other relevant resource and resource use information. For each ~~((oil spill))~~ incident, the committee shall determine whether a damage assessment investigation should be conducted ~~((under RCW 90.48.142))~~, or ~~((alternatively))~~, whether the compensation schedule authorized under RCW 90.48.366 and 90.48.367 should be used to assess damages. The committee may accept restoration or enhancement projects or studies proposed by the liable parties in lieu of some or all of: (a) The compensation schedule authorized under ~~((this chapter))~~ RCW 90.48.366 and 90.48.367; or (b) the claims from damage assessment studies authorized under RCW 90.48.142.

(2) A preassessment screening committee may consist of representatives of the departments of ecology, fisheries, wildlife, natural resources, social and health services, and emergency management, the parks and recreation commission, as well as other federal, state, and local agencies, and tribal and local governments whose presence would enhance the reconnaissance or damage assessment aspects of ~~((oil))~~ spill response. The department shall chair the committee and determine which representatives will be needed on a spill-by-spill basis.

(3) The committee shall consider the following factors when determining whether a damage assessment study authorized under RCW ~~((90.48-142))~~ 90.48.367 should be conducted: (a) Whether evidence from reconnaissance investigations suggests that injury has occurred or is likely to occur to publicly owned resources; (b) the potential loss in services provided by resources injured or likely to be injured and the expected value of the potential loss; (c) whether a restoration project to return lost services is technically feasible; (d) the accuracy of damage quantification methods that

could be used and the anticipated cost-effectiveness of applying each method; (e) the extent to which likely injury to resources can be verified with available quantification methods; and (f) whether the injury, once quantified, can be translated into monetary values with sufficient precision or accuracy.

(4) When a resource damage assessment is required for an oil spill in the navigable waters of the state, as defined in RCW 90.48.315 as recodified by this 1991 act, the state trustee agency responsible for the resource and habitat damaged shall conduct the damage assessment and pursue all appropriate remedies with the responsible party.

(5) Oil spill damage assessment studies authorized under RCW ((90-48-142)) 90.48.367 may only be conducted if the committee, after considering the factors enumerated in subsection (3) of this section, determines that the damages to be investigated are quantifiable at a reasonable cost and that proposed assessment studies are clearly linked to quantification of the damages incurred.

((5)) (6) As new information becomes available, the committee may reevaluate the scope of damage assessment using the factors listed in subsection (3) of this section and may reduce or expand the scope of damage assessment as appropriate.

((6)) (7) The preassessment screening process shall provide for the ongoing involvement of persons who may be liable for damages resulting from an oil spill. The department may negotiate with a potentially liable party to perform restoration and enhancement projects or studies which may substitute for all or part of the compensation authorized under RCW 90.48.366 and 90.48.367 or the damage assessment studies authorized under RCW ((90-48-142)) 90.48.367.

((7)) (8) For the purposes of this section and RCW 90.48.367, the cost of a damage assessment shall be considered "reasonable" when the anticipated cost of the damage assessment is expected to be less than the anticipated damage that may have occurred or may occur.

Sec. 815. RCW 90.48.390 and 1989 c 388 s 7 and 1989 c 262 s 3 are each reenacted and amended to read as follows:

The coastal protection fund is established to be used by the department as a revolving fund for carrying out the purposes of restoration of natural resources under this chapter and chapter 90.56 RCW ((90-48-315 through 90.48.365, 78.52.020, 78.52.125, 82.36.330, 90.48.142, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907, and 90.48.366 through 90.48.368)). To this fund there shall be credited penalties, fees, damages, ((and)) charges received pursuant to the provisions of this chapter and chapter 90.56 RCW ((90-48-142 and 90.48-315 through 90.48-365)), compensation for damages received under this chapter and chapter 90.56 RCW ((90-48-366 through 90.48-368)), and an amount equivalent to one cent per gallon from each marine use refund claim under RCW 82.36.330.

Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its powers, duties, and functions under RCW (~~90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36-.330;~~) 90.48.142, (~~90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907~~) 90.48.366, 90.48.367, and 90.48.368 shall be deposited with the state treasurer to the credit of the fund and may be invested in such manner as is provided for by law. Interest received on such investment shall be credited to the fund.

Sec. 816. RCW 90.48.400 and 1990 c 116 s 14 are each amended to read as follows:

(1) Moneys in the coastal protection fund shall be disbursed for the following purposes and no others:

(a) ~~((All costs of the department related to the enforcement of RCW 90.48.315 through 90.48.365, 90.48.371 through 90.48.378, 90.48.381, 90.48.383, 90.48.385, 90.48.387, 90.48.388, 78.52.020, 78.52.125, 82.36-.330, 90.48.142, 90.48.903, 90.48.906, and 90.48.907 including but not limited to equipment rental and contracting costs:~~

~~(b) All costs involved in the abatement of pollution related to the discharge of oil and other hazardous substances))~~ Environmental restoration and enhancement projects intended to restore or enhance environmental, recreational, or aesthetic resources for the benefit of Washington's citizens;

(b) Investigations of the long-term effects of oil spills; and

(c) Development and implementation of an aquatic land geographic information system.

~~((c))~~ (2) The director may allocate a portion of the fund to be devoted to research and development in the causes, effects, and removal of pollution caused by the discharge of oil or other hazardous substances.

~~((2) Moneys disbursed from the coastal protection fund for the abatement of pollution caused by the discharge of oil or other hazardous substances shall be reimbursed to the fund whenever:~~

~~(a) Moneys are available under any federal program; or~~

~~(b) Moneys are available from a recovery made by the department from the person liable for the discharge of oil or other hazardous substances:~~

~~(3) Moneys collected under RCW 90.48.142 shall only be used for the purposes enumerated in that section, subject to the approval of the steering committee:~~

~~(4))~~ (3) A steering committee consisting of representatives of the department of ecology, fisheries, wildlife, and natural resources, and the parks and recreation commission shall authorize the expenditure of the moneys collected under RCW 90.48.366 through 90.48.368, after consulting impacted local agencies and local and tribal governments. ~~((The moneys collected under RCW 90.48.366 through 90.48.368 shall only be used for the following purposes: (a) Environmental restoration and enhancement projects~~

~~intended to restore or enhance environmental, recreational, or aesthetic resources for the benefit of Washington's citizens; (b) investigations of the long-term effects of oil spills and the release of other hazardous substances on state resources; (c) reimbursement of agencies for reasonable reconnaissance and damage assessment costs; and (d) wildlife rescue and rehabilitation.))~~

(4) Agencies may not be reimbursed ((under this section)) from the coastal protection fund for the salaries and benefits of permanent employees for routine operational support. Agencies may only be reimbursed under this section if money for reconnaissance and damage assessment activities is unavailable from other sources.

Sec. 817. RCW 90.48.369 and 1989 c 388 s 5 are each amended to read as follows:

The department shall submit an annual report to the appropriate standing committees of the legislature for the next five years beginning January 1, 1990. The annual report shall cover the implementation of ~~((this act))~~ RCW 90.48.366, 90.48.367, 90.48.368, and 90.48.369 and shall include information on each ~~((oil))~~ spill for which a preassessment screening committee was convened, the outcome of each process, any compensation claims imposed or damage assessment studies conducted, and the revenues to and expenditures from the coastal protection fund.

PART IX MARITIME COMMISSION

Sec. 901. RCW 88.44.010 and 1990 c 117 s 2 are each amended to read as follows:

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

(1) "Administrator" means the administrator of the office of marine safety created by section 402 of this 1991 act.

(2) "Business class" means a recognized trade segment of the maritime industry.

~~((2))~~ (3) "Commission" means the Washington state maritime commission.

~~((3))~~ "Director" means the director of the department of ecology or their duly authorized representative.))

(4) "Fishing vessel" means a vessel ~~((that))~~ (a) on which persons commercially engage((s)) in: ((a)) (i) Catching, taking, or harvesting fish; ((b)) (ii) preparing fish or fish products; or ((c)) (b) that supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish.

(5) "Foreign vessel" means a vessel of foreign registry or operated under the authority of a country, except the United States.

(6) "Oil" or "oils" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural gas, propane, butane, oils distilled from coal, and other liquid hydrocarbons regardless of specific gravity, or any other petroleum related products.

(7) "Oceanographic research vessel" means a vessel that is employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

(8) "Protection and indemnity club" means a mutual insurance organization formed by a group of shipowners or operators in order to secure cover for various risks of vessel operation, including oil spill costs, not covered by normal hull insurance.

(9) "Public vessel" means a vessel that is owned, or chartered and operated by the United States government, by a state of the United States, or a government of a foreign country and is not engaged in commercial service.

(10) "State" means a state of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(11) "Steamship agent or agency" means an agent or agency appointed by a vessel owner or operator to enter or clear vessels at ports within the state of Washington and to conduct onshore activities, or contract on behalf of the owner or operator for whatever is required for the efficient operation of the vessel.

(12) "Steamship liner company" means a steamship company maintaining a regular schedule of calls at designated ports of the state of Washington.

(13) "Towboat" means a commercial vessel engaged in, or intending to engage in, the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side.

(14) "United States flag vessel" means a vessel documented under the laws of the United States or registered under the laws of any state of the United States.

(15) "Vessel" means every description of watercraft, other than a sea-plane on water, used or capable of being used as a means of transportation on water, carrying oil as fuel or cargo, and over three hundred gross registered tons, except oceanographic research vessels, public vessels, vessels being employed exclusively for pleasure, or vessels which, prior to entering Washington waters, have formerly arranged with an officially recognized cleanup cooperative or with a private cleanup contractor for immediate oil spill response.

(16) "Vessel owner or operator" means the legal owner of a vessel and/or the charterer or other person in charge of the day-to-day operation.

(17) "Waters of this state" or "waters of the state of Washington" ~~((shall mean all navigable waters within the state of Washington as defined in Article 24, section 1 of the state Constitution))~~ has the meaning in RCW 90.48.315 as recodified by this 1991 act.

Sec. 902. RCW 88.44.020 and 1990 c 117 s 3 are each amended to read as follows:

There is created ~~((a))~~ the Washington state maritime commission to be known and designated and declared a corporate body. The powers and duties of the commission shall include the following:

(1) To ~~((elect a chairperson and such other officers as it deems advisable, and to))~~ adopt, rescind, and amend rules and orders for the exercise of its powers, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ, and at its pleasure discharge, a manager, secretary, agents, attorneys, consultants, companies, organizations, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices, incur expenses, enter into contracts, and create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(5) To assess vessels transiting the waters of this state, to collect such assessments, investigate violations, and enforce the provisions of this chapter, except for vessels which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon;

(6) To keep accurate record of all of its dealings, which shall be open to inspection and audit by the state auditor;

(7) To sue and be sued, adopt a corporate seal, and have all of the powers of a corporation;

(8) To expend funds for commission-related education and training programs as the commission deems appropriate;

(9) To borrow money and incur indebtedness;

(10) To establish an oil spill first response system, except for vessels which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon. This system will provide a mandatory emergency response communications network for vessels involved in commerce in Washington waters, and provide an immediate response to such vessels which, for whatever reason, discharge oil into the state's waters. In the event of an oil spill or threatened oil spill, the system must be able to provide a complete response for the first twenty-four hours after the initial report, which may include, but not be limited to, as needed, response vessel

or vessels, boom equipment, skimmers, qualified personnel, and wildlife care centers.

The commission may establish, by or before July 1, 1992, an oil spill first response system for vessels which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon;

(11) To enter into contracts with cleanup contractors to provide spill response, or with other organizations or companies for communication services;

(12) To recover oil spill first response system costs from a responsible vessel owner or operator in the event of a spill or threatened release;

(13) To hold response readiness drills with state and federal agencies;

(14) To work with other states' and countries' maritime organizations, cleanup cooperatives, and governmental response agencies; ~~(and)~~

(15) To develop an oil spill contingency plan to comply with state statutes and rules for those vessels covered by the commission, except for vessels operating on the portion of the Columbia river that runs between the states of Washington and Oregon. The commission shall develop an oil spill contingency plan for vessels which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon, not later than January 1, 1993;

(16) To develop a data base from existing information sources, of accidents, groundings, near misses, and oil discharges of all cargo and passenger vessels entering the waters of the state and to report any such information to the office of marine safety for the purposes of preparing a summary of accidents and near miss incidents; and

(17) To report annually to the governor, the office of marine safety, and the appropriate standing committees of the legislature on the commission's work and the number of incidents to which the commission's first response system has responded, and make recommendations to improve the safety of maritime transportation.

Sec. 903. RCW 88.44.030 and 1990 c 117 s 4 are each amended to read as follows:

The commission shall be comprised of nine voting members. ~~((Six))~~ Seven persons~~((, each representing a))~~ shall be appointed by the governor to represent specific business classes~~((, shall be elected to membership in the commission and one person shall be appointed by the commission members))~~. Two of the members shall represent steamship liner companies, one American flag and one foreign flag. One member shall represent towboat companies. One member shall represent fishing vessels. One member shall represent steamship agencies serving tramp vessels. One member shall represent protection and indemnity clubs or other marine brokers or insurers of oil spill cleanup costs for vessels operating in Washington waters. One member shall represent steamship agencies serving tramp vessels on the Columbia river. The governor shall also appoint one member with maritime,

marine labor, or marine spill cleanup experience and one member from the environmental community with marine experience (~~((shall be appointed from the public by the governor))~~). In addition, the (~~((director, the United States coast guard captain of the port for Puget Sound, the United States coast guard captain of the port for that portion of the Columbia river that runs between Washington and Oregon;))~~) administrator and a state pilot licensed under chapter 88.16 RCW(~~(;)~~) who pilots in the waters of the state of Washington, or their designees, will serve as nonvoting (~~((ex-officio))~~) members. The United States coast guard captain of the port for Puget Sound and the United States coast guard captain of the port for that portion of the Columbia river that runs between Washington and Oregon shall be invited to attend meetings of the commission. The state-licensed pilot shall be selected by the Washington state board of pilotage commissioners.

Members of the commission must have had a minimum of five years' experience in their business class and be actively employed by or on behalf of a company within the business class for whom they shall represent. However, the protection and indemnity or insurance member may be a designee of the international group of protection and indemnity clubs, or any such marine insurers engaged in business within the state.

The commission shall meet at least (~~((quarterly every))~~) twice each year.

Sec. 904. RCW 88.44.040 and 1990 c 117 s 5 are each amended to read as follows:

~~((The regular term of office of the members of the commission shall be three years from July 1 following their election and until their successors are elected and qualified. The commission shall hold its annual meeting during the month of October each year for the purpose of electing officers and the transaction of other business and shall hold such other meetings during the year as it shall determine.~~

~~Commission members shall be first nominated and elected in 1990 in the manner set forth in RCW 88.44.050 and shall take office as soon as they are qualified. However, expiration of the term of the respective commission members first elected in 1990 shall be as follows:~~

~~(1) Foreign flag liner and fishing vessel members on July 1, 1991;
(2) Protection and indemnity club or marine member, and public member on July 1, 1992; and~~

~~(3) All other members on July 1, 1993;))~~ The governor shall appoint members of the commission for three-year terms. The governor shall appoint the chairperson. The members of the commission elected before the effective date of this section shall continue as members until their terms would have expired under section 5, chapter 117, Laws of 1990.

The respective terms shall end on June 30 of each third year thereafter. Any vacancies that occur on the commission shall be filled by (~~((appointment of an eligible person by the other members of the commission; and such appointee shall hold office for the remainder of the term for which~~

~~they are appointed to fill, so that commission memberships shall be on a uniform staggered basis)) the governor to serve out the remainder of the unexpired term.~~

Sec. 905. RCW 88.44.080 and 1990 c 117 s 9 are each amended to read as follows:

A majority of the voting members of the commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out-of-state on official commission business. Compensation and reimbursement shall be from commission funds only.

~~((Resignations of commission members will be filled by a majority of the remaining commission members. The appointed commission members shall serve out the remaining term. If a commission member leaves the employment of their respective business class for more than one hundred twenty days, the commission member must resign from that position. A commission member may be removed from the commission for just cause by a two-thirds majority vote of commission members.))~~

Sec. 906. RCW 88.44.110 and 1990 c 117 s 12 are each amended to read as follows:

If it appears from investigation by the commission that the revenue from the assessment levied on vessels under this chapter is inadequate to accomplish the purposes of this chapter, the commission by rule shall ~~((adopt a resolution setting forth the necessities of the industry, the extent and probable cost of the required research, spill cleanup procedures and operations, public and industry education, administrative operations, the extent of public convenience, interest, and necessity, and probable revenue from the assessment levied. After the proper regulatory hearings, the commission may))~~ increase the assessment to a sum determined by the commission to be necessary for those purposes. The rule adopting the increase shall be filed with the administrator. An increase ((becomes effective)) shall not take effect earlier than ninety days after the ((resolution)) rule is adopted ((or on any other date provided for in the resolution)) and filed with the administrator, unless the administrator determines that the increase is not justified.

Sec. 907. RCW 88.44.160 and 1990 c 117 s 17 are each amended to read as follows:

Rules and orders adopted by the commission shall be filed with the ~~((director))~~ administrator and shall become effective pursuant to the provisions of the administrative procedure act.

PART X
PILOTAGE

Sec. 1001. RCW 88.16.010 and 1987 c 485 s 1 are each amended to read as follows:

(1) The board of pilotage commissioners of the state of Washington is hereby created and shall consist of the assistant secretary of marine transportation of the department of transportation of the state of Washington, or the assistant secretary's designee who shall be an employee of the marine division, who shall be chairperson, the administrator of the office of marine safety, or the administrator's designee, and ~~((six))~~ seven members appointed by the governor and confirmed by the senate. Each of ~~((said))~~ the appointed commissioners shall be appointed for a term of four years from the date of ~~((said))~~ the member's commission. No person shall be eligible for appointment to ~~((said))~~ the board unless that person is at the time of appointment eighteen years of age or over and a citizen of the United States and of the state of Washington. Two of ~~((said))~~ the appointed commissioners shall be pilots licensed under this chapter and actively engaged in piloting upon the waters covered by this chapter for at least three years immediately preceding the time of appointment and while serving on the board. One pilot shall be from the Puget Sound pilotage district and one shall be from the Grays Harbor pilotage district. Two of ~~((said))~~ the appointed commissioners shall be actively engaged in the ownership, operation, or management of deep sea cargo and/or passenger carrying vessels for at least three years immediately preceding the time of appointment and while serving on the board. One of said shipping commissioners shall be a representative of American and one of foreign shipping. One of the commissioners shall be a representative from a recognized environmental organization concerned with marine waters. The remaining commissioners shall be persons interested in and concerned with pilotage, maritime safety, and marine affairs, with broad experience related to the maritime industry exclusive of experience as either a state licensed pilot or as a shipping representative.

(2) Any vacancy in an appointed position on the board shall be filled by the governor for the remainder of the unfilled term, subject to confirmation by the senate.

(3) ~~((Four))~~ Five members of the board shall constitute a quorum. At least one pilot, one shipping representative, and one public member must be present at every meeting. All commissioners and the chairperson shall have a vote.

Sec. 1002. RCW 88.16.090 and 1990 c 116 s 27 and 1990 c 112 s 1 are each reenacted and amended to read as follows:

(1) A person may pilot any vessel subject to the provisions of this chapter on waters covered by this chapter only if appointed and licensed to pilot such vessels on said waters under and pursuant to the provisions of this chapter.

(2) A person is eligible to be appointed a pilot if the person is a citizen of the United States, over the age of twenty-five years and under the age of seventy years, a resident of the state of Washington at the time of appointment and only if the pilot applicant holds as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than one thousand six hundred gross tons or as a master of inland steam or motor vessels of not more than one thousand six hundred gross tons, such license to have been held by the applicant for a period of at least two years prior such license to have been held by the applicant for a period of at least two years prior to taking the Washington state pilotage examination and a first class United States endorsement without restrictions on that license to pilot in the pilotage districts for which the pilot applicant desires to be licensed, and if the pilot applicant meets such other qualifications as may be required by the board. A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) Pilots shall be licensed hereunder for a term of five years from and after the date of the issuance of their respective state licenses. Such licenses shall thereafter be renewed as of course, unless the board shall withhold same for good cause. Each pilot shall pay to the state treasurer an annual license fee established by the board of pilotage commissioners pursuant to chapter 34.05 RCW, but not to exceed one thousand five hundred dollars, to be placed in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(4) Pilot applicants shall be required to pass a written and oral examination administered and graded by the board which shall test such applicants on this chapter, the rules of the board, local harbor ordinances, and such other matters as may be required to compliment the United States examinations and qualifications. The board shall ~~((conduct the examination on a regular date, as prescribed by rule, at least once every two years))~~ hold examinations at such times as will, in the judgment of the board, ensure the maintenance of an efficient and competent pilotage service. An examination shall be scheduled for the Puget Sound pilotage district if there are three or fewer successful candidates from the previous examination who are waiting to become pilots in that district.

(5) The board shall ~~((have developed five examinations and grading sheets for the Puget Sound pilotage district, and two for each other))~~ develop an examination and grading sheet for each pilotage district, for the testing and grading of pilot applicants. The examinations shall be administered to pilot applicants ((on a random basis)) and shall be updated as required to reflect changes in law, rules, policies, or procedures. The board may appoint a special independent examination committee or may contract

with a firm knowledgeable and experienced in the development of professional tests for development of said examinations. Active licensed state pilots may be consulted for the general development of examinations but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination development committee it is authorized to pay the members of said committee the same compensation and travel expenses as received by members of the board. When grading examinations the board shall carefully follow the grading sheet prepared for that examination. The board shall develop a "sample examination" which would tend to indicate to an applicant the general types of questions on pilot examinations, but such sample questions shall not appear on any actual examinations. Any person who willfully gives advance knowledge of information contained on a pilot examination is guilty of a gross misdemeanor.

(6) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or candidate is fully able to carry out the duties of a pilot under this chapter. The board may in its discretion check with the appropriate authority for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months.

(7) The board shall prescribe, pursuant to chapter 34.05 RCW, a number of familiarization trips, between a minimum number of twenty-five and a maximum of one hundred, which pilot applicants must make in the pilotage district for which they desire to be licensed. Familiarization trips any particular applicant must make are to be based upon the applicant's vessel handling experience.

(8) The board may ~~((prescribe))~~ require vessel simulator training for a pilot applicant~~((, or))~~ and shall require vessel simulator training for a pilot subject to RCW 88.16.105~~((, as it deems appropriate, taking into consideration the economic cost of such training, to enhance that person's ability to perform pilotage duties under this chapter))~~. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(9) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure

the accuracy and validity of license and service claims, and records of familiarization trips of pilot candidates. Willful misrepresentation of such required information by a pilot candidate shall result in disqualification of the candidate.

(10) The board shall adopt rules to establish time periods and procedures for additional training trips and retesting as necessary for pilots who at the time of their licensing are unable to become active pilots.

Sec. 1003. RCW 88.16.105 and 1987 c 264 s 3 are each amended to read as follows:

The board shall prescribe, pursuant to chapter 34.05 RCW, rules governing the size and type of vessels which a newly licensed pilot may be assigned to pilot on the waters of this state and whether the assignment involves docking or undocking a vessel. The rules shall also prescribe required familiarization trips before a newly licensed pilot may pilot a larger or different type of vessel. Such rules shall be for the first ~~((three))~~ five-year period in which pilots are actually employed.

Sec. 1004. RCW 88.16.110 and 1935 c 18 s 7 are each amended to read as follows:

(1) Every pilot licensed under this chapter shall file with the board not later than the tenth day of January, April, July and October of each year a report for the preceding quarter. Said report shall contain an account of all moneys received for pilotage by him or her or by any other person for ((him)) the pilot or on ((his)) the pilot's account or for his or her benefit. Said report shall state the name of each vessel piloted, the amount charged to and/or collected from each vessel, the port of registry of such vessel, its dead weight tonnage, whether it was inward or outward bound, whether the amount so received, collected or charged is in full payment of pilotage and such other information as the board shall by regulation prescribe.

(2) The report shall include information for each vessel that suffers a grounding, collision, or other major marine casualty that occurred while the pilot was on duty during the reporting period. The report shall also include information on near miss incidents as defined in section 423 of this 1991 act. Information concerning near miss incidents provided pursuant to this section shall not be used for imposing any sanctions or penalties. The board shall forward information provided under this subsection to the office of marine safety for inclusion in the collision reporting system established under section 423 of this 1991 act.

**Sec. 1005. RCW 88.16.155 and 1977 ex.s. c 337 s 11 are each amended to read as follows:*

(1) The master of any vessel which employs a Washington licensed pilot shall certify ~~((on a form prescribed by the board of pilotage commissioners that the vessel complies with:~~

~~(a) Such provisions of the United States coast guard regulations governing the safety and navigation of vessels in United States waters, as codified in Title 33 of the code of federal regulations, as the board may prescribe; and~~

~~(b) The provisions of current international agreements governing the safety, radio equipment, and pollution of vessels and other matters as ratified by the United States Senate and prescribed by the board)) to the United States coast guard before the vessel enters the navigable waters of the state, that the vessel complies with:~~

~~(a) United States coast guard regulations as codified in 33 C.F.R. Part 161; and~~

~~(b) The federal oil pollution act of 1990.~~

(2) The master of any vessel which employs a Washington licensed pilot shall be prepared to ~~((produce, and any Washington licensed pilot employed by a vessel shall request to see, certificates of the vessel which))~~ certify and indicate to the United States coast guard that the vessel complies with subsection (1) of this section and the rules of the board ~~((promulgated))~~ adopted pursuant to subsection (1) of this section.

(3) If the master of a vessel which employs a Washington licensed pilot cannot certify that the vessel complies with subsection (1) of this section and the rules of the board adopted pursuant to subsection (1) of this section, the master shall certify that:

(a) The vessel will comply with subsection (1) of this section before the time the vessel is scheduled to leave the waters of Washington state; and

(b) The coast guard captain of the port was notified of the noncomplying items when they were determined; and

(c) The coast guard captain of the port has authorized the vessel to proceed under such conditions as prescribed by the coast guard pursuant to its authority under federal statutes and regulations.

(4) ~~((After the board has prescribed the form required under subsection (1) of this section;))~~ No Washington licensed pilot shall offer pilotage services to any vessel on which the master has failed to make a certification required by this section. If the master fails to make a certification the pilot shall:

~~(a) Immediately inform the United States coast guard and the port captain of the conditions and circumstances by the best possible means; and~~

~~(b) Disembark from the vessel as soon as practicable(, and~~

~~(b) Immediately inform the port captain of the conditions and circumstances by the best possible means; and~~

~~(c) Forward a written report to the board no later than twenty-four hours after disembarking from the vessel)).~~

(5) Any Washington licensed pilot who offers pilotage services to a vessel on which the master has failed to make a certification required by this section or the rules of the board adopted under this section shall be subject to RCW 88.16.150, as now or hereafter amended, and RCW 88.16.100, as now or hereafter amended.

(6) The board shall revise the requirements enumerated in this section as necessary to reflect changes in coast guard regulations, federal statutes, and international agreements. All actions of the board under this section shall comply with chapters 34.05 and 42.30 RCW. ~~(The board shall prescribe the time of and method for retention of forms which have been signed by the master of a vessel in accordance with the provisions of this section.)~~

(7) This section shall not apply to the movement of dead ships. The board shall prescribe pursuant to chapter 34.05 RCW, after consultation with the coast guard and interested persons, for the movement of dead ships and the certification process thereon.

*Sec. 1005 was vetoed, see message at end of chapter.

PART XI MISCELLANEOUS PROVISIONS

NEW SECTION. Sec. 1101. DEPARTMENT OF NATURAL RESOURCES LEASES. After the effective date of this section, the department of natural resources shall include in its leases for onshore and offshore facilities the following provisions:

(1) Require those wishing to lease, sublease, or re-lease state-owned aquatic lands to comply with the provisions of this chapter;

(2) Require lessees and sublessees to operate according to the plan of operations and to keep the plan current in compliance with this chapter; and

(3) Include in its leases provisions that a violation by the lessee or sublessee of the provisions of this chapter may be grounds for termination of the lease.

Sec. 1102. RCW 90.48.037 and 1987 c 109 s 125 are each amended to read as follows:

The department, with the assistance of the attorney general, is authorized to bring any appropriate action at law or in equity, including action for injunctive relief, in the name of the people of the state of Washington as may be necessary to carry out the provisions of this chapter or chapter 90.56 RCW.

Sec. 1103. RCW 90.48.095 and 1987 c 109 s 128 are each amended to read as follows:

In carrying out the purposes of this chapter or chapter 90.56 RCW the department shall, in conjunction with either the ~~((promulgation))~~ adoption of rules ~~((and regulations))~~, consideration of an application for a waste discharge permit or the termination or modification of such permit, or proceedings in ~~((contested cases))~~ adjudicative hearings, have the authority to issue process and subpoena witnesses effective throughout the state on its own behalf or that of an interested party, compel their attendance, administer oaths, take the testimony of any person under oath and, in connection therewith require the production for examination of any books or papers relating to the matter under consideration by the department. In case of

disobedience on the part of any person to comply with any subpoena issued by the department, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the superior court of any county, or of the judge thereof, on application of the department, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. In connection with the authority granted under this section no witness or other person shall be required to divulge trade secrets or secret processes. Persons responding to a subpoena as provided herein shall be entitled to fees as are witnesses in superior court.

Sec. 1104. RCW 90.48.100 and 1987 c 109 s 129 are each amended to read as follows:

The department shall have the right to request and receive the assistance of any educational institution or state agency when it is deemed necessary by the department to carry out the provisions of this chapter or chapter 90.56 RCW.

Sec. 1105. RCW 90.48.156 and 1987 c 109 s 134 are each amended to read as follows:

The department is authorized to cooperate with appropriate agencies of neighboring states and neighboring provinces, to enter into contracts, and make contributions toward interstate and state-provincial projects to carry out the purposes of this chapter and chapter 90.56 RCW.

Sec. 1106. RCW 90.48.240 and 1987 c 109 s 15 are each amended to read as follows:

Notwithstanding any other provisions of this chapter or chapter 90.56 RCW, whenever it appears to the director that water quality conditions exist which require immediate action to protect the public health or welfare, or that a person required by RCW 90.48.160 to obtain a waste discharge permit prior to discharge is discharging without the same, or that a person conducting an operation which is subject to a permit issued pursuant to RCW 90.48.160 conducts the same in violation of the terms of said permit, causing water quality conditions to exist which require immediate action to protect the public health or welfare, the director may issue a written order to the person or persons responsible without prior notice or hearing, directing and affording the person or persons responsible the alternative of either (1) immediately discontinuing or modifying the discharge into the waters of the state, or (2) appearing before the department at the time and place specified in said written order for the purpose of providing to the department information pertaining to the violations and conditions alleged in said written order. The responsible person or persons shall be afforded not less than twenty-four hours notice of such an information meeting. If following such a meeting the department determines that water quality conditions exist which require immediate action as described herein, the department may

issue a written order requiring immediate discontinuance or modification of the discharge into the waters of the state. In the event an order is not immediately complied with the attorney general, upon request of the department, shall seek and obtain an order of the superior court of the county in which the violation took place directing compliance with the order of the department. Such an order is appealable pursuant to RCW 43.21B.310.

Sec. 1107. RCW 90.48.907 and 1971 ex.s. c 180 s 10 are each amended to read as follows:

~~((RCW 90.48.315 through 90.48.365 and this 1971 amendatory act))~~

This chapter, being necessary for the general welfare, the public health, and the public safety of the state and its inhabitants, shall be liberally construed to effect their purposes. No rule, regulation, or order of the department shall be stayed pending appeal under ~~((the provisions of RCW 90.48.315 through 90.48.365 and this 1971 amendatory act))~~ this chapter.

NEW SECTION. Sec. 1108. The department of ecology, the office of marine safety, and the marine oversight board shall study issues related to the transportation and storage of bulk hazardous substances on or near the navigable waters of the state. The study shall develop information on the types, hazards, and quantity of bulk hazardous substances shipped on or stored near the navigable waters, the types of vessels used to transport the substances, the types of facilities at which the substances are transferred or stored, the methods for responding to spills of the substances. The study shall also examine existing regulation of the transporters and facilities, including an examination of requirements for prevention and response planning. The study shall incorporate any recommendations for changes in state laws which the department, office, and board determine are necessary to protect the navigable waters of the state. An interim report shall be completed not later than December 1, 1991, and the final study shall be completed and a report made to the appropriate standing committees of the legislature not later than November 1, 1992.

NEW SECTION. Sec. 1109. The department of ecology shall report to the appropriate standing committees on the effectiveness of chapter 90.56 RCW, and in particular as to how the chapter has been implemented to complement federal law. A report shall be submitted not later than December 1, 1992, and a second report not later than December 1, 1994.

NEW SECTION. Sec. 1110. TIMING FOR STATE MASTER PREVENTION AND CONTINGENCY PLANS. The state-wide master plan required by section 10, chapter 116, Laws of 1990 to be completed by July 1, 1991, shall be completed by July 1, 1991. The additional requirements to the state-wide master plan concerning prevention plans, and an incident command system shall be added to the first annual update submitted to the legislature not later than November 1, 1992.

NEW SECTION. Sec. 1111. **TIMING OF CONTINGENCY PLAN RULES.** The rules required by RCW 90.48.371 as recodified by this act for facilities and, except as otherwise provided in this section for covered vessels, shall be adopted not later than July 1, 1991. The department shall exclude from the rules to be adopted by July 1, 1991, standards for tank vessels of less than twenty thousand deadweight tons, cargo vessels, and passenger vessels operating on the portion of the Columbia river for which the department determines that Washington and Oregon should cooperate in the adoption of standards for contingency plans. The department, after consultation with the appropriate state agencies in Oregon, shall adopt the rules for standards for contingency plans for this portion of the Columbia river at the earliest possible time, but not later than July 1, 1992.

NEW SECTION. Sec. 1112. A new section is added to chapter 80.50 RCW to read as follows:

In making its recommendations to the governor under this chapter regarding an application that includes transmission facilities for petroleum products, the council shall give appropriate weight to city or county facility siting standards adopted for the protection of sole source aquifers.

NEW SECTION. Sec. 1113. **CAPTIONS NOT LAW.** Section headings and part headings as used in this chapter shall constitute no part of the law.

NEW SECTION. Sec. 1114. Sections 101, 103, 108 through 110, 201, 203, 204, 304, 501, 805, and 806 of this act are each added to a new chapter in Title 90 RCW to be codified as provided for in section 1115 of this act.

NEW SECTION. Sec. 1115. **CODIFICATION INSTRUCTIONS.** (1) Parts I through III and sections 501, 805, and 806 of this act shall constitute a new chapter in Title 90 RCW to be codified as chapter 90.56 RCW, and shall be codified and recodified as provided for in this section. The code reviser shall correct all statutory references to these sections to reflect this recodification.

The following sections shall be codified and recodified in the following order:

Section 101 of this act
RCW 90.48.315
Section 103 of this act
RCW 90.48.370
RCW 90.48.365
RCW 90.48.380
RCW 90.48.378
Section 108 of this act
Section 109 of this act
Section 110 of this act

RCW 90.48.387
 RCW 90.48.388
 Section 201 of this act
 RCW 90.48.371
 Section 203 of this act
 Section 204 of this act
 RCW 90.48.372
 RCW 90.48.373
 RCW 90.48.374
 RCW 90.48.375
 RCW 90.48.360
 RCW 90.48.376
 RCW 90.48.377
 RCW 90.48.320
 RCW 90.48.350
 RCW 90.48.325
 RCW 90.48.330
 RCW 90.48.335
 RCW 90.48.336
 RCW 90.48.338
 Section 304 of this act
 RCW 90.48.340
 RCW 90.48.355
 RCW 90.48.343
 Section 501 of this act
 Section 805 of this act
 Section 806 of this act
 RCW 90.48.907.

(2) Sections 801 through 804, 808, and 809 of this act shall constitute a new chapter in Title 82 RCW.

(3) Sections 402, 403, 405, and 407 of this act shall constitute a new chapter in Title 43 RCW.

(4)(a) Sections 414 through 436 of this act shall constitute a new chapter in Title 88 RCW.

(b) RCW 90.48.385 and 90.48.510 are recodified as sections in the new chapter created in (a) of this subsection.

(5) Sections 604 through 607 of this act are each added to chapter 88-.16 RCW.

NEW SECTION. Sec. 1116. **REPEALER.** The following acts or parts of acts are each repealed:

- (1) RCW 90.48.345 and 1987 c 109 s 150 & 1969 ex.s. c 133 s 6;
- (2) RCW 90.48.381 and 1990 c 116 s 15;
- (3) RCW 90.48.410 and 1971 ex.s. c 180 s 6;
- (4) RCW 88.40.010 and 1990 c 116 s 30 & 1989 1st ex.s. c 2 s 2;

- (5) RCW 88.40.050 and 1989 1st ex.s. c 2 s 6;
- (6) RCW 90.48.910 and 1967 c 13 s 25;
- (7) RCW 88.44.050 and 1990 c 117 s 6;
- (8) RCW 88.44.060 and 1990 c 117 s 7;
- (9) RCW 88.44.070 and 1990 c 117 s 8; and
- (10) RCW 90.48.383 and 1990 c 116 s 25.

****NEW SECTION. Sec. 1117. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.***

****Sec. 1117 was vetoed, see message at end of chapter.***

NEW SECTION. Sec. 1118. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 1119. (1) Sections 101 through 429, 501 through 706, 805 through 807, 810 through 817, and 901 through 1118 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

(2) Sections 801 through 804, 808, and 809 of this act shall take effect October 1, 1991.

NEW SECTION. Sec. 1120. Sections 430 through 436 of this act shall take effect July 1, 1997.

Passed the House March 15, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 15, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 15, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 306, 1005, and 1117, Engrossed Substitute House Bill No. 1027 entitled:

"AN ACT Relating to oil and hazardous substances."

Existing state law establishes penalties for any person who negligently discharges oil into Washington's waters. Section 306 of this bill qualifies this standard by stating that an employee shall be indemnified by the owner or operator of a facility or covered vessel for any penalty resulting from a negligent discharge of oil by the employee. I am vetoing this section for three reasons. First, this penalty provision has been state law for over 20 years. Current law should not be relaxed if no problems have been identified. Second, there is no valid policy reason to exempt from penalty an employee, including a pilot or ship captain, who negligently discharges oil. Third, this section creates a special class of individuals who get special protection under the law. Others who are not employees of facilities or vessels do not get the same special treatment and are liable for penalties for the negligent discharge of oil. The veto of section 306 restores current law.

Under existing state law, the master of a vessel certifies in writing that the vessel meets certain safety requirements. If the certification is made, the pilot countersigns

the certificate. If the certification is not made, the pilot must refuse to take the ship in. Section 1005 changes this requirement. There appears to be no justification for this change. Without sufficient justification, current responsibilities of masters and pilots to ensure vessel safety should be maintained.

Section 1117 states that this bill is null and void unless specific funding is provided in the omnibus appropriations act. This section conflicts with Section 1119 which declares an emergency. There is much work to do to implement this important bill and to protect Washington's marine waters from the threat of oil spills. Agencies need to begin that work now.

With the exception of sections 306, 1005, and 1117, Engrossed Substitute House Bill No. 1027 is approved.*

CHAPTER 201

[Engrossed Substitute Senate Bill 5245]

STATE ENERGY POLICY

Effective Date: 7/28/91

AN ACT Relating to state energy policy; amending RCW 39.35.030 and 43.88.195; amending 1989 1st ex.s. c 12 s 301 (uncodified); adding a new section to chapter 43.21F RCW; adding new sections to chapter 39.35 RCW; adding a new chapter to Title 39 RCW; adding a new section to Title 28A RCW; creating a new section; and repealing 1982 c 159 s 6 (uncodified).

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 43.21F RCW to read as follows:

DEVELOPMENT OF STATE ENERGY STRATEGY. (1) The state energy office shall develop a state energy strategy under the guidance of an advisory committee. The advisory committee shall include twenty members and represent different regions of the state, including fifteen citizens appointed by the governor from the following groups: One person recommended by the investor-owned electric utilities, one person recommended by the investor-owned natural gas utilities, one person employed by or recommended by a natural gas pipeline serving the state, one person recommended by the suppliers of petroleum products, one person recommended by municipally owned electric utilities, one person recommended by the public utility districts, one person recommended by industrial energy users, one person recommended by commercial energy users, one person recommended by agricultural energy users, one person recommended by the association of Washington cities, one person recommended by the Washington association of counties, two persons recommended by civic organizations, and two persons recommended by environmental organizations. In addition, the advisory committee shall include one of the representatives of the state of Washington to the Pacific Northwest electric power and conservation planning council selected by the governor; the chair of the energy facility site evaluation council; one member of the utilities and transportation commission selected by the chair of the commission; one member of the house of representatives selected by the speaker of the house of representatives;

and one member of the senate selected by the majority leader of the senate. The chair of the advisory committee will be appointed by the governor from citizen members. The director may establish technical advisory groups as necessary to assist in the development of the strategy. The director shall provide for extensive public involvement throughout the development of the strategy.

(2) The state energy strategy shall consider all forms of energy and each major sector of energy consumption and shall:

(a) Assess future needs of the state and future resources available for use in the state for each form of energy;

(b) Identify measures to assist in maintaining adequate, reliable, secure, economic, and environmentally acceptable supplies;

(c) Identify and, to the extent possible, quantify the costs and benefits of energy alternatives including direct economic costs and benefits, environmental costs and benefits, and the costs of inadequate or unreliable energy supplies;

(d) Develop a framework in which public decisions and actions affecting energy supply and use can be evaluated including the impact of decisions in other areas of public policy on energy supply and cost and on the use of energy and the establishment of goals to guide energy-related decisions;

(e) Evaluate the future role of the state energy office and means of financing those activities determined essential to that role; and

(f) Recommend energy goals and policies to the governor and the legislature.

(3) In developing the state energy strategy, the state energy office shall:

(a) Ensure that the information developed is objective and impartial and facilitates the effective and efficient operation of such energy markets as may exist and recognizes and conforms to the pattern of regulation governing public service companies but shall not mandate the use of one energy source over another;

(b) Draw upon existing public and private sector information and expertise in energy matters to the fullest extent possible through consultation and cooperation;

(c) Recognize the planning horizons required for each segment of the energy industry and the need for state actions and decisions to take those planning horizons into consideration; and

(d) Ensure that the strategy is coordinated with the energy planning activities of federal, state, and private entities and does not duplicate what is already available.

(4) The energy office shall provide a progress report to the house of representatives and senate committees on energy and utilities in January 1992. A final report shall be provided to the governor and the legislature by December 1, 1992.

NEW SECTION. Sec. 2. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results, but does not include thermal or electric energy production from cogeneration.

(3) "Cost-effective" means that the present value to a state agency or school district of the energy reasonably expected to be saved or produced by a facility, activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(4) "Energy" means energy as defined in RCW 43.21F.025(1).

(5) "Energy efficiency project" means a conservation or cogeneration project.

(6) "Energy efficiency services" means assistance furnished by the energy office to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

(7) "Energy office" means the Washington state energy office.

(8) "Performance-based contracting" means contracts for which payment is conditional on achieving contractually specified energy savings.

(9) "Public facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency or school district.

(10) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

(11) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

(12) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state.

(13) "Local utility" means the utility or utilities in whose service territory a public facility is located.

NEW SECTION. Sec. 3. CONSERVATION PROJECTS: ROLES AND RESPONSIBILITIES. (1) Each state agency and school district

shall implement cost-effective conservation improvements and maintain efficient operation of its facilities in order to minimize energy consumption and related environmental impacts and reduce operating costs.

(2) The energy office shall assist state agencies and school districts in identifying, evaluating, and implementing cost-effective conservation projects at their facilities. The assistance shall include the following:

(a) Notifying state agencies and school districts of their responsibilities under this chapter;

(b) Apprising state agencies and school districts of opportunities to develop and finance such projects;

(c) Providing technical and analytical support, including procurement of performance-based contracting services;

(d) Reviewing verification procedures for energy savings; and

(e) Assisting in the structuring and arranging of financing for cost-effective conservation projects.

(3) Conservation projects implemented under this chapter shall have appropriate levels of monitoring to verify the performance and measure the energy savings over the life of the project. The energy office shall solicit involvement in program planning and implementation from utilities and other energy conservation suppliers, especially those that have demonstrated experience in performance-based energy programs.

(4) The energy office shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(5) The energy office shall recover any costs and expenses it incurs in providing assistance pursuant to this section, including reimbursement from third parties participating in conservation projects. The energy office shall enter into a written agreement with the state agency or school district for the recovery of costs.

NEW SECTION. Sec. 4. COORDINATION OF CONSERVATION DEVELOPMENT WITH UTILITIES. (1) The energy office shall consult with the local utilities to develop priorities for energy conservation projects pursuant to this chapter, cooperate where possible with existing utility programs, and consult with the local utilities prior to implementing projects in their service territory.

(2) A local utility shall be offered the initial opportunity to participate in the development of conservation projects in the following manner:

(a) Before initiating projects in a local utility service territory, the energy office shall notify the local utility in writing, on an annual basis, of public facilities in the local utility's service territory at which the energy office anticipates cost-effective conservation projects will be developed.

(b) Within sixty days of receipt of this notification, the local utility may express interest in these projects by submitting to the energy office a written description of the role the local utility is willing to perform in developing and acquiring the conservation at these facilities. This role may

include any local utility conservation programs which would be available to the public facility, any competitive bidding or solicitation process which the local utility will be undertaking in accordance with the rules of the utilities and transportation commission or the public utility district, municipal utility, cooperative, or mutual governing body for which the public facility would be eligible, or any other role the local utility may be willing to perform.

(c) Upon receipt of the written description from the local utility, the energy office shall, through discussions with the local utility, and with involvement from state agencies and school districts responsible for the public facilities, develop a plan for coordinated delivery of conservation services and financing or make a determination of whether to participate in the local utility's competitive bidding or solicitation process. The plan shall identify the local utility in roles that the local utility is willing to perform and that are consistent with the provisions of section 5(2) (d) and (e) of this act.

NEW SECTION. Sec. 5. SALE OF CONSERVED ENERGY. (1) It is the intent of this chapter that the state, state agencies, and school districts are compensated fairly for the energy savings provided to utilities and be allowed to participate on an equal basis in any utility conservation program, bidding, or solicitation process. State agencies and school districts shall not receive preferential treatment. For the purposes of this section, any type of compensation from a utility or the Bonneville power administration intended to achieve reductions or efficiencies in energy use which are cost-effective to the utility or the Bonneville power administration shall be regarded as a sale of energy savings. Such compensation may include credits to the energy bill, low or no interest loans, rebates, or payment per unit of energy saved. The energy office shall, in coordination with utilities, the Bonneville power administration, state agencies, and school districts, facilitate the sale of energy savings at public facilities including participation in any competitive bidding or solicitation which has been agreed to by the state agency or school district. Energy savings may only be sold to local utilities or, under conditions specified in this section, to the Bonneville power administration. The energy office shall not attempt to sell energy savings occurring in one utility service territory to a different utility. Nothing in this chapter mandates that utilities purchase the energy savings.

(2) To ensure an equitable allocation of benefits to the state, state agencies, and school districts, the following conditions shall apply to transactions between utilities or the Bonneville power administration and state agencies or school districts for sales of energy savings:

(a) A transaction shall be approved by both the energy office and the state agency or school district.

(b) The energy office and the state agency or school district shall work together throughout the planning and negotiation process for such transactions unless the energy office determines that its participation will not further the purposes of this section.

(c) Before making a decision under (d) of this subsection, the energy office shall review the proposed transaction for its technical and economic feasibility, the adequacy and reasonableness of procedures proposed for verification of project or program performance, the degree of certainty of benefits to the state, state agency, or school district, the degree of risk assumed by the state or school district, the benefits offered to the state, state agency, or school district and such other factors as the energy office determines to be prudent.

(d) The energy office shall approve a transaction unless it finds, pursuant to the review in (c) of this subsection, that the transaction would not result in an equitable allocation of costs and benefits to the state, state agency, or school district, in which case the transaction shall be disapproved.

(e) In addition to the requirements of (c) and (d) of this subsection, in areas in which the Bonneville power administration has a program for the purchase of energy savings at public facilities, the energy office shall approve the transaction unless the local utility cannot offer a benefit substantially equivalent to that offered by the Bonneville power administration, in which case the transaction shall be disapproved. In determining whether the local utility can offer a substantially equivalent benefit, the energy office shall consider the net present value of the payment for energy savings; any goods, services, or financial assistance provided by the local utility; and any risks borne by the local utility. Any direct negative financial impact on a nongrowing, local utility shall be considered.

(3) Any party to a potential transaction may, within thirty days of any decision to disapprove a transaction made pursuant to subsection (2) (c), (d), or (e) of this section, request an independent reviewer who is mutually agreeable to all parties to the transaction to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days.

NEW SECTION. Sec. 6. AUTHORITIES OF STATE AGENCIES AND SCHOOL DISTRICTS TO IMPLEMENT CONSERVATION. In addition to any other authorities conferred by law:

(1) The energy office, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including performance-based contracts; and

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration.

(2) A state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(3) A school district may:

(a) Develop and finance conservation at school district facilities;

(b) Contract for energy services, including performance-based contracts at school district facilities; and

(c) Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration directly or to local utilities or the Bonneville power administration through third parties.

(4) In exercising the authority granted by subsections (1), (2), and (3) of this section, a school district or state agency must comply with the provisions of section 5 of this act.

NEW SECTION. Sec. 7. AUTHORITY TO FINANCE CONSERVATION IN SCHOOL DISTRICTS AND STATE AGENCIES. (1) The energy office, in accordance with RCW 43.21F.060(2) may use appropriated moneys to make loans to school districts to provide all or part of the financing for conservation projects. The energy office shall determine the eligibility of such projects for conservation loans and the terms of such loans. If loans are from moneys appropriated from bond proceeds, the repayments of the loans shall be sufficient to pay, when due, the principal and interest on the bonds and shall be paid to the energy efficiency construction account established in section 11 of this act. To the extent that a school district applies the proceeds of such loans to a modernization or new construction project, such proceeds shall be considered a portion of the school district's share of the costs of such project.

(2) State agencies may use financing contracts under chapter 39.94 RCW to provide all or part of the funding for conservation projects. The energy office shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts shall be sufficient to pay, when due, the principal and interest on the contracts.

NEW SECTION. Sec. 8. ROLES AND RESPONSIBILITIES OF COGENERATION PROJECTS WITH UTILITIES AND PRIVATE DEVELOPERS. (1) Consistent with the region's need to develop cost-effective, high efficiency electric energy resources, the state shall investigate

and, if appropriate, pursue development of cost-effective opportunities for cogeneration in existing or new state facilities.

(2) To assist state agencies in identifying, evaluating, and developing potential cogeneration projects at their facilities, the energy office shall notify state agencies of their responsibilities under this chapter; apprise them of opportunities to develop and finance such projects; and provide technical and analytical support. The energy office shall recover costs for such assistance through written agreements, including reimbursement from third parties participating in such projects, for any costs and expenses incurred in providing such assistance.

(3)(a) The energy office shall identify priorities for cogeneration projects at state facilities, and, where such projects are initially deemed desirable by the energy office and the appropriate state agency, the energy office shall notify the local utility serving the state facility of its intent to conduct a feasibility study at such facility. The energy office shall consult with the local utility and provide the local utility an opportunity to participate in the development of the feasibility study for the state facility it serves.

(b) If the local utility has an interest in participating in the feasibility study, it shall notify the energy office and the state agency whose facility or facilities it serves within sixty days of receipt of notification pursuant to (a) of this subsection as to the nature and scope of its desired participation. The energy office, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement.

(c) If a local utility identifies a potential cogeneration project at a state facility for which it intends to conduct a feasibility study, it shall notify the energy office and the appropriate state agency. The energy office, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement. Nothing in this section shall preclude a local utility from conducting an independent assessment of a potential cogeneration project at a state facility.

(d) Agreements written pursuant to (a) and (b) of this subsection shall include a provision for the recovery of costs incurred by a local utility in performing a feasibility study in the event such utility does not participate in the development of the cogeneration project. If the local utility does participate in the cogeneration project through energy purchase, project development or ownership, recovery of the utility's costs may be deferred or provided for through negotiation on agreements for energy purchase, project development or ownership.

(e) If the local utility declines participation in the feasibility study, the energy office and the state agency may receive and solicit proposals to conduct the feasibility study from other parties. Participation of these other parties shall also be secured and defined by a written agreement which may

include the provision for reimbursement of costs incurred in the formulation of the feasibility study.

(4) The feasibility study shall include consideration of regional and local utility needs for power, the consistency of the proposed cogeneration project with the state energy strategy, the cost and certainty of fuel supplies, the value of electricity produced, the capability of the state agency to own and/or operate such facilities, the capability of utilities or third parties to own and/or operate such facilities, requirements for and costs of standby sources of power, costs associated with interconnection with the local electric utility's transmission system, the capability of the local electric utility to wheel electricity generated by the facility, costs associated with obtaining wheeling services, potential financial risks and losses to the state and/or state agency, measures to mitigate the financial risk to the state and/or state agency, and benefits to the state and to the state agency from a range of design configurations, ownership, and operation options.

(5) Based upon the findings of the feasibility study, the energy office and the state agency shall determine whether a cogeneration project will be cost-effective and whether development of a cogeneration project should be pursued. This determination shall be made in consultation with the local utility or, if the local utility had not participated in the development of the feasibility study, with any third party that may have participated in the development of the feasibility study.

(a) Recognizing the local utility's expertise, knowledge, and ownership and operation of the local utility systems, the energy office and the state agency shall have the authority to negotiate directly with the local utility for the purpose of entering into a sole source contract to develop, own, and/or operate the cogeneration facility. The contract may also include provisions for the purchase of electricity or thermal energy from the cogeneration facility, the acquisition of a fuel source, and any financial considerations which may accrue to the state from ownership and/or operation of the cogeneration facility by the local utility.

(b) The energy office may enter into contracts through competitive negotiation under this subsection for the development, ownership, and/or operation of a cogeneration facility. In determining an acceptable bid, the energy office and the state agency may consider such factors as technical knowledge, experience, management, staff, or schedule, as may be necessary to achieve economical construction or operation of the project. The selection of a developer or operator of a cogeneration facility shall be made in accordance with procedures for competitive bidding under chapter 43.19 RCW.

(c) The energy office shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(6)(a) The state may own and/or operate a cogeneration project at a state facility. However, unless the cogeneration project is determined to be

cost-effective, based on the findings of the feasibility study, the energy office and state agency shall not pursue development of the project as a state-owned facility. If the project is found to be cost-effective, and the energy office and the state agency agree development of the cogeneration project should be pursued as a state-owned and/or operated facility, the energy office shall assist the state agency in the preparation of a finance and development plan for the cogeneration project. Any such plan shall fully account for and specify all costs to the state for developing and/or operating the cogeneration facility.

(b) It is the general intent of this chapter that cogeneration projects developed and owned by the state will be sized to the projected thermal energy load of the state facility over the useful life of the project. The principal purpose and use of such projects is to supply thermal energy to a state facility and not primarily to develop generating capacity for the sale of electricity. For state-owned projects with electricity production in excess of projected thermal requirements, the energy office shall seek and obtain legislative appropriation and approval for development. Nothing in this act shall be construed to authorize any state agency to sell electricity or thermal energy on a retail basis.

(7) When a cogeneration facility will be developed, owned, and/or operated by a state agency or third party other than the local serving utility, the energy office and the state agency shall negotiate a written agreement with the local utility. Elements of such an agreement shall include provisions to ensure system safety, provisions to ensure reliability of any interconnected operations equipment necessary for parallel operation and switching equipment capable of isolating the generation facility, the provision of and reimbursement for standby services, if required, and the provision of and reimbursement for wheeling electricity, if the provision of such has been agreed to by the local utility.

(8) The state may develop and own a thermal energy distribution system associated with a cogeneration project for the principal purpose of distributing thermal energy at the state facility. If thermal energy is to be sold outside the state facility, the state may only sell the thermal energy to a utility.

NEW SECTION. Sec. 9. SALE OF COGENERATED ELECTRICITY AND STEAM. It is the intention of this act that the state and its agencies are compensated fairly for the energy provided to utilities from cogeneration at state facilities. Such compensation may include revenues from sales of electricity or thermal energy to utilities, lease of state properties, and value of thermal energy provided to the facility. It is also the intent of this act that the state and its agencies be accorded the opportunity to compete on a fair and reasonable basis to fulfill a utility's new resource acquisition needs when selling the energy produced from cogeneration projects at state facilities through energy purchase agreements.

(1)(a) The energy office and state agencies may participate in any utility request for resource proposal process, as either established under the rules and regulations of the utilities and transportation commission, or by the governing board of a public utility district, municipal utility, cooperative, or mutual.

(b) If a local utility does not have a request for resource proposal pending, the energy office or a state agency may negotiate an equitable and mutually beneficial energy purchase agreement with that utility.

(2) To ensure an equitable allocation of benefits to the state and its agencies, the following conditions shall apply to energy purchase agreements negotiated between utilities and state agencies:

(a) An energy purchase agreement shall be approved by both the energy office and the affected state agency.

(b) The energy office and the state agency shall work together throughout the planning and negotiation process for energy purchase agreements, unless the energy office determines that its participation will not further the purposes of this section.

(c) Before approving an energy purchase agreement, the energy office shall review the proposed agreement for its technical and economic feasibility, the degree of certainty of benefits, the degree of financial risk assumed by the state and/or the state agency, the benefits offered to the state and/or state agency, and other such factors as the energy office deems prudent. The energy office shall approve an energy purchase agreement unless it finds that such an agreement would not result in an equitable allocation of costs and benefits, in which case the transaction shall be disapproved.

(3)(a) The state or state agency shall comply with and shall be bound by applicable avoided cost schedules, electric power wheeling charges, interconnection requirements, utility tariffs, and regulatory provisions to the same extent it would be required to comply and would be bound if it were a private citizen. The state shall neither seek regulatory advantage, nor change regulations, regulatory policy, process, or decisions to its advantage as a seller of cogenerated energy. Nothing contained in this act shall be construed to mandate or require public or private utilities to wheel electric energy resources within or beyond their service territories. Nothing in this act authorizes any state agency or school district to make any sale of energy or waste heat as defined by RCW 80.62.020(9) beyond the explicit provisions of this act. Nothing contained in this act requires a utility to purchase energy from the state or a state agency or enter into any agreement in connection with a cogeneration facility.

(b) The state shall neither construct, nor be party to an agreement for developing a cogeneration project at a state facility for the purpose of supplying its own electrical needs, unless it can show that such an arrangement would be in the economic interest of the state taking into account the cost of (i) interconnection requirements, as specified by the local electric utility,

(ii) standby charges, as may be required by the local electric utility, and (iii) the current price of electricity offered by the local electric utility. If the local electric utility can demonstrate that the cogeneration project may place an undue burden on the electric utility, the energy office or the state agency shall attempt to negotiate a mutually beneficial agreement that would minimize the burden upon the ratepayers of the local electric utility.

(4) Any party to an energy purchase agreement may, within thirty days of any decision made pursuant to subsection (2)(c) of this section to disapprove the agreement made pursuant to this section, request an independent reviewer who is mutually agreeable to all parties to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days.

NEW SECTION. Sec. 10. **AUTHORITIES RELATED TO CO-GENERATION AT STATE AGENCIES.** In addition to any other authorities conferred by law:

(1) The energy office, with the consent of the state agency responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Contract to sell electric energy generated at state facilities to a utility; and

(b) Contract to sell thermal energy produced at state facilities to a utility.

(2) A state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Acquire, install, permit, construct, own, operate, and maintain cogeneration and facility heating and cooling measures or equipment, or both, at its facilities;

(b) Lease state property for the installation and operation of cogeneration and facility heating and cooling equipment at its facilities;

(c) Contract to purchase all or part of the electric or thermal output of cogeneration plants at its facilities;

(d) Contract to purchase or otherwise acquire fuel or other energy sources needed to operate cogeneration plants at its facilities; and

(e) Undertake procurements for third-party development of cogeneration projects at its facilities, with successful bidders to be selected based on the responsible bid, including nonprice elements listed in RCW 43.19.1911, that offers the greatest net achievable benefits to the state and its agencies.

(3) After the effective date of this section, a state agency shall consult with the energy office prior to exercising any authority granted by this section.

(4) In exercising the authority granted by subsections (1) and (2) of this section, a state agency must comply with the provisions of section 9 of this act.

NEW SECTION. Sec. 11. ENERGY EFFICIENCY CONSTRUCTION ACCOUNT. (1) The energy efficiency construction account is hereby created in the state treasury. Moneys in the account may be spent only after appropriation and only for the following purposes:

(a) Construction of energy efficiency projects, including project evaluation and verification of benefits, project design, project development, project construction, and project administration.

(b) Payment of principal and interest and other costs required under bond covenant on bonds issued for the purpose of (a) of this subsection.

(2) Sources for this account may include:

(a) General obligation and revenue bond proceeds appropriated by the legislature;

(b) Loan repayments under section 7 of this act sufficient to pay principal and interest obligations; and

(c) Funding from federal, state, and local agencies.

(3) The energy office shall establish criteria for approving energy efficiency projects to be financed from moneys disbursed from this account. The criteria shall include cost-effectiveness, reliability of energy systems, and environmental costs or benefits. The energy office shall ensure that the criteria are applied with professional standards for engineering and review.

NEW SECTION. Sec. 12. ENERGY EFFICIENCY SERVICES ACCOUNT. (1) The energy efficiency services account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only (a) for the energy office to provide energy efficiency services to state agencies and school districts including review of life-cycle cost analyses and (b) for transfer by the legislature to the state general fund.

(2) All receipts from the following sources shall be deposited into the account:

(a) Project fees charged under this section and sections 3, 8, and 16 of this act;

(b) After payment of any principal and interest obligations, moneys from repayments of loans under section 7 of this act;

(c) Revenue from sales of energy generated or saved at public facilities under this chapter, except those retained by state agencies and school districts under section 13 of this act; and

(d) Payments by utilities and federal power marketing agencies under this chapter, except those retained by state agencies and school districts under section 13 of this act.

(3) The energy office may accept moneys and make deposits to the account from federal, state, or local government agencies.

(4) Within one hundred eighty days after the effective date of this act, the energy office shall adopt rules establishing criteria and procedures for setting a fee schedule, establishing working capital requirements, and receiving deposits for this account.

NEW SECTION. Sec. 13. **PROJECT BENEFITS.** (1) Potential benefits from energy efficiency projects at public facilities include savings in the form of reduced energy costs; revenues from lease payments, sales of energy or energy savings, or other sources; avoided capital costs; site enhancements; and additional operating and maintenance resources.

(2) To encourage these projects at state facilities, and notwithstanding any other provision of law, the following benefits from energy efficiency projects completed after the effective date of this chapter shall be apportioned as specified:

(a) As to conservation, state agencies may retain all net savings in the form of reduced energy costs, and one-half of all net revenues from any transaction with a utility, the Bonneville power administration, or other entity. The net savings shall be retained by the local administrative body responsible for the public facility;

(b) As to cogeneration projects, state agencies may retain one-half of all net savings in the form of reduced energy costs and twenty percent of all net revenues generated by the project from any source except that state institutions of higher education may retain one-half of all net revenues generated by the project; and

(c) The remaining net revenues from conservation projects, and remaining net savings and revenues from cogeneration projects, shall be remitted to the state for the disposition and uses specified in subsection (4) of this section.

(3) Each state agency's share of net savings from cogeneration projects and of all net revenues shall be credited to a special local account created under section 18 of this act, the use of which shall be limited, in priority order, to ongoing operation, maintenance, and improvements of energy systems and energy efficiency measures, to other ongoing and deferred maintenance, and to other infrastructure improvements at the facility that was the site of the energy efficiency project.

(4) The state's share of net savings from cogeneration projects and of all net revenues, and any portion of the state agency's share which exceeds its needs for the purposes specified in subsection (3) of this section, shall be deposited in the energy efficiency services account established by section 12 of this act.

(5) The use by state agencies of net savings and net revenues from energy efficiency projects shall be in addition to, and shall not supplant or replace, funding from traditional sources for their normal operations and maintenance or capital budgets. It is the intent of this subsection to ensure that such institutions receive the full benefit intended by this section, and

that such effect will not be diminished by budget adjustments inconsistent with this intent.

(6) Energy efficiency projects in school districts, funded in whole or in part with state assistance provided under chapter 28A.525 RCW, or with the financing mechanisms authorized by this chapter, shall be subject to the provisions of this section governing the apportionment and use of savings and revenues from energy efficiency projects.

(7) For purposes of this section, "net" savings and revenues shall mean savings and revenues remaining after payment of project capital costs, including debt service, and other payments and reserves as required by a bond resolution or loan agreement under this chapter, and payment of project operating and maintenance expenses. The energy office shall develop guidelines and procedures for determining net savings and net revenues for energy efficiency projects at public facilities by April 1, 1992.

(8) The energy office shall report annually until the year 2006 to the director of the office of financial management and the chairs of the senate ways and means committee and the appropriate house of representatives fiscal committees a full and complete financial accounting for energy efficiency projects undertaken pursuant to this act, including but not limited to a description of the project, its location and sponsoring agency or school district, date of completion or, if not completed, status of construction, the amount of investment in and expenditures on the project, the amount of revenues received from the project and estimated savings, if any, during the past year, estimated revenues, expenditures, and investments for the ensuing five years, the useful life originally estimated for the project, and the useful life of the project estimated to remain as of the date of the report, and the amount of savings and revenues from energy conservation and cogeneration retained by individual state agencies.

Sec. 14. RCW 39.35.030 and 1982 c 159 s 3 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(2) "Office" means the Washington state energy office.

(3) "Major facility" means any publicly owned or leased building having twenty-five thousand square feet or more of usable floor space.

(4) "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

(5) "Renovation" means additions, alterations, or repairs within any twelve-month period which exceed fifty percent of the value of a major facility and which will affect any energy system.

(6) "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

(7) "Life-cycle cost" means the initial cost and cost of operation of a major facility over its economic life. This shall be calculated as the initial cost plus the operation, maintenance, and energy costs over its economic life, reflecting anticipated increases in these costs discounted to present value at the current rate for borrowing public funds, as determined by the ~~((state finance committee))~~ office of financial management. The energy cost~~(s)~~ projections used shall be those ~~((projected))~~ provided by the state energy office. The office shall update ~~((the))~~ these projections ~~((of energy costs))~~ at least every two years.

(8) "Life-cycle cost analysis" includes, but is not limited to, the following elements:

(a) The coordination and positioning of a major facility on its physical site;

(b) The amount and type of fenestration employed in a major facility;

(c) The amount of insulation incorporated into the design of a major facility;

(d) The variable occupancy and operating conditions of a major facility; and

(e) An energy-consumption analysis of a major facility.

(9) "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.

(10) "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment, and components, and the external energy load imposed on a major facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility shall include, but not be limited to, the following elements:

(a) The comparison of three or more system alternatives, at least one of which shall include renewable energy systems;

(b) The simulation of each system over the entire range of operation of such facility for a year's operating period; and

(c) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

The energy-consumption analysis shall be prepared by a professional engineer or licensed architect who may use computers or such other methods as are capable of producing predictable results.

(11) "Renewable energy systems" means methods of facility design and construction and types of equipment for the utilization of renewable energy sources including, but not limited to, active or passive solar space

heating or cooling, domestic solar water heating, windmills, waste heat, biomass and/or refuse-derived fuels, (~~(cogenerated energy;)~~) photovoltaic devices, and geothermal energy.

(12) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. Where these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. 292.202 (c) through (m) as of the effective date of this act shall apply.

NEW SECTION. Sec. 15. A new section is added to chapter 39.35 RCW to read as follows:

GUIDELINES FOR LIFE-CYCLE COST ANALYSIS. The office, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter. The purpose of the guidelines is to define a procedure and method for performance of life-cycle cost analysis to promote the selection of low-life-cycle cost alternatives. At a minimum, the guidelines must contain provisions that:

- (1) Address energy considerations during the planning phase of the project;
- (2) Identify energy components and system alternatives including renewable energy systems and cogeneration applications prior to commencing the energy consumption analysis;
- (3) Establish times during the design process for preparation, review, and approval or disapproval of the life-cycle cost analysis;
- (4) Specify the assumptions to be used for escalation and inflation rates, equipment service lives, economic building lives, and maintenance costs;
- (5) Determine life-cycle cost analysis format and submittal requirements to meet the provisions of this act;
- (6) Provide for review and approval of life-cycle cost analysis.

NEW SECTION. Sec. 16. A new section is added to chapter 39.35 RCW to read as follows:

LIFE-CYCLE COST ANALYSIS REVIEW FEES. The energy office may impose fees upon affected public agencies for the review of life-cycle cost analyses. The fees shall be deposited in the energy efficiency services account established in section 12 of this act. The purpose of the fees is to recover the costs by the office for review of the analyses. The office shall set fees at a level necessary to recover all of its costs related to increasing the energy efficiency of state-supported new construction. The fees shall not exceed one-tenth of one percent of the total cost of any project or exceed two thousand dollars for any project unless mutually agreed to. The office shall provide detailed calculation ensuring that the energy savings resulting from its review of life-cycle cost analysis justify the costs of performing that review.

NEW SECTION. Sec. 17. ADOPTION OF RULES. The energy office may adopt rules to implement sections 3 through 5, 8, 9, 13, and 15 of this act.

NEW SECTION. Sec. 18. A new section is added to Title 28A RCW to read as follows:

The office of the superintendent of public instruction shall report annually to the energy and utilities committees of the house of representatives and the senate regarding the effects of this act on school districts throughout the state.

Sec. 19. RCW 43.88.195 and 1979 c 151 s 140 are each amended to read as follows:

After August 11, 1969, no state agency, state institution, state institution of higher education, which shall include all state universities, regional universities, The Evergreen State College, and community colleges, shall establish any new accounts or funds which are to be located outside of the state treasury: PROVIDED, That the office of financial management shall be authorized to grant permission for the establishment of such an account or fund outside of the state treasury only when the requesting agency presents compelling reasons of economy and efficiency which could not be achieved by placing such funds in the state treasury. When the director of financial management authorizes the creation of such fund or account, ~~((he))~~ the director shall forthwith give written notice of the fact to the standing committees on ways and means of the house and senate: PROVIDED FURTHER, That the office of financial management may grant permission for the establishment of accounts outside of the state treasury for the purposes of section 13 of this act.

Sec. 20. 1989 1st ex.s. c 12 s 301 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE ENERGY OFFICE

Energy conservation projects (90-4-001)

The appropriation in this section is subject to the following conditions and limitations: The department shall contract with the following agencies for the amounts specified to undertake energy conservation projects. Each contract shall require the agencies listed below to deposit into the energy ~~((conservation account, hereby created in the state treasury))~~ efficiency services account, created in section 12 of this act, an amount equal to the contract amount. The payback period for the contracted amount shall be determined by the department, but shall not exceed six years.

(1) No more than \$1,033,000 shall be expended for energy conservation projects for Military Department facilities;

(2) No more than \$361,600 shall be expended for energy conservation projects for the department of social and health services;

(3) No more than \$552,000 shall be expended for energy conservation projects for The Evergreen State College.

| | | |
|---------------------|-----------------|---------------|
| | Reappropriation | Appropriation |
| St Bldg Constr Acct | | 1,946,600 |
| Prior Biennia | Future Biennia | Total |
| | 2,199,000 | 4,145,600 |

NEW SECTION. Sec. 21. CODIFICATION INSTRUCTIONS. Sections 2 through 13 and 17 of this act shall constitute a new chapter in Title 39 RCW.

NEW SECTION. Sec. 22. CAPTIONS NOT LAW. Captions as used in this act constitute no part of the law.

NEW SECTION. Sec. 23. REPEALER. 1982 c 159 s 6 (uncodified) is repealed.

NEW SECTION. Sec. 24. SEVERABILITY CLAUSE. 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.

Passed the Senate April 16, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.

CHAPTER 202

[Second Substitute House Bill 1671]

HIGHWAY ACCESS CONTROL AND TRANSPORTATION DEMAND
MANAGEMENT

Effective Date: 7/1/91

AN ACT Relating to growth strategies; adding a new chapter to Title 47 RCW; adding a new chapter to Title 81 RCW; creating new sections; prescribing penalties; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

HIGHWAY ACCESS MANAGEMENT

NEW SECTION. Sec. 1. LEGISLATIVE FINDINGS—ACCESS.
(1) The legislature finds that:

(a) Regulation of access to the state highway system is necessary in order to protect the public health, safety, and welfare, to preserve the functional integrity of the state highway system, and to promote the safe and efficient movement of people and goods within the state;

(b) The development of an access management program, in accordance with this chapter, which coordinates land use planning decisions by local governments and investments in the state highway system, will serve to

control the proliferation of connections and other access approaches to and from the state highway system. Without such a program, the health, safety, and welfare of the residents of this state are at risk, due to the fact that uncontrolled access to the state highway system is a significant contributing factor to the congestion and functional deterioration of the system; and

(c) The development of an access management program in accordance with this chapter will enhance the development of an effective transportation system and increase the traffic-carrying capacity of the state highway system and thereby reduce the incidences of traffic accidents, personal injury, and property damage or loss; mitigate environmental degradation; promote sound economic growth and the growth management goals of the state; reduce highway maintenance costs and the necessity for costly traffic operations measures; lengthen the effective life of transportation facilities in the state, thus preserving the public investment in such facilities; and shorten response time for emergency vehicles.

(2) In furtherance of these findings, all state highways are hereby declared to be controlled access facilities as defined in section 2 of this act, except those highways that are defined as limited access facilities in chapter 47.52 RCW.

(3) It is the policy of the legislature that:

(a) The access rights of an owner of property abutting the state highway system are subordinate to the public's right and interest in a safe and efficient highway system; and

(b) Every owner of property which abuts a state highway has a right to reasonable access to that highway, unless such access has been acquired pursuant to chapter 47.52 RCW, but may not have the right of a particular means of access. The right of access to the state highway may be restricted if, pursuant to local regulation, reasonable access can be provided to another public road which abuts the property.

(4) The legislature declares that it is the purpose of this chapter to provide a coordinated planning process for the permitting of access points on the state highway system to effectuate the findings and policies under this section.

(5) Nothing in this chapter shall affect the right to full compensation under section 16, Article I of the state Constitution.

NEW SECTION. Sec. 2. DEFINITIONS—ACCESS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Controlled access facility" means a transportation facility to which access is regulated by the governmental entity having jurisdiction over the facility. Owners or occupants of abutting lands and other persons have a right of access to or from such facility at such points only and in such manner as may be determined by the governmental entity.

(2) "Connection" means approaches, driveways, turnouts, or other means of providing for the right of access to or from controlled access facilities on the state highway system.

(3) "Permitting authority" means the department for connections in unincorporated areas or a city or town within incorporated areas which are authorized to regulate access to state highways pursuant to chapter 47.24 RCW.

NEW SECTION. Sec. 3. REGULATING CONNECTIONS. (1) Vehicular access and connections to or from the state highway system shall be regulated by the permitting authority in accordance with the provisions of this chapter in order to protect the public health, safety, and welfare.

(2) The department shall by July 1, 1992, adopt administrative procedures pursuant to chapter 34.05 RCW which establish state highway access standards and rules for its issuance and modification of access permits, closing of unpermitted connections, revocation of permits, and waiver provisions in accordance with this chapter. The department shall consult with the association of Washington cities and obtain concurrence of the city design standards committee as established by RCW 35.78.030 in the development and adoption of rules for access standards for city streets designated as state highways under chapter 47.24 RCW.

(3) Cities and towns shall, no later than July 1, 1993, adopt standards for access permitting on streets designated as state highways which meet or exceed the department's standards, provided that such standards may not be inconsistent with standards adopted by the department.

NEW SECTION. Sec. 4. ACCESS PERMITS. (1) No connection to a state highway shall be constructed or altered without obtaining an access permit in accordance with this chapter in advance of such action. A permitting authority has the authority to deny access to the state highway system at the location specified in the permit until the permittee constructs or alters the connection in accordance with the permit requirements.

(2) The cost of construction or alteration of a connection shall be borne by the permittee, except for alterations which are not required by law or administrative rule, but are made at the request of and for the convenience of the permitting authority. The permittee, however, shall bear the cost of alteration of any connection which is required by the permitting authority due to increased or altered traffic flows generated by changes in the permittee's facilities or nature of business conducted at the location specified in the permit.

(3) Except as otherwise provided in this chapter, an unpermitted connection is subject to closure by the appropriate permitting authority which shall have the right to install barriers across or remove the connection. When the permitting authority determines that a connection is unpermitted and subject to closure, it shall provide reasonable notice of its impending action to the owner of property served by the connection. The permitting

authority's procedures for providing notice and preventing the operation of unpermitted connections shall be adopted by rule.

NEW SECTION. Sec. 5. PERMIT FEE. The department shall establish by rule a schedule of fees for permit applications made to the department. The fee shall be nonrefundable and shall be used only to offset the costs of administering the access permit review process and the costs associated with administering the provisions of this chapter.

NEW SECTION. Sec. 6. PERMIT REVIEW PROCESS. The review process for access permit applications made by the department shall be as follows: Any person seeking an access permit shall file an application with the department. The department by rule shall establish application form and content requirements. The fee required by section 5 of this act must accompany the applications.

NEW SECTION. Sec. 7. PERMIT CONDITIONS. The permitting authority may issue a permit subject to any conditions necessary to carry out the provisions of this chapter, including, but not limited to, requiring the use of a joint-use connection. The permitting authority may revoke a permit if the applicant fails to comply with the conditions upon which the issuance of the permit was predicated.

NEW SECTION. Sec. 8. PERMIT REMOVAL. (1) Unpermitted connections to the state highway system in existence on July 1, 1990, shall not require the issuance of a permit and may continue to provide access to the state highway system, unless the permitting authority determines that such a connection does not meet minimum acceptable standards of highway safety. However, a permitting authority may require that a permit be obtained for such a connection if a significant change occurs in the use, design, or traffic flow of the connection or of the state highway to which it provides access. If a permit is not obtained, the connection may be closed pursuant to section 4 of this act.

(2) Access permits granted prior to adoption of the permitting authorities' standards shall remain valid until modified or revoked. Access connections to state highways identified on plats and subdivisions approved prior to July 1, 1991, shall be deemed to be permitted pursuant to chapter ____, Laws of 1991 (this act). The permitting authority may, after written notification, under rules adopted in accordance with section 3 of this act, modify or revoke an access permit granted prior to adoption of the standards by requiring relocation, alteration, or closure of the connection if a significant change occurs in the use, design, or traffic flow of the connection.

(3) The permitting authority may issue a nonconforming access permit after finding that to deny an access permit would leave the property without a reasonable means of access to the public roads of this state. Every nonconforming access permit shall specify limits on the maximum vehicular use

of the connection and shall be conditioned on the availability of future alternative means of access for which access permits can be obtained.

NEW SECTION. Sec. 9. ACCESS MANAGEMENT STANDARDS. (1) The department shall develop, adopt, and maintain an access control classification system for all routes on the state highway system, the purpose of which shall be to provide for the implementation and continuing applications of the provision of this chapter.

(2) The principal component of the access control classification system shall be access management standards, the purpose of which shall be to provide specific minimum standards to be adhered to in the planning for and approval of access to state highways.

(3) The control classification system shall be developed consistent with the following:

(a) The department shall, no later than January 1, 1993, adopt rules setting forth procedures governing the implementation of the access control classification system required by this chapter. The rule shall provide for input from the entities described in (b) of this subsection as well as for public meetings to discuss the access control classification system. Nothing in this chapter shall affect the validity of the department's existing or subsequently adopted rules concerning access to the state highway system. Such rules shall remain in effect until repealed or replaced by the rules required by this chapter.

(b) The access control classification system shall be developed in cooperation with counties, cities and towns, the state department of community development, regional transportation planning organizations, and other local governmental entities, and for city streets designated as state highways pursuant to chapter 47.24 RCW, adopted with the concurrence of the city design standards committee.

(c) The rule required by this section shall provide that assignment of a road segment to a specific access category be made in consideration of the following criteria:

(i) Local land use plans and zoning, as set forth in comprehensive plans;

(ii) The current functional classification as well as potential future functional classification of each road on the state highway system;

(iii) Existing and projected traffic volumes;

(iv) Existing and projected state, local, and metropolitan planning organization transportation plans and needs;

(v) Drainage requirements;

(vi) The character of lands adjoining the highway;

(vii) The type and volume of traffic requiring access;

(viii) Other operational aspects of access;

(ix) The availability of reasonable access by way of county roads and city streets to a state highway; and

(x) The cumulative effect of existing and projected connections on the state highway system's ability to provide for the safe and efficient movement of people and goods within the state.

(d) Access management standards shall include, but not be limited to, connection location standards, safety factors, design and construction standards, desired levels of service, traffic control devices, and effective maintenance of the roads. The standards shall also contain minimum requirements for the spacing of connections, intersecting streets, roads, and highways.

(e) An access control category shall be assigned to each segment of the state highway system by July 1, 1993.

TRANSPORTATION DEMAND MANAGEMENT

NEW SECTION. Sec. 10. FINDINGS—DEMAND MANAGEMENT. The legislature finds that automotive traffic in Washington's metropolitan areas is the major source of emissions of air contaminants. This air pollution causes significant harm to public health, causes damage to trees, plants, structures, and materials and degrades the quality of the environment.

Increasing automotive traffic is also aggravating traffic congestion in Washington's metropolitan areas. This traffic congestion imposes significant costs on Washington's businesses, governmental agencies, and individuals in terms of lost working hours and delays in the delivery of goods and services. Traffic congestion worsens automobile-related air pollution, increases the consumption of fuel, and degrades the habitability of many of Washington's cities and suburban areas. The capital and environmental costs of fully accommodating the existing and projected automobile traffic on roads and highways are prohibitive. Decreasing the demand for vehicle trips is significantly less costly and at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities such as roads and bridges, to accommodate increased traffic volumes.

The legislature also finds that increasing automotive transportation is a major factor in increasing consumption of gasoline and, thereby, increasing reliance on imported sources of petroleum. Moderating the growth in automotive travel is essential to stabilizing and reducing dependence on imported petroleum and improving the nation's energy security.

The legislature further finds that reducing the number of commute trips to work made via single occupant cars and light trucks is an effective way of reducing automobile-related air pollution, traffic congestion, and energy use. Major employers have significant opportunities to encourage and facilitate reducing single occupant vehicle commuting by employees.

The intent of this chapter is to require local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to reduce single occupant

vehicle commute trips. Such plans shall require major employers and employers at major worksites to implement programs to reduce single occupant vehicle commuting by employees at major worksites. Local governments in counties experiencing significant but less severe automobile-related air pollution and traffic congestion may implement such plans. State agencies shall implement programs to reduce single occupant vehicle commuting at all major worksites throughout the state.

NEW SECTION. Sec. 11. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "A major employer" means a private or public employer that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous months during the year.

(2) "Major worksite" means a building or group of buildings that are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights of way, and at which there are one hundred or more full-time employees of one or more employers, who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays, for at least twelve continuous months.

(3) "Commute trip reduction zones" mean areas, such as census tracts or combinations of census tracts, within a jurisdiction that are characterized by similar employment density, population density, level of transit service, parking availability, access to high occupancy vehicle facilities, and other factors that are determined to affect the level of single occupancy vehicle commuting.

(4) "Commute trip" means trips made from a worker's home to a worksite during the peak period of 6:00 a.m. to 9:00 a.m. on weekdays.

(5) "Proportion of single occupant vehicle commute trips" means the number of commute trips made by single occupant automobiles divided by the number of full-time employees.

(6) "Commute trip vehicle miles traveled per employee" means the sum of the individual vehicle commute trip lengths in miles over a set period divided by the number of full-time employees during that period.

(7) "Base year" means the year January 1, 1992, through December 31, 1992, on which goals for vehicle miles traveled and single occupant vehicle trips shall be based. Base year goals may be determined using the 1990 journey-to-work census data projected to the year 1992 and shall be consistent with the growth management act. The task force shall establish a method to be used by jurisdictions to determine reductions of vehicle miles traveled.

NEW SECTION. Sec. 12. REQUIREMENTS FOR COUNTIES AND CITIES. (1) Each county with a population over one hundred fifty thousand, and each city or town within those counties containing a major

employer shall, by October 1, 1992, adopt by ordinance and implement a commute trip reduction plan for all major employers. The plan shall be developed in cooperation with local transit agencies, regional transportation planning organizations as established in RCW 47.80.020, major employers, and the owners of and employers at major worksites. The plan shall be designed to achieve reductions in the proportion of single occupant vehicle commute trips and the commute trip vehicle miles traveled per employee by employees of major public and private sector employers in the jurisdiction.

(2) All other counties, and cities and towns in those counties, may adopt and implement a commute trip reduction plan.

(3) The department of ecology may, after consultation with the state energy office, as part of the state implementation plan for areas that do not attain the national ambient air quality standards for carbon monoxide or ozone, require municipalities other than those identified in subsection (1) of this section to adopt and implement commute trip reduction plans if the department determines that such plans are necessary for attainment of said standards.

(4) A commute trip reduction plan shall be consistent with the guidelines established under section 15 of this act and shall include but is not limited to (a) goals for reductions in the proportion of single occupant vehicle commute trips and the commute trip vehicle miles traveled per employee; (b) designation of commute trip reduction zones; (c) requirements for major public and private sector employers to implement commute trip reduction programs; (d) a commute trip reduction program for employees of the county, city, or town; (e) a review of local parking policies and ordinances as they relate to employers and major worksites and any revisions necessary to comply with commute trip reduction goals and guidelines; (f) an appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain waiver or modification of those requirements; and (g) means for determining base year values of the proportion of single occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals on an annual basis. Goals which are established shall take into account existing transportation demand management efforts which are made by major employers. Each jurisdiction shall ensure that employers shall receive full credit for the results of transportation demand management efforts and commute trip reduction programs which have been implemented by major employers prior to the base year. The goals for miles traveled per employee for all major employers shall not be less than a fifteen percent reduction from the base year value of the commute trip reduction zone in which their worksite is located by January 1, 1995, twenty-five percent reduction from the base year values by January

1, 1997, and thirty-five percent reduction from the base year values by January 1, 1999.

(5) A county, city, or town may, as part of its commute trip reduction plan, require commute trip reduction programs for employers with ten or more full time employees at major worksites in federally designated non-attainment areas for carbon monoxide and ozone. The county, city or town shall develop the programs in cooperation with affected employers and provide technical assistance to the employers in implementing such programs.

(6) The commute trip reduction plans adopted by counties, cities, and towns under this chapter shall be consistent with and may be incorporated in applicable state or regional transportation plans and local comprehensive plans and shall be coordinated, and consistent with, the commute trip reduction plans of counties, cities, or towns with which the county, city, or town has, in part, common borders or related regional issues. Such regional issues shall include assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction. Counties, cities, or towns adopting commute trip reduction plans may enter into agreements through the interlocal cooperation act or by resolution or ordinance as appropriate with other jurisdictions, local transit agencies, or regional transportation planning organizations to coordinate the development and implementation of such plans. Counties, cities, or towns adopting a commute trip reduction plan shall review it annually and revise it as necessary to be consistent with applicable plans developed under RCW 36.70A.070.

(7) Each county, city, or town implementing a commute trip reduction program shall, within thirty days submit a summary of its plan along with certification of adoption to the commute trip reduction task force established under section 15 of this act.

(8) Each county, city, or town implementing a commute trip reduction program shall submit an annual progress report to the commute trip reduction task force established under section 15 of this act. The report shall be due July 1, 1994, and each July 1 thereafter through July 1, 2000. The report shall describe progress in attaining the applicable commute trip reduction goals for each commute trip reduction zone and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction task force.

(9) Any waivers or modifications of the requirements of a commute trip reduction plan granted by a jurisdiction shall be submitted for review to the commute trip reduction task force established under section 15 of this act. The commute trip reduction task force may not deny the granting of a waiver or modification of the requirements of a commute trip reduction plan by a jurisdiction but they may notify the jurisdiction of any comments or objections.

(10) Each county, city, or town implementing a commute trip reduction program shall count commute trips eliminated through work-at-home options or alternate work schedules as one and two-tenths vehicle trips eliminated for the purpose of meeting trip reduction goals.

(11) Plans implemented under this section shall not apply to commute trips for seasonal agricultural employees.

(12) Plans implemented under this section shall not apply to construction worksites when the expected duration of the construction project is less than two years.

NEW SECTION. Sec. 13. REQUIREMENTS FOR EMPLOYERS.

(1) Not more than six months after the adoption of the commute trip reduction plan by a jurisdiction, each major employer in that jurisdiction shall develop a commute trip reduction program and shall submit a description of that program to the jurisdiction for review. The program shall be implemented not more than six months after submission to the jurisdiction.

(2) A commute trip reduction program shall consist of, at a minimum (a) designation of a transportation coordinator and the display of the name, location, and telephone number of the coordinator in a prominent manner at each affected worksite; (b) regular distribution of information to employees regarding alternatives to single occupant vehicle commuting; (c) an annual review of employee commuting and reporting of progress toward meeting the single occupant vehicle reduction goals to the county, city, or town consistent with the method established in the commute trip reduction plan; and (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures may include but are not limited to:

(i) Provision of preferential parking or reduced parking charges, or both, for high occupancy vehicles;

(ii) Instituting or increasing parking charges for single occupant vehicles;

(iii) Provision of commuter ride matching services to facilitate employee ridesharing for commute trips;

(iv) Provision of subsidies for transit fares;

(v) Provision of vans for van pools;

(vi) Provision of subsidies for car pooling or van pooling;

(vii) Permitting the use of the employer's vehicles for car pooling or van pooling;

(viii) Permitting flexible work schedules to facilitate employees' use of transit, car pools, or van pools;

(ix) Cooperation with transportation providers to provide additional regular or express service to the worksite;

(x) Construction of special loading and unloading facilities for transit, car pool, and van pool users;

(xi) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;

(xii) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facility;

(xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes;

(xiv) Establishment of a program of alternative work schedules such as compressed work week schedules which reduce commuting; and

(xv) Implementation of other measures designed to facilitate the use of high-occupancy vehicles such as on-site day care facilities and emergency taxi services.

(3) Employers or owners of worksites may form or utilize existing transportation management associations to assist members in developing and implementing commute trip reduction programs.

NEW SECTION. Sec. 14. JURISDICTIONS' REVIEW AND PENALTIES. (1) Each jurisdiction implementing a commute trip reduction plan under this chapter or as part of a plan or ordinance developed under RCW 36.70A.070 shall review each employer's initial commute trip reduction program to determine if the program is likely to meet the applicable commute trip reduction goals. The employer shall be notified by the jurisdiction of its findings. If the jurisdiction finds that the program is not likely to meet the applicable commute trip reduction goals, the jurisdiction will work with the employer to modify the program as necessary. The jurisdiction shall complete review of each employer's initial commute trip reduction program within three months of receipt.

(2) Each jurisdiction shall annually review each employer's progress toward meeting the applicable commute trip reduction goals. If it appears an employer is not likely to meet the applicable commute trip reduction goals, the jurisdiction shall work with the employer to make modifications to the commute trip reduction program.

(3) If an employer fails to meet the applicable commute trip reduction goals, the jurisdiction shall propose modifications to the program and direct the employer to revise its program within thirty days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.

(4) Each jurisdiction implementing a commute trip reduction plan pursuant to this chapter may impose civil penalties, in the manner provided in chapter 7.80 RCW, for failure by an employer to implement a commute trip reduction program or to modify its commute trip reduction program as required in subsection (3) of this section. No major employer shall be liable for civil penalties under this chapter if failure to achieve a commute trip reduction program goal was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith.

NEW SECTION. Sec. 15. (1) A twenty-three member state commute trip reduction task force shall be established as follows:

(a) The director of the state energy office or the director's designee who shall serve as chair;

(b) The secretary of the department of transportation or the secretary's designee;

(c) The director of the department of ecology or the director's designee;

(d) The director of the department of community development or the director's designee;

(e) The director of the department of general administration or the director's designee;

(f) Three representatives from counties appointed by the governor from a list of at least six recommended by the Washington state association of counties;

(g) Three representatives from cities and towns appointed by the governor from a list of at least six recommended by the association of Washington cities;

(h) Three representatives from transit agencies appointed by the governor from a list of at least six recommended by the Washington state transit association;

(i) Six representatives of employers at or owners of major work sites in Washington appointed by the governor from a list of at least twelve recommended by the association of Washington business; and

(j) Three citizens appointed by the governor.

Members of the commute trip reduction task force shall serve without compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members appointed by the governor shall be compensated in accordance with RCW 43.03.220. The task force has all powers necessary to carry out its duties as prescribed by this chapter. The task force shall be dissolved on July 1, 2000.

(2) By March 1, 1992, the commute trip reduction task force shall establish guidelines for commute trip reduction plans. The guidelines are intended to ensure consistency in commute trip reduction plans and goals among jurisdictions while fairly taking into account differences in employment and housing density, employer size, existing and anticipated levels of transit service, special employer circumstances, and other factors the task force determines to be relevant. The guidelines shall include:

(a) Criteria for establishing commute trip reduction zones;

(b) Methods and information requirements for determining base year values of the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals;

(c) Model commute trip reduction ordinances;

(d) Methods for assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction;

(e) An appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification;

(f) Methods to ensure that employers shall receive full credit for the results of transportation demand management efforts and commute trip reduction programs which have been implemented by major employers prior to the base year;

(g) Alternative commute trip reduction goals for major employers which cannot meet the goals of this chapter because of the unique nature of their business; and

(h) Alternative commute trip reduction goals for major employers whose worksites change and who contribute substantially to traffic congestion in a trip reduction zone.

(3) The task force shall assess the commute trip reduction options available to employers other than major employers and make recommendations to the legislature by October 1, 1992. The recommendations shall include the minimum size of employer who shall be required to implement trip reduction programs and the appropriate methods those employers can use to accomplish trip reduction goals.

(4) The task force shall review progress toward implementing commute trip reduction plans and programs and the costs and benefits of commute trip reduction plans and programs and shall make recommendations to the legislature by December 1, 1995, and December 1, 1999. In assessing the costs and benefits, the task force shall consider the costs of not having implemented commute trip reduction plans and programs. The task force shall examine other transportation demand management programs nationally and incorporate its findings into its recommendations to the legislature. The recommendations shall address the need for continuation, modification, or termination or any or all requirements of this chapter. The recommendations made December 1, 1995, shall include recommendations regarding extension of the requirements of this chapter to employers with fifty or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for more than twelve continuous months.

NEW SECTION. Sec. 16. TECHNICAL ASSISTANCE TEAM. (1) A technical assistance team shall be established under the direction of the state energy office and include representatives of the departments of transportation and ecology. The team shall provide staff support to the commute trip reduction task force in carrying out the requirements of section 15 of

this act and to the department of general administration in carrying out the requirements of section 19 of this act.

(2) The team shall provide technical assistance to counties, cities, and towns, the department of general administration, other state agencies, and other employers in developing and implementing commute trip reduction plans and programs. The technical assistance shall include: (a) Guidance in determining base and subsequent year values of single occupant vehicle commuting proportion and commute trip reduction vehicle miles traveled to be used in determining progress in attaining plan goals; (b) developing model plans and programs appropriate to different situations; and (c) providing consistent training and informational materials for the implementation of commute trip reduction programs. Model plans and programs, training and informational materials shall be developed in cooperation with representatives of local governments, transit agencies, and employers.

(3) In carrying out this section the state energy office and department of transportation may contract with state-wide associations representing cities, towns, and counties to assist cities, towns, and counties in implementing commute trip reduction plans and programs.

NEW SECTION. Sec. 17. USE OF FUNDS. A portion of the funds made available for the purposes of this chapter shall be used to fund the commute trip reduction task force in carrying out the responsibilities of section 16 of this act, and the interagency technical assistance team, including the activities authorized under section 16(2) of this act, and to assist counties, cities, and towns implementing commute trip reduction plans. Funds shall be provided to the counties in proportion to the number of major employers and major worksites in each county. The counties shall provide funds to cities and towns within the county which are implementing commute trip reduction plans in proportion to the number of major employers and major worksites within the city or town.

NEW SECTION. Sec. 18. LEGISLATIVE INTENT—STATE LEADERSHIP. The legislature hereby recognizes the state's crucial leadership role in establishing and implementing effective commute trip reduction programs. Therefore, it is the policy of the state that the department of general administration and other state agencies shall aggressively develop substantive programs to reduce commute trips by state employees. Implementation of these programs will reduce energy consumption, congestion in urban areas, and air and water pollution associated with automobile travel.

NEW SECTION. Sec. 19. GENERAL ADMINISTRATION. (1) The director of general administration, with the concurrence of an interagency task force established for the purposes of this section, shall coordinate a commute trip reduction plan for state agencies which are phase I major employers by January 1, 1993. The task force shall include representatives of the state energy office, the departments of transportation and ecology and

such other departments as the director of general administration determines to be necessary to be generally representative of state agencies. The state agency plan shall be consistent with the requirements of sections 12 and 13 of this act and shall be developed in consultation with state employees, local and regional governments, local transit agencies, the business community, and other interested groups. The plan shall consider and recommend policies applicable to all state agencies including but not limited to policies regarding parking and parking charges, employee incentives for commuting by other than single-occupant automobiles, flexible and alternative work schedules, alternative worksites, and the use of state-owned vehicles for car and van pools. The plan shall also consider the costs and benefits to state agencies of achieving commute trip reductions and consider mechanisms for funding state agency commute trip reduction programs. The department shall, within thirty days, submit a summary of its plan along with certification of adoption to the commute trip reduction task force established under section 15 of this act.

(2) Not more than three months after the adoption of the commute trip reduction plan, each state agency shall, for each facility which is a major employer, develop a commute trip reduction program. The program shall be designed to meet the goals of the commute trip reduction plan of the county, city, or town or, if there is no local commute trip reduction plan, the state. The program shall be consistent with the policies of the state commute trip reduction plan and section 13 of this act. The agency shall submit a description of that program to the local jurisdiction implementing a commute trip reduction plan or, if there is no local commute trip reduction plan, to the department of general administration. The program shall be implemented not more than three months after submission to the department. Annual reports required in section 13(2)(c) of this act shall be submitted to the local jurisdiction implementing a commute trip reduction plan and to the department of general administration. An agency which is not meeting the applicable commute trip reduction goals shall, to the extent possible, modify its program to comply with the recommendations of the local jurisdiction or the department of general administration.

(3) State agencies sharing a common location may develop and implement a joint commute trip reduction program or may delegate the development and implementation of the commute trip reduction program to the department of general administration.

(4) The department of general administration in consultation with the state technical assistance team shall review the initial commute trip reduction program of each state agency subject to the commute trip reduction plan for state agencies to determine if the program is likely to meet the applicable commute trip reduction goals and notify the agency of any deficiencies. If it is found that the program is not likely to meet the applicable

commute trip reduction goals, the team will work with the agency to modify the program as necessary.

(5) For each agency subject to the state agency commute trip reduction plan, the department of general administration in consultation with the technical assistance team shall annually review progress toward meeting the applicable commute trip reduction goals. If it appears an agency is not meeting or is not likely to meet the applicable commute trip reduction goals, the team shall work with the agency to make modifications to the commute trip reduction program.

(6) The department of general administration shall submit an annual progress report for state agencies subject to the state agency commute trip reduction plan to the commute trip reduction task force established under section 15 of this act. The report shall be due April 1, 1993, and each April 1 through 2000. The report shall report progress in attaining the applicable commute trip reduction goals for each commute trip reduction zone and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction task force.

NEW SECTION. Sec. 20. CODIFICATION. Sections 1 through 9 of this act shall constitute a new chapter in Title 47 RCW.

****NEW SECTION.*** Sec. 21. CODIFICATION. Sections 10 through 19 of this act shall constitute a new chapter in Title 81 RCW.

*Sec. 21 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 22. HEADINGS. Section captions and part headings as used in this act do not constitute any part of the law.

****NEW SECTION.*** Sec. 23. TDM---NULL AND VOID. If funding for the purposes of sections 10 through 19 of this act is not provided by June 30, 1991, sections 10 through 19 and 21 of this act shall be null and void.

*Sec. 23 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 24. EMERGENCY CLAUSE. 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 shall take effect July 1, 1991.

NEW SECTION. Sec. 25. SEVERABILITY CLAUSE. 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.

Passed the House March 19, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 15, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 15, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 21 and 23, Second Substitute House Bill No. 1671 entitled:

"AN ACT Relating to growth strategies."

This bill establishes two innovative approaches to dealing with some of the problems associated with the rapid growth in this state: highway access control and transportation demand management (TDM).

Motor vehicles generate over 40% of the air pollution in our state. For this reason, I included TDM as one of the key strategies in addressing the major sources of pollution in the clean air bill I submitted to the 1991 Legislature. Reducing the number of vehicles on our roads, particularly single-occupant vehicles, through TDM measures is an effective way to reduce automobile-related air pollution, traffic congestion, and energy use.

Examples of TDM measures include carpools, vanpools, employer-subsidized transit passes, parking fees at market rates, work-at-home options and alternative work schedules. This bill allows public and private employers to choose the options that best suit their particular work situation while working toward reducing the number of their employees who drive alone to work.

TDM generated considerable interest and support among a broad range of interests, including local governments, business and environmental organizations. This bill has the imprint of all these groups.

During the legislative process, the TDM provisions were separated from the clean air bill and incorporated in Second Substitute House Bill No. 1671. Due to an oversight, the appropriate linkages were not made between the two bills to provide funding for the TDM program. I am vetoing sections 21 (codification) and 23 (null and void) to ensure that the revenue raised in Engrossed Substitute House Bill No. 1028, the clean air bill, may be used for the TDM activities prescribed in this bill as intended.

Section 21 codifies the TDM provisions of this bill in Title 81 (Transportation). Funds intended for air pollution control activities, such as TDM, are provided in Engrossed Substitute House Bill No. 1028, section 228. However, section 228 permits expenditures only for the clean air bill, of which TDM was originally a part, and RCW Chapters 70.94 and 70.120.

In vetoing section 21, I am requesting the Code Reviser to place the TDM sections of this bill into RCW Chapter 70.94, Washington Clean Air Act. This would allow TDM activities to be funded from the revenues raised in Engrossed Substitute House Bill No. 1028 for air pollution control. This action is consistent with legislative intent and the purposes for which these revenues were originally intended.

I am vetoing section 23, the null and void clause, in order to protect the significant public policy established by this bill. While the 1991-93 biennium budget has not yet been adopted, funding for TDM activities has been included from the air pollution control account in previous versions of both the House and Senate budgets.

With the exception of sections 21 and 23, Second Substitute House Bill No. 1671 is approved."

CHAPTER 203

[Substitute Senate Bill 5110]

PROPERTY TAX—EXEMPTIONS FOR SENIOR CITIZENS AND DISABLED PERSONS

Effective Date: 5/16/91

AN ACT Relating to exemptions and deferrals for senior citizens and persons retired for reasons of physical disability; amending RCW 84.36.381 and 84.36.041; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.36.381 and 1987 c 301 s 1 are each amended to read as follows:

A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of January 1st of the year for which the exemption is claimed: PROVIDED, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: PROVIDED FURTHER, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if the residence is temporarily unoccupied or if the residence is occupied by a spouse and/or a person financially dependent on the claimant for support;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must have been sixty-one years of age or older on January 1st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: PROVIDED, That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve.

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of (~~eighteen~~) twenty-six thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of (~~fourteen~~) eighteen thousand dollars or less but greater than (~~twelve~~) fifteen thousand dollars shall be exempt from all regular property taxes on the greater of (~~twenty-four~~) thirty thousand dollars or thirty percent of the valuation of his or her residence, but not to exceed (~~forty~~) fifty thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of (~~twelve~~) fifteen thousand dollars or less shall be exempt from all regular property taxes on the greater of (~~twenty-eight~~) thirty-four thousand dollars or fifty percent of the valuation of his or her residence.

Sec. 2. RCW 84.36.041 and 1989 c 379 s 2 are each amended to read as follows:

(1) All real and personal property used by a nonprofit home for the aging that is reasonably necessary for the purposes of the home is exempt from taxation if the benefit of the exemption inures to the home and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents; or

(b) The home is subsidized under a federal department of housing and urban development program. The department of revenue shall provide by rule a definition of homes eligible for exemption under this subsection (b), consistent with the purposes of this section.

(2) A home for the aging is eligible for a partial exemption if the home does not meet the requirements of subsection (1) of this section because fewer than fifty percent of the occupied dwelling units are occupied by eligible residents. The amount of exemption shall be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home by a fraction. The numerator of the fraction is the number of dwelling units occupied by eligible persons multiplied by two. The denominator of the fraction is the total number of occupied dwelling units. The fraction shall never exceed one.

(3) To be exempt under this section, the property must be used exclusively for the purposes for which the exemption is granted, except as provided in RCW 84.36.805.

(4) A home for the aging is exempt from taxation only if the organization operating the home is exempt from income tax under section 501(c) of the federal internal revenue code as existing on January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purposes of this section.

(5) Each eligible resident of a home for the aging shall submit the form required under RCW 84.36.385 to the county assessor by July 1st of the assessment year. An eligible resident who has filed a form for a previous

year need not file a new form until there is a change in status affecting the person's eligibility.

(6) In determining the true and fair value of a home for the aging for purposes of the partial exemption provided by subsection (2) of this section, the assessor shall apply the computation method provided by RCW 84.34-.060 and shall consider only the use to which such property is applied during the years for which such partial exemptions are available and shall not consider potential uses of such property.

(7) A home for the aging that was exempt for taxes levied for collection in 1990 and is not fully exempt under this section is entitled to partial exemptions as follows:

(a) For taxes levied for collection in 1991, two-thirds of the assessed value that would otherwise be subject to tax under this section is exempt from taxation.

(b) For taxes levied for collection in 1992, one-third of the assessed value that would otherwise be subject to tax under this section is exempt from taxation.

(8) As used in this section:

(a) "Eligible resident" means a person who would be eligible for an exemption of regular property taxes under RCW 84.36.381 if the person owned a single-family dwelling. For the purposes of determining eligibility under this section, a "cotenant" as used in RCW 84.36.383 means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(b) "Home for the aging" means a residential housing facility that (i) provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person; (ii) has only residents who are at least sixty-two years of age or who have needs for care generally compatible with persons who are at least sixty-two years of age; and (iii) provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

NEW SECTION. Sec. 3. In calendar year 1992, the county assessor of each county shall compile data on the number of persons using the property tax exemption program, the number of persons using the property tax deferral program, the income of the claimants, and the value of the residence for which an exemption or deferral is claimed. The county assessor shall report the results to the department of revenue no later than March 1, 1993.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 5. Section 1 of this act shall be effective for taxes levied for collection in 1992 and thereafter.

Passed the Senate April 28, 1991.

Passed the House April 28, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 204

[Substitute Senate Bill 5332]

DISABLED PERSONS—RESIDENTIAL CARE—REAL PROPERTY INVENTORY—REQUIREMENTS

Effective Date: 5/16/91

AN ACT Relating to the use of real property inventories to provide residential care for disabled persons; amending RCW 43.79.201 and 43.185.110; adding a new section to chapter 79.01 RCW; adding a new section to chapter 43.20A RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 79.01 RCW to read as follows:

(1) Every five years the department of social and health services and other state agencies that operate institutions shall conduct an inventory of all real property subject to the charitable, educational, penal, and reformatory institution account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled. The inventory shall identify which of those real properties are not needed for state-provided residential care, custody, or treatment. By December 1, 1992, and every five years thereafter the department shall report the results of the inventory to the house of representatives committee on capital facilities and financing, the senate committee on ways and means, and the legislative budget committee.

(2) Real property identified as not needed for state-provided residential care, custody, or treatment shall be transferred to the corpus of the charitable, educational, penal, and reformatory institution account. This subsection shall not apply to real property subject to binding conditions that conflict with the other provisions of this subsection.

(3) The department of natural resources shall manage all property subject to the charitable, educational, penal, and reformatory institution account and, in consultation with the department of social and health services and other affected agencies, shall adopt a plan for the management of real property subject to the account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled.

(a) The plan shall be consistent with state trust land policies and shall be compatible with the needs of institutions adjacent to real property subject to the plan.

(b) The plan may be modified as necessary to ensure the quality of future management and to address the acquisition of additional real property.

NEW SECTION. Sec. 2. A new section is added to chapter 43.20A RCW to read as follows:

The department shall conduct an inventory of real properties as provided in section 1 of this act.

Sec. 3. RCW 43.79.201 and 1985 c 57 s 37 are each amended to read as follows:

(1) All moneys in the state treasury to the credit of that fund now denoted as the C.E.P. & R.I. fund on and after March 20, 1961, and all moneys thereafter paid into the state treasury for or to the credit of such fund shall be and are hereby transferred to and placed in the charitable, educational, penal and reformatory institutions account, hereby created, in the state treasury, into which fund there shall also be deposited all moneys arising from the sale, lease or transfer of the land granted by the United States government to the state for charitable, educational, penal and reformatory institutions by section 17 of the enabling act, or otherwise set apart for such institutions, except all moneys arising from the sale, lease, or transfer of that certain one hundred thousand acres of such land assigned for the support of the University of Washington by chapter 91, Laws of 1903 and section 9, chapter 122, Laws of 1893. All earnings of investments of balances in the charitable, educational, penal and reformatory institutions account shall be credited to the ~~((general fund))~~ account.

(2) If feasible, not less than one-half of all income to the charitable, educational, penal, and reformatory institutions account shall be appropriated for the purpose of providing housing, including repair and renovation of state institutions, for persons who are mentally ill, developmentally disabled, or youth who are blind, deaf, or otherwise disabled. If moneys are appropriated for community-based housing, the moneys shall be appropriated to the department of community development for the housing assistance program under chapter 43.185 RCW.

Sec. 4. RCW 43.185.110 and 1987 c 513 s 3 are each amended to read as follows:

The director shall prepare an annual report and shall send copies to the chair of the house of representatives committee on housing, the chair of the senate committee on commerce and labor, and one copy to the staff of each committee that summarizes the housing trust fund's income, grants and operating expenses, implementation of its program, and any problems arising in the administration thereof. The director shall promptly appoint a

low-income housing assistance advisory committee composed of a representative from each of the following groups: Apartment owners, realtors, mortgage lending or servicing institutions, private nonprofit housing assistance programs, tenant associations, and public housing assistance programs. The advisory group shall advise the director on housing needs in this state, including housing needs for persons who are mentally ill or developmentally disabled or youth who are blind or deaf or otherwise disabled, operational aspects of the grant and loan program or revenue collection programs established by this chapter, and implementation of the policy and goals of this chapter. Such advice shall be consistent with policies and plans developed by regional support networks according to chapter 71.24 RCW for the mentally ill and the developmental disabilities planning council for the developmentally disabled.

NEW SECTION. Sec. 5. A new section is added to chapter 79.01 RCW to read as follows:

Where C.E.P. & R.I. land has the potential for lease for commercial, industrial, or residential uses or other uses with the potential for high economic return and is within urban or suburban areas, the department of natural resources shall make every effort consistent with trust land management principles and all other provisions of law to lease the lands for such purposes, unless the land is subject to a lease to a state agency operating an existing state institution. The department of natural resources is authorized, subject to approval by the board of natural resources and only if a higher return can be realized, to exchange such lands for lands of at least equal value and to sell such lands and use the proceeds to acquire replacement lands. The department shall report to the appropriate legislative committees all C.E.P. & R.I. land purchased, sold, or exchanged. Income from the leases shall be deposited in the charitable, educational, penal, and reformatory institutions account. The legislature shall give priority consideration to appropriating one-half of the money derived from lease income to providing community housing for persons who are mentally ill, developmentally disabled, or youth who are blind, deaf, or otherwise disabled.

NEW SECTION. Sec. 6. 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 shall take effect immediately.

Passed the Senate April 23, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 205

[House Bill 2198]

JOINT CENTER FOR HIGHER EDUCATION

Effective Date: 7/1/91

AN ACT Relating to the joint center for higher education; amending RCW 28B.10.060, 28B.25.010, 28B.25.020, 28B.25.030, 28B.25.040, 28B.25.050, and 28B.45.050; adding new sections to chapter 28B.25 RCW; repealing RCW 28B.25.060; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28B.10.060 and 1989 1st ex.s. c 7 s 10 are each amended to read as follows:

(1) The Spokane intercollegiate research and technology institute is hereby created.

(2) The institute shall be operated and administered as a multi-institutional education and research center, housing appropriate programs conducted in Spokane under the authority of Washington State University, Eastern Washington University, and the community colleges of Spokane. Gonzaga University and Whitworth College may participate as full partners in any academic and research activities of the institute. ~~((Washington State University shall act as administrative and fiscal agent for the institute.~~

~~(3) The institute shall be operated and administered through a cooperative arrangement of the institutions of higher education participating in the institute.~~

~~(4))~~ (3) The institute shall house education and research programs specifically designed to meet the needs of the greater Spokane area.

~~((5))~~ (4) The coordination of programs and activities at the institute shall be subject to the authority of the ~~((Spokane))~~ joint center for higher education under RCW 28B.25.020. The institute shall be administered by the joint center.

~~((6))~~ (5) The establishment of any education or research programs at the institute and the lease, purchase, or construction of any site or facility for the institute shall be subject to the approval of the higher education coordinating board pursuant to RCW 28B.80.340.

(6) All cabinets, furniture, office equipment, other tangible property acquired by Washington State University for the institute, all funds, credits, or other assets held by Washington State University for the institute shall be assigned to the joint center for higher education.

Sec. 2. RCW 28B.25.010 and 1985 c 370 s 97 are each amended to read as follows:

~~((Washington State and Eastern Washington Universities shall establish, in cooperation with the council for postsecondary education or its successor agency;)) A joint center for higher education is hereby established. The center shall be located in Spokane ((on or before January 1, 1986)).~~

Sec. 3. RCW 28B.25.020 and 1989 1st ex.s. c 7 s 11 are each amended to read as follows:

(1) The joint center shall have authority over all fiscal activities related to the land and facilities known as the Spokane higher education park subject to the approval of the higher education coordinating board pursuant to RCW 28B.80.330 through 28B.80.350.

(2) The joint center for higher education shall coordinate all ~~((undergraduate))~~ baccalaureate and graduate degree programs, and all other ~~((seminars;))~~ courses~~((;))~~ and programs ~~((of any type))~~ offered in the Spokane area by Washington State University and by Eastern Washington University outside of its Cheney campus. The joint center for higher education shall not coordinate the intercollegiate center for nursing.

~~((2))~~ (3) The joint center for higher education shall coordinate the following higher education activities in the Spokane area outside of the Eastern Washington University Cheney campus:

(a) Articulation between lower division and upper division programs;

(b) The participation of Washington State University and Eastern Washington University in ~~((its))~~ joint ~~((engineering))~~ programs with Gonzaga University and Whitworth College and in ~~((its))~~ joint ~~((engineering-management))~~ programs with ~~((Eastern Washington University and Gonzaga University))~~ each other;

(c) All contractual negotiations between public and independent colleges and universities; and

(d) Programs offered through the intercollegiate research and technology institute created by RCW 28B.10.060.

~~((3))~~ (4) The participating institutions in the joint center for higher education shall maintain jurisdiction over the content of the course offerings and the entitlement to degrees. However, before any degree is authorized under this section it shall be subject to review and approval of the higher education coordinating board.

~~((4) Disputes regarding which programs are to be coordinated by the joint center for higher education shall be arbitrated by the higher education coordinating board or its successor agency. The decision of the arbitrating agency shall be binding;))~~

(5) The joint center shall develop a master plan for the Spokane higher education park. The plan shall be developed in cooperation with the participating institutions and submitted to the higher education coordinating board, legislature, and office of financial management.

(6) The joint center shall adopt rules as necessary to implement this chapter.

(7) Title to or all interest in real estate and other assets, including but not limited to assignable contracts, cash, equipment, buildings, facilities, and appurtenances thereto held as of the effective date of this section shall vest in the joint center for higher education.

Sec. 4. RCW 28B.25.030 and 1985 c 370 s 99 are each amended to read as follows:

(1) The joint center for higher education shall be ~~((administered))~~ governed by a board consisting of the following twelve voting members:

(a) ~~((Two representatives))~~ One member of the Eastern Washington University ~~((appointed by the))~~ board of trustees;

(b) ~~((Two representatives))~~ One member of the Washington State University ~~((appointed by the))~~ board of regents;

(c) One ~~((representative of the community colleges in the Spokane area appointed by))~~ member of the board of trustees of the Spokane community college district; ~~((and))~~

(d) ~~((Two))~~ Six citizens residing in Spokane county. ~~((The governor, with the consent of the senate, shall appoint the initial members, one for a two-year term and one for a four-year term. Subsequent citizen board members shall be appointed for four-year terms by the remaining voting members of the board:))~~ Of the six citizen members, no more than two may be regents or trustees of Eastern Washington University, Washington State University, or the Spokane community college district; and

(e) The presidents of Washington State University and Eastern Washington University, and the chief executive officer of the Spokane community college district shall serve as ex officio members of the board.

(2) The executive ~~((coordinator or designee of the council for postsecondary education or its successor agency))~~ director of the higher education coordinating board, the president of Gonzaga University, and the president of Whitworth College shall serve as ~~((a))~~ nonvoting ex officio members of the board.

(3) Each of the ~~((seven))~~ twelve voting members shall have one vote. The voting members shall select a chairperson from among the nine appointed members. A majority of the twelve voting members shall constitute a quorum for conducting business.

NEW SECTION. Sec. 5. A new section is added to chapter 28B.25 RCW to read as follows:

Nine members of the board shall be appointed by the governor and approved by the senate. The appointed members of the board shall serve for terms of four years, the terms expiring on September 30th of the fourth year except that, in the case of initial members, three shall be appointed to two-year terms, three shall be appointed to three-year terms, and three shall be appointed to four-year terms. The term of any board member who is a trustee or regent shall automatically expire when the member's term as trustee or regent expires.

NEW SECTION. Sec. 6. A new section is added to chapter 28B.25 RCW to read as follows:

A vacancy among appointed board members shall be filled by the governor subject to confirmation by the senate then in session, or, if not in session, at the next session. Board members appointed under this section shall have full authority to act as a board member prior to the time the senate acts on the member's confirmation. Appointments to fill vacancies shall be only for such terms as remain unexpired.

Sec. 7. RCW 28B.25.040 and 1985 c 370 s 100 are each amended to read as follows:

The board of the joint center for higher education shall hire a director who may hire other staff under chapter 28B.16 RCW as necessary to carry out the center's duties. ~~((The director shall have the status of resident dean at the center and of dean at both Washington State and Eastern Washington Universities.))~~ The director shall exercise such additional powers, other than rule making, as may be delegated by the board by resolution.

Sec. 8. RCW 28B.25.050 and 1985 c 370 s 101 are each amended to read as follows:

~~((Washington State University and Eastern Washington University shall each allocate at least fifty thousand dollars per year to implement RCW 28B.25.010 through 28B.25.060.))~~ The board shall have authority to contract for ((financial and personnel)) services((, or provide such services through other means as agreed upon by the board)) as deemed appropriate to carry out its functions. Such services shall include, but not be limited to, facilities and project management, grants and contract development and monitoring, personnel services, and accounting.

NEW SECTION. Sec. 9. A new section is added to chapter 28B.25 RCW to read as follows:

The board is authorized to receive and expend federal funds and any private gifts or grants to further the purpose of the center. The funds are to be expended in accordance with federal and state law and any conditions contingent in the grant of those funds.

NEW SECTION. Sec. 10. A new section is added to chapter 28B.25 RCW to read as follows:

Washington State University is authorized to represent state interests in acquiring additional property at the site known as the Riverpoint higher education park. This authority will transfer to the joint center for higher education upon the first meeting held by the joint center board.

Sec. 11. RCW 28B.45.050 and 1989 1st ex.s. c 7 s 6 are each amended to read as follows:

Washington State University and Eastern Washington University are responsible for providing upper-division and graduate level programs to the citizens of the Spokane area, under rules or guidelines adopted by the joint

center for higher education. However, before any degree is authorized under this section it shall be subject to the review and approval of the higher education coordinating board. Washington State University shall meet its responsibility through the operation of a branch campus in the Spokane area. Eastern Washington University shall meet its responsibility through the operation of ((collocated)) programs and facilities in Spokane.

NEW SECTION. Sec. 12. RCW 28B.25.060 and 1985 c 370 s 102 are each repealed.

NEW SECTION. Sec. 13. 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 shall take effect July 1, 1991.

- Passed the House April 18, 1991.
- Passed the Senate April 18, 1991.
- Approved by the Governor May 16, 1991.
- Filed in Office of Secretary of State May 16, 1991.

CHAPTER 206

[Senate Bill 5651]

SCENIC RIVER SYSTEM—LITTLE SPOKANE RIVER ADDED

Effective Date: 7/28/91

AN ACT Relating to the scenic river system; amending RCW 79.72.080; and making an appropriation.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 79.72.080 and 1977 ex.s. c 161 s 8 are each amended to read as follows:

The following rivers of the state of Washington are hereby designated as being in the scenic river system of the state of Washington:

- (1) The Skykomish river from the junction of the north and south forks of the Skykomish river:
 - (a) Downstream approximately fourteen miles to its junction with the Sultan river;
 - (b) Upstream approximately twenty miles on the south fork to the junction of the Tye and Foss rivers;
 - (c) Upstream approximately eleven miles on the north fork to its junction with Bear creek;
- (2) The Beckler river from its junction with the south fork of the Skykomish river upstream approximately eight miles to its junction with Rapid river; ((and))
- (3) The Tye river from its junction with the south fork of the Skykomish river upstream approximately fourteen miles to Tye Lake; and

(4) The Little Spokane river from the upstream boundary of the state park boat put-in site near Rutter parkway and downstream to its confluence with the Spokane river.

NEW SECTION. Sec. 2. The sum of thirty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1993, from the general fund to the parks and recreation commission for the purpose of offsetting the costs of: A management assessment plan, an inventory of river resources, preparation of maps, facilitation of public forums and task forces, and the production of interim and final river management reports to the legislature.

Passed the Senate March 7, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 207

[House Bill 2057]

PUBLIC FACILITIES DISTRICTS—SALES AND USE TAXING AUTHORITY

Effective Date: 7/28/91

AN ACT Relating to public facilities districts; amending RCW 82.14.050 and 82.14.060; and adding a new section to chapter 82.14 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 82.14 RCW to read as follows:

The governing board of a public facilities district under chapter 36.100 RCW may submit an authorizing proposition to the voters of the district, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter.

The tax authorized in this section shall be in addition to any other taxes authorized by law and shall 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 public facilities district. The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

Moneys received from any tax imposed under this section shall be used for the purpose of providing funds for the costs associated with the financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of sports or entertainment facilities and contiguous parking.

Sec. 2. RCW 82.14.050 and 1990 2nd ex.s. c 1 s 201 are each amended to read as follows:

The counties, cities, and transportation authorities under RCW 82.14.045 and public facilities districts under chapter 36.100 RCW shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter which is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, cities, ~~((and))~~ transportation authorities, and public facilities districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. All earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, ~~((and))~~ transportation authorities, and public facilities districts monthly.

Sec. 3. RCW 82.14.060 and 1990 2nd ex.s. c 1 s 202 are each amended to read as follows:

Monthly the state treasurer shall make distribution from the local sales and use tax account to the counties, cities, ~~((and))~~ transportation authorities, and public facilities districts the amount of tax collected on behalf of each ~~((county, city, or transportation))~~ taxing authority, less the deduction provided for in RCW 82.14.050. The state treasurer shall make the distribution under this section without appropriation.

In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution shall not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein.

Passed the House March 19, 1991.

Passed the Senate April 17, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 208

[Substitute House Bill 1743]

HIGH RISK CONSUMER LOANS

Effective Date: Sections 1 through 23 become effective on 1/1/92; Section 24 becomes effective on 1/1/93.

AN ACT Relating to consumer loans; adding new sections to chapter 31.04 RCW; repealing RCW 31.04.010, 31.04.030, 31.04.040, 31.04.050, 31.04.060, 31.04.070, 31.04.080, 31.04.090, 31.04.095, 31.04.100, 31.04.110, 31.04.120, 31.04.130, 31.04.140, 31.04.150, 31.04.160, 31.04.200, 31.04.210, 31.04.220, 31.04.230, 31.04.250, 31.04.260, 31.08.010, 31.08.020, 31.08.030, 31.08.050, 31.08.060, 31.08.070, 31.08.080, 31.08.090, 31.08.100, 31.08.130, 31.08.140, 31.08.150, 31.08.160, 31.08.170, 31.08.173, 31.08.175, 31.08.180, 31.08.190, 31.08.200, 31.08.210, 31.08.220, 31.08.230, 31.08.240, 31.08.250, 31.08.260, 31.08.270, 31.08.900, 31.08.910, 31.08.911, and 31.08.920; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that borrowers who represent a higher than average credit risk are unable to obtain credit except at interest rates higher than permitted under other statutory provisions governing interest rates for loans. Therefore, it is the purpose of this chapter to authorize higher interest rates for certain types of loans, subject to the conditions and limitations contained in this chapter in order to ensure credit availability.

NEW SECTION. Sec. 2. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

(2) "License" means a single license issued under the authority of this chapter with respect to a single place of business.

(3) "Licensee" means a person to whom one or more licenses have been issued.

(4) "Supervisor" means the supervisor of banking of the department of general administration.

(5) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(6) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The supervisor may adopt by rule a more detailed explanation of the meaning and use of this method.

(7) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its

periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding with each payment applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded. The supervisor may adopt by rule a more detailed explanation of the meaning and use of this method.

NEW SECTION. Sec. 3. No person may engage in the business of making secured or unsecured loans of money, credit, or things in action at interest rates authorized by this chapter without first obtaining and maintaining a license in accordance with this chapter.

NEW SECTION. Sec. 4. This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions, nor to any pawnbroking business lawfully transacted under and as permitted by any law of this state regulating pawnbrokers, nor to any loan of credit made pursuant to a credit card plan including but not restricted to plans having all of the following characteristics:

(1) Where credit cards are issued pursuant to a plan whereby the organization issuing such cards shall be enabled to acquire those certain obligations which its members in good standing incur with those persons with whom the organization has entered into agreements setting forth said plan, and where the obligations are incurred pursuant to such agreements; or whereby the organization issuing such cards shall be enabled to extend credit to its members;

(2) Any fee for such credit cards is designed to cover only the administrative costs of the plan and does not exceed twenty-five dollars per year;

(3) Any charges, discounts, or fees resulting from the acquisition of such charges shall be paid to the organization issuing said credit cards (or to such other organizations as may be authorized by the issuing organization) by the persons, corporations, or associations with whom the organization has entered into such written agreements.

NEW SECTION. Sec. 5. (1) Application for a license under this chapter must be in writing and in the form prescribed by the supervisor. The application must contain at least the following information:

(a) The name and the business and the residence addresses of the applicant;

(b) If the applicant is a partnership or association, the name of every member;

(c) If the applicant is a corporation, the name of each officer and director;

(d) The street address, county, and municipality where business is to be conducted; and

(e) Such other information as the supervisor may require by rule.

(2) At the time of filing an application for a license under this chapter, each applicant shall pay to the supervisor an investigation fee and the initial year's license fee in an amount determined by rule of the supervisor to be sufficient to cover the supervisor's costs in administering this chapter.

(3) Each applicant shall file and maintain a surety bond, approved by the supervisor, in the penal sum of one hundred thousand dollars, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety shall not exceed the penal sum in the aggregate. The bond shall run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The supervisor may define qualifying "long-term subordinated debt" for purposes of this section.

NEW SECTION. Sec. 6. (1) The supervisor shall issue and deliver a license to the applicant to make loans in accordance with this chapter at the location specified in the application if, after investigation, the supervisor finds that the applicant has paid all required fees, has complied with section 5 of this act, and that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter.

(2) If the supervisor does not find the conditions of subsection (1) of this section have been met, the supervisor shall not issue the license. The supervisor shall notify the applicant of the denial and return to the applicant the bond posted and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The supervisor shall approve or deny every application for license under this chapter within sixty days from the filing of a complete application with the fees and the approved bond.

NEW SECTION. Sec. 7. The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of its members, and if a corporation, the date and place of its incorporation. The licensee shall conspicuously post the license in the place of business of the licensee. The license is not transferable or assignable.

NEW SECTION. Sec. 8. The licensee may not maintain more than one place of business under the same license, but the supervisor may issue more than one license to the same licensee upon application by the licensee in a form and manner established by the supervisor. A licensee who has five licensed locations shall not be required to maintain a bond in a penal sum exceeding ten thousand dollars for each additionally licensed location.

Whenever a licensee wishes to change the place of business to a street address other than that designated in the license, the licensee shall give written notice to the supervisor and shall obtain the supervisor's approval.

NEW SECTION. Sec. 9. A licensee shall, for each license held by any person, on or before the twentieth day of each December, pay to the supervisor an annual license fee. At the same time the licensee shall file with the supervisor the required bond or otherwise demonstrate compliance with section 5 of this act.

NEW SECTION. Sec. 10. (1) The supervisor may revoke a license issued under this chapter if the supervisor finds that:

(a) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the supervisor lawfully made and directed to the licensee in accordance with this chapter;

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter; or

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the supervisor to deny the application for the original license. The supervisor may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist unless the supervisor finds that the grounds for revocation or suspension are of general application to all offices or to more than one office operated by the licensee, in which case, the supervisor may revoke or suspend all of the licenses issued to the licensee.

(2) A licensee may surrender a license by delivering to the supervisor written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender.

(3) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a borrower.

(4) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the supervisor may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the supervisor finds that the licensee meets all the requirements of this chapter.

NEW SECTION. Sec. 11. Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees for title insurance, appraisals, recording, reconveyance, and releasing when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) Charge and collect a penalty of ten cents or less on each dollar of any installment payment delinquent ten days or more;

(5) Make open-end loans as provided in this chapter;

(6) Charge and collect a fee for dishonored checks in an amount approved by the supervisor; and

(7) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

NEW SECTION. Sec. 12. (1) As used in this section, "open-end loan" means an agreement between a licensee and a borrower that expressly states that the loan is made in accordance with this chapter and that provides that:

(a) A licensee may permit the borrower to obtain advances of money from the licensee from time to time, or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The amount of each advance and permitted charges and costs are debited to the borrower's account, and payments and other credits are credited to the same account;

(c) The charges are computed on the unpaid principal balance, or balances, of the account from time to time; and

(d) The borrower has the privilege of paying the account in full at any time without prepayment penalty or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

(2) Interest charges on an open-end loan shall not exceed twenty-five percent per annum computed in each billing cycle by any of the following methods:

(a) By converting the annual rate to a daily rate, and multiplying the daily rate by the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing the annual rate by three hundred sixty-five;

(b) By multiplying a monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the monthly rate is one-twelfth of the annual rate, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) By converting the annual rate to a daily rate, and multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the daily rate is determined by dividing the annual rate by three hundred sixty-five, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

For all of the methods of computation specified in this subsection, the billing cycle shall be monthly, and the unpaid principal balance on any day shall be determined by adding to the balance unpaid, as of the beginning of that day, all advances and other permissible amounts charged to the borrower, and deducting all payments and other credits made or received that day. A billing cycle is considered monthly if the closing date of the cycle is on the same date each month, or does not vary by more than four days from that date.

(3) In addition to the charges permitted under subsection (2) of this section, the licensee may contract for and receive an annual fee, payable each year in advance, for the privilege of opening and maintaining an open-end loan account. Except as prohibited or limited by this section, the licensee may also contract for and receive on an open-end loan any additional charge permitted by this chapter on other loans, subject to the conditions and restrictions otherwise pertaining to those charges.

(4)(a) If credit life or disability insurance is provided, and if the insured dies or becomes disabled when there is an outstanding open-end loan

indebtedness, the insurance must be sufficient to pay the total balance of the loan due on the date of the borrower's death in the case of credit life insurance, or all minimum payments that become due on the loan during the covered period of disability in the case of credit disability insurance. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for the insurance, as permitted by the insurance commissioner, to the unpaid balances in the borrower's account, using any of the methods specified in subsection (2) of this section for the calculation of interest; and

(b) The licensee shall not cancel credit life or disability insurance written in connection with an open-end loan because of delinquency of the borrower in the making of the required minimum payments on the loan, unless one or more of the payments is past due for a period of ninety days or more; and the licensee shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

(5) A security interest in real or personal property may be taken to secure an open-end loan. Any such security interest may be retained until the open-end account is terminated. The security interest shall be promptly released if (a) there has been no outstanding balance in the account for twelve months and the borrower either does not have or surrenders the unilateral right to create a new outstanding balance; or (b) the account is terminated at the borrower's request and paid in full.

(6) The licensee may from time to time increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans if the licensee mails or delivers written notice of the change to the borrower at least thirty days before the effective date of the increase unless the increase has been earlier agreed to by the borrower. However, the borrower may choose to terminate the open-end account and the licensee shall allow the borrower to repay the unpaid balance incurred before the effective date of the rate increase upon the existing open-end loan account terms and interest rate unless the borrower incurs additional debt on or after the effective date of the rate increase or otherwise agrees to the new rate.

(7) The licensee shall deliver a copy of the open-end loan agreement to the borrower at the time the open-end account is created. The agreement must contain the name and address of the licensee and of the principal borrower, and must contain such specific disclosures as may be required by rule of the supervisor. In adopting the rules the supervisor shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal Consumer Credit Protection Act.

(8) Except in the case of an account that the licensee deems to be uncollectible, or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver to the borrower at the end of each

billing cycle in which there is an outstanding balance of more than one dollar in the account, or with respect to which interest is imposed, a periodic statement in the form required by the supervisor. In specifying such form the supervisor shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal Consumer Credit Protection Act.

NEW SECTION. Sec. 13. (1) No licensee may make a loan with a repayment period greater than six years and fifteen days after the loan origination date except for open-end loans or loans secured by real estate or personal property used as a residence.

(2) No licensee may make a loan using any method of calculating interest other than the simple interest method; except that the add-on method of calculating interest may be used for a loan not secured by real property or personal property used as a residence when the repayment period does not exceed three years and fifteen days after the loan origination date.

(3) No licensee may make a loan secured by real estate in an amount in excess of ninety percent of the value of such real estate and improvements, including all prior liens against the property.

(4) No licensee may make a loan using the add-on method to calculate interest that does not provide for a refund to the borrower or a credit to the borrower's account of any unearned interest when the loan is repaid before the original maturity date in full by cash, by a new loan, by refinancing, or otherwise before the final due date. The refund must be calculated using the actuarial method, unless a sum equal to two or more installments has been prepaid and the account is not in arrears and continues to be paid ahead, in which case the interest on the account must be recalculated by the simple interest method with the refund of unearned interest made as if the loan had been made using the simple interest method. When computing an actuarial refund, the lender may round the annual rate used to the nearest quarter of one percent.

In computing a required refund of unearned interest, a prepayment made on or before the fifteenth day after the scheduled payment date is deemed to have been made on the payment date preceding the prepayment. In the case of prepayment before the first installment due date, the company may retain an amount not to exceed one-thirtieth of the first month's interest charge for each day between the origination date of the loan and the actual date of prepayment.

(5) No licensee may provide credit life or disability insurance in an amount greater than that required to pay off the total balance owing on the date of the borrower's death net of refunds in the case of credit life insurance, or all minimum payments that become due on the loan during the covered period of disability in the case of credit disability insurance. The lender may not require any such insurance.

(6) Except in the case of loans by mail, where the borrower has sufficient time to review papers before returning them, no licensee may prepare loan papers in advance of the loan closing without having reviewed with the borrower the terms and conditions of the loan to include the type and amount of insurance, if any, requested by the borrower.

NEW SECTION. Sec. 14. No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for the lending of money that is false, misleading, or deceptive.

NEW SECTION. Sec. 15. For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the supervisor may at any time, either personally or by a designee, investigate the loans and business and examine, wherever located, the books, accounts, records, and files used in the business of every licensee and of every person who is engaged in the business described in section 3 of this act, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the supervisor and designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The supervisor and persons designated by the supervisor may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing. The supervisor shall make such an examination of the affairs, business, office, and records of each licensee at least once each eighteen months. The licensee so examined shall pay to the supervisor the actual cost of examining and supervising each licensed place of business.

NEW SECTION. Sec. 16. The licensee shall keep and use in the business such books, accounts, and records as will enable the supervisor to determine whether the licensee is complying with this chapter and with the rules adopted by the supervisor under this chapter. The supervisor shall have free access to such books, accounts, and records wherever located. Every licensee shall preserve the books, accounts, and records for at least two years after making the final entry on any loan recorded in them.

Each licensee shall on or before the first day of March each year file a report with the supervisor giving such relevant information as the supervisor reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee within the state. The report must be made under oath and must be in the form prescribed by the supervisor, who shall make and publish annually an analysis and recapitulation of the reports.

NEW SECTION. Sec. 17. (1) The supervisor has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by loan companies subject to this chapter. The supervisor shall adopt all rules necessary to ensure complete and full disclosure by licensees of lending transactions governed by this chapter.

(2) If it appears to the supervisor that a licensee is conducting business in an injurious manner or is violating any provision of this chapter, the supervisor may direct the discontinuance of any such injurious or illegal practice.

NEW SECTION. Sec. 18. (1) Every licensee that fails to file a report that is required to be filed by this chapter within the time required under this chapter is subject to a penalty of fifty dollars per day for each day's delay. The attorney general may bring a civil action in the name of the state for recovery of any such penalty.

(2) A person who violates, or knowingly aids or abets the violation of any provision of this chapter for which no penalty has been prescribed, and a person who fails to perform any act that it is made his or her duty to perform under this chapter and for which failure no penalty has been prescribed, is guilty of a gross misdemeanor. No person who has been convicted for the violation of the banking laws of this state or of the United States may be permitted to engage in the business, or become an officer or official, of any licensee in this state.

(3) No provision imposing civil penalties or criminal liability under this chapter or rule adopted under this chapter applies to an act taken or omission made in good faith in conformity with a written notice, interpretation, or examination report of the supervisor or his or her agent.

NEW SECTION. Sec. 19. All rules adopted under or to implement the provisions of law repealed by sections 23 and 24 of this act remain in effect until amended or repealed by the supervisor.

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

NEW SECTION. Sec. 21. This chapter shall be known as the Consumer Loan Act.

NEW SECTION. Sec. 22. Sections 1 through 21 of this act are added to chapter 31.04 RCW.

NEW SECTION. Sec. 23. The following acts or parts of acts are each repealed:

(1) RCW 31.04.010 and 1941 c 19 s 1, 1925 ex.s. c 186 s 1, & 1923 c 172 s 1;

(2) RCW 31.04.030 and 1923 c 172 s 2;

- (3) RCW 31.04.040 and 1982 c 10 s 4;
- (4) RCW 31.04.050 and 1981 c 302 s 21 & 1923 c 172 s 4;
- (5) RCW 31.04.060 and 1925 ex.s. c 186 s 2 & 1923 c 172 s 6;
- (6) RCW 31.04.070 and 1981 c 302 s 22 & 1923 c 172 s 5;
- (7) RCW 31.04.080 and 1941 c 19 s 2, 1939 c 95 s 3, 1925 ex.s. c 186 s 3, & 1923 c 172 s 7;
- (8) RCW 31.04.090 and 1988 c 7 s 1, 1985 c 74 s 1, 1981 c 312 s 2, 1941 c 19 s 3, 1939 c 95 s 2, 1925 ex.s. c 186 s 4, & 1923 c 172 s 8;
- (9) RCW 31.04.095 and 1985 c 74 s 3;
- (10) RCW 31.04.100 and 1988 c 7 s 2, 1985 c 74 s 2, 1981 c 312 s 3, 1941 c 19 s 4, 1939 c 95 s 3, 1925 ex.s. c 186 s 5, & 1923 c 172 s 9;
- (11) RCW 31.04.110 and 1923 c 172 s 10;
- (12) RCW 31.04.120 and 1925 ex.s. c 186 s 6 & 1923 c 172 s 11;
- (13) RCW 31.04.130 and 1941 c 19 s 5, 1925 ex.s. c 186 s 7, & 1923 c 172 s 12;
- (14) RCW 31.04.140 and 1981 c 312 s 4 & 1923 c 172 s 14;
- (15) RCW 31.04.150 and 1981 c 312 s 5, 1941 c 19 s 6, & 1923 c 172 s 15;
- (16) RCW 31.04.160 and 1988 c 25 s 2 & 1923 c 172 s 16;
- (17) RCW 31.04.200 and 1923 c 172 s 17;
- (18) RCW 31.04.210 and 1925 ex.s. c 186 s 8 & 1923 c 172 s 18;
- (19) RCW 31.04.220 and 1981 c 312 s 6 & 1923 c 172 s 19;
- (20) RCW 31.04.230 and 1923 c 172 s 20;
- (21) RCW 31.04.250 and 1939 c 95 s 4 & 1923 c 172 s 24; and
- (22) RCW 31.04.260 and 1923 c 172 s 13.

NEW SECTION. Sec. 24. The following acts or parts of acts are each repealed:

- (1) RCW 31.08.010 and 1988 c 25 s 3 & 1941 c 208 s 1;
- (2) RCW 31.08.020 and 1977 ex.s. c 150 s 1, 1959 c 212 s 1, & 1941 c 208 s 2;
- (3) RCW 31.08.030 and 1979 c 18 s 5, 1977 ex.s. c 150 s 2, 1959 c 212 s 2, & 1941 c 208 s 3;
- (4) RCW 31.08.050 and 1977 ex.s. c 150 s 3 & 1941 c 208 s 4;
- (5) RCW 31.08.060 and 1941 c 208 s 5;
- (6) RCW 31.08.070 and 1979 c 18 s 6, 1977 ex.s. c 150 s 4, & 1941 c 208 s 6;
- (7) RCW 31.08.080 and 1977 ex.s. c 150 s 5 & 1941 c 208 s 7;
- (8) RCW 31.08.090 and 1977 ex.s. c 150 s 6 & 1941 c 208 s 8;
- (9) RCW 31.08.100 and 1988 c 25 s 4 & 1941 c 208 s 9;
- (10) RCW 31.08.130 and 1959 c 212 s 3 & 1941 c 208 s 10;
- (11) RCW 31.08.140 and 1941 c 208 s 11;
- (12) RCW 31.08.150 and 1977 ex.s. c 150 s 7, 1959 c 212 s 4, & 1941 c 208 s 12;

- (13) RCW 31.08.160 and 1983 c 227 s 1, 1979 c 18 s 3, 1977 ex.s. c 150 s 8, 1959 c 212 s 5, & 1941 c 208 s 13;
- (14) RCW 31.08.170 and 1983 c 227 s 2, 1959 c 212 s 6, & 1941 c 208 s 14;
- (15) RCW 31.08.173 and 1977 ex.s. c 150 s 9 & 1959 c 212 s 10;
- (16) RCW 31.08.175 and 1979 c 18 s 4, 1975 1st ex.s. c 266 s 1, & 1959 c 212 s 11;
- (17) RCW 31.08.180 and 1977 ex.s. c 150 s 10, 1959 c 212 s 7, & 1941 c 208 s 15;
- (18) RCW 31.08.190 and 1977 ex.s. c 150 s 11, 1959 c 212 s 8, & 1941 c 208 s 16;
- (19) RCW 31.08.200 and 1977 ex.s. c 150 s 12, 1967 c 180 s 1, 1959 c 212 s 9, & 1941 c 208 s 17;
- (20) RCW 31.08.210 and 1941 c 208 s 18;
- (21) RCW 31.08.220 and 1971 ex.s. c 37 s 1 & 1941 c 208 s 19;
- (22) RCW 31.08.230 and 1988 c 25 s 5 & 1941 c 208 s 20;
- (23) RCW 31.08.240 and 1941 c 208 s 21;
- (24) RCW 31.08.250 and 1941 c 208 s 22;
- (25) RCW 31.08.260 and 1988 c 202 s 31, 1971 c 81 s 81, & 1941 c 208 s 23;
- (26) RCW 31.08.270 and 1979 c 18 s 1 & 1941 c 208 s 24;
- (27) RCW 31.08.900 and 1941 c 208 s 25;
- (28) RCW 31.08.910 and 1941 c 208 s 26;
- (29) RCW 31.08.911 and 1959 c 212 s 12; and
- (30) RCW 31.08.920 and 1979 c 18 s 2 & 1941 c 208 s 27.

NEW SECTION. Sec. 25. (1) Sections 1 through 23 of this act shall take effect January 1, 1992, but the supervisor shall take such steps and adopt such rules as are necessary to implement this act by that date.

(2) Section 24 of this act shall take effect January 1, 1993.

Passed the House March 13, 1991.

Passed the Senate April 17, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 209

[Substitute House Bill 1936]

COLLEGE AND UNIVERSITY ADMISSIONS STANDARDS

Effective Date: 5/16/91

AN ACT Relating to college and university admission standards; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. By May 15, 1991, or as soon as possible thereafter, the higher education coordinating board, the state board of education, and the superintendent of public instruction shall jointly convene a task force to recommend a process for evaluating and accepting a student's high school coursework for entrance into a state university, regional university, or state college. In selecting or adding task force members, the agencies shall consult with the work force training and education coordinating board and other appropriate organizations. The process shall be designed to accomplish the following goals:

(1) Give college freshmen a reasonable assurance that their high school coursework has prepared them to successfully proceed through college.

(2) Recognize the changing nature of high school crediting and instruction and award appropriate credit for curriculum and competencies learned in a variety of ways, including through interdisciplinary classes, equivalency classes, and the academic components of vocational and technical classes.

(3) Recognize and award appropriate credit to measurable student competencies.

(4) Achieve decisions within a reasonable amount of time.

(5) Under special circumstances, provide for on-site program or coursework reviews.

(6) Provide an appeal process that, under special circumstances, may provide an additional review of competencies, coursework, or classes.

By December 20, 1991, the higher education coordinating board and the superintendent of public instruction shall report recommendations to the governor and the house of representatives and senate higher education and education committees. In the event that the two agencies are unable to reach agreement on a process, the report may include points of agreement and disagreement.

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 shall take effect immediately.

Passed the House March 15, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 210

[Substitute House Bill 2042]

FORFEITURE OF EARNEST MONEY DEPOSITS

Effective Date: 7/28/91

AN ACT Relating to earnest money agreements; adding a new section to chapter 64.04 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 64.04 RCW to read as follows:

(1)(a) A provision in a written agreement for the purchase and sale of real estate which provides for the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if the purchaser fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the seller incurs any actual damages, **PROVIDED That:**

(i) The total earnest money deposit to be forfeited does not exceed five percent of the purchase price; and

(ii) The agreement includes an express provision in substantially the following form: "In the event the purchaser fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the purchaser shall be forfeited to the seller as the sole and exclusive remedy available to the seller for such failure."

(b) If the real estate which is the subject of the agreement is being purchased by the purchaser primarily for the purchaser's personal, family, or household purposes, then the agreement provision required by (a)(ii) of this subsection must be:

(i) In typeface no smaller than other text provisions of the agreement; and

(ii) Must be separately initialed or signed by the purchaser and seller.

(2) If an agreement for the purchase and sale of real estate does not satisfy the requirements of subsection (1) of this section, then the seller shall have all rights and remedies otherwise available at law or in equity as a result of the failure of the purchaser, without legal excuse, to complete the purchase.

(3) Nothing in subsection (1) of this section shall affect or limit the rights of any party to an agreement for the purchase and sale of real estate with respect to:

(a) Any cause of action arising from any other breach or default by either party under the agreement; or

(b) The recovery of attorneys' fees in any action commenced with respect to the agreement, if the agreement so provides.

(4) For purposes of this section, "earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser.

NEW SECTION. Sec. 2. The provisions of this act apply only to written agreements entered on or after the effective date of this act.

Passed the House March 18, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 211

[House Bill 2163]

ASSAULTS ON WILDLIFE AGENTS AND OTHER LAW ENFORCEMENT OFFICERS

Effective Date: 7/28/91

AN ACT Relating to assault of wildlife agents and other law enforcement officers; and adding a new section to chapter 77.16 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 77.16 RCW to read as follows:

(1) The director shall revoke all licenses and privileges extended under Title 77 RCW of a person convicted of assault on a state wildlife agent or other law enforcement officer provided that:

(a) The wildlife agent or other law enforcement officer was on duty at the time of the assault; and

(b) The wildlife agent or other law enforcement officer was enforcing the provisions of Title 77 RCW.

(2) For the purposes of this section, the definition of assault includes:

(a) RCW 9A.32.030; murder in the first degree;

(b) RCW 9A.32.050; murder in the second degree;

(c) RCW 9A.32.060; manslaughter in the first degree;

(d) RCW 9A.32.070; manslaughter in the second degree;

(e) RCW 9A.36.011; assault in the first degree;

(f) RCW 9A.36.021; assault in the second degree; and

(g) RCW 9A.36.031; assault in the third degree.

(3) For the purposes of this section, a conviction includes:

(a) A determination of guilt by the court;

(b) The entering of a guilty plea to the charge or charges by the accused;

(c) A forfeiture of bail or a vacation of bail posted to the court; or

(d) The imposition of a deferred or suspended sentence by the court.

(4) No license described under Title 77 RCW shall be reissued to a person violating this section for a minimum of ten years, at that [which] time a person may petition the director of wildlife for a reinstatement of his or her license or licenses. The ten-year period shall be tolled during any time the convicted person is incarcerated in any state or local correctional or penal institution, in community supervision, or home detention for an offense under this section. Upon review by the director, and if all provisions of the court that imposed sentencing have been completed, the director may reinstate in whole or in part the licenses and privileges under Title 77 RCW.

Passed the House March 12, 1991.

Passed the Senate April 9, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 212

[Engrossed Substitute House Bill 2058]

CHILDHOOD SEXUAL ABUSE—STATUTE OF LIMITATIONS FOR ACTIONS
BASED ON

Effective Date: 7/28/91

AN ACT Relating to application of the statute of limitations to actions based on childhood sexual abuse; amending RCW 4.16.340; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

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

(1) Childhood sexual abuse is a pervasive problem that affects the safety and well-being of many of our citizens.

(2) Childhood sexual abuse is a traumatic experience for the victim causing long-lasting damage.

(3) The victim of childhood sexual abuse may repress the memory of the abuse or be unable to connect the abuse to any injury until after the statute of limitations has run.

(4) The victim of childhood sexual abuse may be unable to understand or make the connection between childhood sexual abuse and emotional harm or damage until many years after the abuse occurs.

(5) Even though victims may be aware of injuries related to the childhood sexual abuse, more serious injuries may be discovered many years later.

(6) The legislature enacted RCW 4.16.340 to clarify the application of the discovery rule to childhood sexual abuse cases. At that time the legislature intended to reverse the Washington supreme court decision in *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986).

It is still the legislature's intention that *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986) be reversed, as well as the line of cases that state that discovery of any injury whatsoever caused by an act of childhood sexual abuse commences the statute of limitations. The legislature intends that the earlier discovery of less serious injuries should not affect the statute of limitations for injuries that are discovered later.

Sec. 2. RCW 4.16.340 and 1989 c 317 s 2 are each amended to read as follows:

(1) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within the later of the following periods:

(a) Within three years of the act alleged to have caused the injury or condition~~((, or))~~;

(b) Within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act~~((, whichever period expires later))~~; or

(c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought:

PROVIDED, That the time limit for commencement of an action under this section is tolled for a child until the child reaches the age of eighteen years.

(2) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.

(3) The knowledge of a custodial parent or guardian shall not be imputed to a person under the age of eighteen years.

(4) For purposes of this section, "child" means a person under the age of eighteen years.

(5) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed.

Passed the House March 19, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 213

[House Bill 1299]

PROPERTY TAX—EXEMPTIONS FOR SENIOR CITIZENS AND DISABLED
PERSONS—INCOME AMOUNTS INCREASED

Effective Date: 5/16/91

AN ACT Relating to increasing the maximum income limits for retired persons' property tax exemptions to twenty-two thousand dollars per year and for retired persons' property tax deferrals to thirty thousand dollars per year; amending RCW 84.38.020, 84.38.030, 84.36.381, and 84.36.383; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.38.020 and 1984 c 220 s 20 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Claimant" means a person who (~~is receiving a property tax exemption under RCW 84.36.381 through 84.36.389 and who~~) either elects or is required under RCW 84.64.030 or 84.64.050 to defer payment of the special assessments and/or real property taxes accrued on ((his)) the claimant's residence by filing a declaration to defer as provided by this chapter.

When two or more individuals of a household file or seek to file a declaration to defer, they may determine between them as to who the claimant shall be.

(2) "Department" means the state department of revenue.

(3) "Equity value" means the amount by which the fair market value of a residence as determined from the records of the county assessor exceeds the total amount of any liens or other obligations against the property.

(4) "Special assessment" means the charge or obligation imposed by a city, town, county, or other municipal corporation upon property specially benefited by a local improvement, including assessments under chapters 35-.44, 36.88, 36.94, 53.08, 54.16, 56.20, 57.16, 86.09, and 87.03 RCW and any other relevant chapter.

(5) "Real property taxes" means ad valorem property taxes levied on a residence in this state in the preceding calendar year.

Sec. 2. RCW 84.38.030 and 1988 c 222 s 11 are each amended to read as follows:

A claimant may defer payment of special assessments and/or real property taxes on ~~((his property that is receiving an exemption under RCW 84.36.381 through 84.36.389 on))~~ up to eighty percent of the amount of ((his)) the claimant's equity value in ((said property)) the claimant's residence if the following conditions are met:

(1) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the income limits.

(2) The claimant must have a combined disposable income, as defined in RCW 84.36.383, of thirty thousand dollars or less.

(3) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life, or a revocable trust does not satisfy the ownership requirement.

~~((2))~~ (4) The claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state in the claimant's equity value: PROVIDED, That if the claimant fails to keep fire and casualty insurance in force to the extent of the state's interest in the claimant's equity value, the amount deferred shall not exceed one hundred percent of the claimant's equity value in the land or lot only.

~~((3))~~ (5) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available.

Sec. 3. RCW 84.36.381 and 1987 c 301 s 1 are each amended to read as follows:

A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of January 1st of the year for which the exemption is claimed: PROVIDED, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: PROVIDED FURTHER, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if the residence is temporarily unoccupied or if the residence is occupied by a spouse and/or a person financially dependent on the claimant for support;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this

subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must (~~(have been)~~) be sixty-one years of age or older on (~~(January 1st)~~) December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: PROVIDED, That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve.

(5) (a) A person who otherwise qualifies under this section and has a combined disposable income of eighteen thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of fourteen thousand dollars or less but greater than twelve thousand dollars shall be exempt from all regular property taxes on the greater of twenty-four thousand dollars or thirty percent of the valuation of his or her residence, but not to exceed forty thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twelve thousand dollars or less shall be exempt from all regular property taxes on the greater of twenty-eight thousand dollars or fifty percent of the valuation of his or her residence.

Sec. 4. RCW 84.36.383 and 1991 c __ s 1 (HB 1642) are each amended to read as follows:

As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" shall mean a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre. The term shall also include a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term shall also include a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of

Washington, and notwithstanding the provisions of RCW 84.04.080, 84.04-.090 or 84.40.250, such a residence shall be deemed real property.

(2) The term "real property" shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities: PROVIDED, That a mobile home located on land leased by the owner of the mobile home shall be subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) The term "preceding calendar year" shall mean the calendar year preceding the year in which the claim for exemption is to be made.

(4) "Department" shall mean the state department of revenue.

(5) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the residence for the preceding calendar year, less amounts paid by the person claiming the exemption or his or her spouse during the previous year for the treatment or care of either person received in the home or in a nursing home.

(6) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains, other than nonrecognized gain on the sale of a principal residence under section 1034 of the federal internal revenue code, or gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits other than attendant-care and medical-aid payments;

(g) Federal social security act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

(7) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.

NEW SECTION. Sec. 5. 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 shall take effect immediately.

NEW SECTION. Sec. 6. Sections 1 and 2 of this act shall be effective for taxes levied for collection in 1991 and thereafter. Sections 3 and 4 of this act shall be effective for taxes levied for collection in 1992 and thereafter.

Passed the House April 28, 1991.

Passed the Senate April 28, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 214

[Engrossed Substitute House Bill 1081]

BICYCLE SAFETY

Effective Date: 7/28/91

AN ACT Relating to bicycle safety; amending RCW 46.04.670 and 46.61.990; adding a new section to chapter 43.43 RCW; adding a new section to chapter 47.36 RCW; and adding new sections to chapter 47.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 43.43 RCW to read as follows:

Bicycling is increasing in popularity as a form of recreation and as an alternative mode of transportation. To make bicycling safer, the various law enforcement agencies should enforce traffic regulations for bicyclists. By enforcing bicycle regulations, law enforcement officers are reinforcing educational programs. Bicycling takes more skill than most people realize. Since bicyclists have a low profile in traffic and are unprotected, they need more defensive riding skills than motorists do.

A bicycle awareness program is created within the Washington state patrol. In developing the curriculum for the bicycle awareness program the patrol shall consult with the traffic safety commission and with bicycling groups providing bicycle safety education. The patrol shall conduct the program in conjunction with the safety education officer program and may use other law enforcement personnel and volunteers to implement the program for children in grades kindergarten through six. The patrol shall ensure that each safety educator presenting the bicycle awareness program has received specialized training in bicycle safety education and has been trained in effective defensive bicycle riding skills.

Sec. 2. RCW 46.04.670 and 1979 ex.s. c 213 s 4 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, ~~((excepting))~~ including bicycles. The term does not include devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks~~((except~~

that)). Mopeds shall be considered vehicles or motor vehicles only for the purposes of chapter 46.12 RCW, but not 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.

Sec. 3. RCW 46.61.990 and 1965 ex.s. c 155 s 92 are each amended to read as follows:

Sections 1 through 52 and 54 through 86 of (~~this amendatory act~~) chapter 155, Laws of 1965 ex. sess. are added to chapter 12, Laws of 1961 and shall constitute a new chapter in Title 46 of the Revised Code of Washington and sections 54, 55, and 63 as herein amended and RCW 46.48.012, 46.48.014, 46.48.015, 46.48.016, 46.48.023, 46.48.025, 46.48.026, 46.48.041, 46.48.046, 46.48.050, 46.48.060, 46.48.080, 46.48.110, 46.48.120, 46.48.150, 46.48.160, 46.48.340, 46.56.030, 46.56.070, 46.56.100, 46.56.130, 46.56.135, 46.56.190, 46.56.200, 46.56.210, 46.56.220, 46.56.230, 46.56.240, 46.60.260, 46.60.270, 46.60.330, and 46.60.340 shall be recodified as and be a part of said chapter. The sections of the new chapter shall be organized under the following captions: "OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS", "TRAFFIC SIGNS, SIGNALS AND MARKINGS", "DRIVING ON RIGHT SIDE OF ROADWAY—OVERTAKING AND PASSING—USE OF ROADWAY", "RIGHT OF WAY", "PEDESTRIANS' RIGHTS AND DUTIES", "TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING", "SPECIAL STOPS REQUIRED", "SPEED RESTRICTIONS", "RECKLESS DRIVING, DRIVING WHILE INTOXICATED AND NEGLIGENT HOMICIDE BY VEHICLE", "STOPPING, STANDING AND PARKING", "MISCELLANEOUS RULES", and "OPERATION OF (~~BICYCLES AND PLAY~~) NONMOTORIZED VEHICLES". Such captions shall not constitute any part of the law.

NEW SECTION. Sec. 4. A new section is added to chapter 47.36 RCW to read as follows:

The department of transportation shall, by January 1, 1992, adopt minimum pavement marking standards for the area designating the limits of the vehicle driving lane along the right edge for arterials that do not have curbs or sidewalks and are inside urbanized areas. In preparing the standards, the department of transportation shall take into consideration all types of pavement markings, including flat, raised, and recessed markings, and their effect on pedestrians, bicycle, and motor vehicle safety.

The standards shall provide that a jurisdiction shall conform to these requirements, at such time thereafter that it undertakes to (1) renew or install permanent markings on the existing or new roadway, and (2) remove existing nonconforming raised pavement markers at the time the jurisdiction prepares to resurface the roadway, or earlier, at its option. These standards shall be in effect, as provided in this section, unless the legislative authority

of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a variance to the standard.

For the purposes of this section, "urbanized area" means an area designated as such by the United States bureau of census and having a population of more than fifty thousand. Other jurisdictions that install pavement marking material on the right edge of the roadway shall do so in a manner not in conflict with the minimum state standard.

NEW SECTION. Sec. 5. A new section is added to chapter 47.04 RCW to read as follows:

(1) The department of transportation is responsible for the initiation, coordination, and operation of a bicycle transportation management program.

(2) To assist in the operation of the bicycle transportation management program, a full-time staff position of state bicycle program manager is established within the department of transportation.

NEW SECTION. Sec. 6. A new section is added to chapter 47.04 RCW to read as follows:

The state bicycle program manager shall:

(1) Design programs that encourage the use of bicycling for transportation;

(2) Coordinate bicycle safety related programs and bicycle tourism programs in all state agencies;

(3) Assist the department of transportation and the cities and counties of the state in assigning priorities to, programming, and developing bicycle-related projects;

(4) Serve as a clearinghouse for bicycle program information and resources;

(5) Provide assistance in revising and updating bicycle material of the superintendent of public instruction and the state patrol;

(6) Promote the use of bicycle helmets of a type certified to meet the requirements of standard Z-90.4 of the American National Standards Institute or such subsequent nationally recognized standard for bicycle helmet performance; and

(7) Promote bicycle safety equipment.

Passed the House March 15, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 215

[Engrossed Substitute House Bill 2071]

MEDICAL DISCIPLINARY BOARD—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to the medical disciplinary board; amending RCW 18.130.180; adding new sections to chapter 18.72 RCW; and repealing RCW 18.72.040, 18.72.050, 18.72.055, 18.72.060, 18.72.070, and 18.72.080.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 18.72 RCW to read as follows:

There is hereby created the Washington state medical disciplinary board. The board shall be composed of one holder of a valid license to practice medicine and surgery under this chapter from each congressional district now existing or hereafter created in the state, four members representing the public, and one physician assistant authorized to practice under chapter 18.71A RCW. The physician assistant member shall vote only on matters relating to the discipline of physician assistants. The members of the board shall be appointed by the governor. The governor may stagger initial terms of appointment and thereafter all terms of appointment shall be for four years. The governor shall consider such physician and physician assistant members who are recommended for appointment by the appropriate professional associations in the state. The members representing the public shall be persons whose occupations are other than the administration of health activities or the providing of health services, who have no fiduciary obligations to a health facility or other health agency, and who have no material financial interest in the rendering of health services.

Nothing in this section shall affect the current terms of members of the board who are serving on the board on the effective date of this act.

Vacancies on the board shall be filled promptly by the governor, and a member appointed to fill a vacancy on the board shall continue to serve until his or her successor is appointed.

The terms of office of members of the board shall not be affected by changes in congressional district boundaries.

The board shall be an administrative agency of the state of Washington. The attorney general shall be the advisor to the board and shall represent it in legal proceedings.

NEW SECTION. Sec. 2. A new section is added to chapter 18.72 RCW to read as follows:

To assist in identifying impairment related to alcohol abuse, the board may obtain a copy of the driving record of a physician or a physician assistant maintained by the department of licensing.

Sec. 3. RCW 18.130.180 and 1989 c 270 s 33 are each amended to read as follows:

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed;

(5) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(8) Failure to cooperate with the disciplining authority by:

(a) Not furnishing any papers or documents;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority; or

(c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding;

(9) Failure to comply with an order issued by the disciplining authority or an assurance of discontinuance entered into with the disciplining authority;

(10) Aiding or abetting an unlicensed person to practice when a license is required;

(11) Violations of rules established by any health agency;

(12) Practice beyond the scope of practice as defined by law or rule;

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;

(16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(18) The procuring, or aiding or abetting in procuring, a criminal abortion;

(19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(23) Current misuse of:

(a) Alcohol;

(b) Controlled substances; or

(c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient;

(25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards.

NEW SECTION. Sec. 4. The following acts or parts of acts are each repealed:

- (1) RCW 18.72.040 and 1986 c 300 s 2, 1977 c 71 s 1, & 1955 c 202 s 4;
- (2) RCW 18.72.050 and 1982 1st ex.s. c 30 s 3, 1977 c 71 s 2, & 1955 c 202 s 5;
- (3) RCW 18.72.055 and 1982 1st ex.s. c 30 s 4;
- (4) RCW 18.72.060 and 1979 ex.s. c 111 s 2 & 1955 c 202 s 6;
- (5) RCW 18.72.070 and 1955 c 202 s 7; and
- (6) RCW 18.72.080 and 1955 c 202 s 8.

Passed the House April 27, 1991.

Passed the Senate April 27, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 216

[House Bill 2106]

HOMELESS PERSONS—DONATIONS OF PERSONAL PROPERTY BY DEPARTMENT OF GENERAL ADMINISTRATION

Effective Date: 7/28/91

AN ACT Relating to the donation by the department of general administration of personal property to shelters that serve homeless persons; amending RCW 43.19.1919; adding a new section to chapter 43.19 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that (1) there are an increasing number of persons who are unable to meet their basic needs relating to shelter, clothing, and nourishment; (2) there are many nonprofit organizations and units of local government that provide shelter and other assistance to these persons but that these organizations are finding it difficult to meet the increasing demand for such assistance; and (3) the numerous agencies and institutions of state government generate a significant quantity of surplus, tangible personal property that would be of great assistance to homeless persons throughout the state. Therefore, the legislature finds that it is in the best interest of the state to provide for the donation of state-owned, surplus, tangible property to assist the homeless in meeting their basic needs.

Sec. 2. RCW 43.19.1919 and 1989 c 144 s 1 are each amended to read as follows:

Except as provided in section 3 of this act, the division of purchasing shall sell or exchange personal property belonging to the state for which the agency, office, department, or educational institution having custody thereof has no further use, at public or private sale, and cause the moneys realized from the sale of any such property to be paid into the fund from which such property was purchased or, if such fund no longer exists, into the state general fund: PROVIDED, Sales of capital assets may be made by the division of purchasing and a credit established in central stores for future purchases of capital items as provided for in RCW 43.19.190 through 43.19.1939, as now or hereafter amended: PROVIDED FURTHER, That personal property, excess to a state agency, including educational institutions, shall not be sold or disposed of prior to reasonable efforts by the division of purchasing to determine if other state agencies have a requirement for such personal property. Such determination shall follow sufficient notice to all state agencies to allow adequate time for them to make their needs known. Surplus items may be disposed of without prior notification to state agencies if it is determined by the director of general administration to be in the best interest of the state. The division of purchasing shall maintain a record of disposed surplus property, including date and method of disposal, identity of any recipient, and approximate value of the property: PROVIDED, FURTHER, That this section shall not apply to personal property acquired by a state organization under federal grants and contracts if in conflict with special title provisions contained in such grants or contracts.

This section does not apply to property under RCW 27.53.045.

NEW SECTION. Sec. 3. A new section is added to chapter 43.19 RCW to read as follows:

The division of purchasing may donate state-owned, surplus, tangible personal property to shelters that are: Participants in the department of community development's emergency shelter assistance program; and operated by nonprofit organizations or units of local government providing emergency or transitional housing for homeless persons. A donation may be made only if all of the following conditions have been met:

(1) The division of purchasing has made reasonable efforts to determine if any state agency has a requirement for such personal property and no such agency has been identified. Such determination shall follow sufficient notice to all state agencies to allow adequate time for them to make their needs known;

(2) The agency owning the property has authorized the division of purchasing to donate the property in accordance with this section;

(3) The nature and quantity of the property in question is directly germane to the needs of the homeless persons served by the shelter and the

purpose for which the shelter exists and the shelter agrees to use the property for such needs and purposes; and

(4) The director of general administration has determined that the donation of such property is in the best interest of the state.

Passed the House March 18, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 217

[Substitute House Bill 1919]

DRIVER EDUCATION—ALCOHOL AND DRUG USE INSTRUCTION REQUIRED

Effective Date: 7/28/91

AN ACT Relating to motor vehicle insurance and safety courses; amending RCW 28A.220.900 and 46.82.420; and adding a new section to chapter 28A.220 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.220.900 and 1969 ex.s. c 218 s 7 are each amended to read as follows:

It is the purpose of this act to provide the financial assistance necessary to enable each high school district to offer a course in traffic safety education and by that means to develop in the youth of this state a knowledge of the motor vehicle laws, an acceptance of personal responsibility on the public highways, and an understanding of the causes and consequences of traffic accidents, with an emphasis on the consequences, both physical and legal, of the use of drugs or alcohol in relation to operating a motor vehicle. The course in traffic safety education shall further provide to the youthful drivers of this state training in the skills necessary for the safe operation of motor vehicles.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.220 RCW to read as follows:

The superintendent of public instruction shall include information on the effects of alcohol and drug use on motor vehicle operators, including information on drug and alcohol related traffic injury and mortality rates in the state of Washington, and current penalties for driving under the influence of drugs or alcohol in instructional material used in traffic safety education courses.

Sec. 3. RCW 46.82.420 and 1979 ex.s. c 51 s 15 are each amended to read as follows:

The advisory committee shall compile and furnish to each qualifying applicant for an instructor's license or a driver training school license a basic minimum required curriculum. The basic minimum required curriculum shall also include information on the effects of alcohol and drug use on

motor vehicle operators, including information on drug and alcohol related traffic injury and mortality rates in the state of Washington, and current penalties for driving under the influence of drugs or alcohol. Should the director be presented with acceptable proof that any licensed instructor or driver training school is not showing proper diligence in teaching such basic minimum curriculum as required, the instructor or school shall be required to appear before the advisory committee and show cause why the license of the instructor or school should not be revoked for such negligence. If the committee does not accept such reasons as may be offered, the director may revoke the license of the instructor or school, or both.

Passed the House March 19, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 218

[Substitute House Bill 1301]

STUDY OF PROPERTY TAX ADMINISTRATION SYSTEM

Effective Date: 5/16/91 – Except Section 3 which becomes effective on 7/1/92.

AN ACT Relating to improving property tax administrative practices; requiring annual updating of assessed values; providing more complete information about property tax administration; modifying qualification requirements for property tax appraisers; requiring a study; amending RCW 36.21.015 and 36.21.100; adding a new section to chapter 84.08 RCW; creating a new section; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The department of revenue shall study the administration of the property tax system. The study shall include examination of and recommendations regarding the following issues:

(a) Annual revaluations:

(i) Whether the property tax system would be improved by revaluing all property annually, and if annual revaluations would be an improvement, the extent of the improvement.

(ii) The cost of increasing the frequency of revaluations, including the increased burden on smaller counties.

(iii) Whether any move to annual revaluations should be phased in over a period of years.

(iv) Whether the state should assist in meeting any increased costs of annual revaluations.

(v) What assistance the department can provide in helping counties achieve annual revaluations.

(b) General property tax administration:

(i) The adequacy of information and tools relating to property location and value, including items such as maps, property data, sales data, geographic information systems, and computer systems.

(ii) The proper role and the effectiveness of county boards of equalization.

(iii) The adequacy of auditing procedures for property tax relief programs.

(iv) Any other property tax administration problems that the department determines warrant study and recommendations to the legislature.

(2) The department shall report the findings of the study and the recommendations of the department to the committees of the legislature that deal with revenue matters no later than November 30, 1991.

NEW SECTION. Sec. 2. A new section is added to chapter 84.08 RCW to read as follows:

(1) The department shall prepare a clear and succinct explanation of the property tax system, including but not limited to:

(a) The standard of true and fair value as the basis of the property tax.

(b) How the assessed value for particular parcels is determined.

(c) The procedures and timing of the assessment process.

(d) How district levy rates are determined, including the one hundred six percent limit.

(e) How the composite tax rate is determined.

(f) How the amount of tax is calculated.

(g) How a taxpayer may appeal an assessment, and what issues are appropriate as a basis of appeal.

(h) A summary of tax exemption and relief programs, along with the eligibility standards and application processes.

(2) Each county assessor shall provide copies of the explanation to taxpayers on request, free of charge. Each revaluation notice shall include information regarding the availability of the explanation.

Sec. 3. RCW 36.21.015 and 1977 c 75 s 30 are each amended to read as follows:

(1) Any person having the responsibility of valuing real property for purposes of taxation including persons acting as assistants or deputies to a county assessor under RCW 36.21.011 (~~as now or hereafter amended;~~) shall have first:

~~((1) Graduated from an accredited high school or passed a high school equivalency examination;~~

~~((2))~~ (a) Had at least one year of experience in transactions involving real property, in appraisal of real property, or in assessment of real property, or at least one year of experience in a combination of the three;

~~((3))~~ (b) Become knowledgeable in repair and remodeling of buildings and improvement of land, and in the significance of locality and area to the value of real property; ~~(and~~

~~(4))~~ (c) Become knowledgeable in the standards for appraising property set forth by the department of revenue; and

(d) Met other minimum requirements specified by department of revenue rule.

(2) The department of ~~((personnel shall prepare with the advice of the department of))~~ revenue shall prepare and administer an examination on ~~((the))~~ subjects ~~((of subsections (3) and (4), and))~~ related to the valuation of real property. No person shall assess real property for purposes of taxation without having passed said examination or having received an examination waiver from the department of revenue upon showing education or experience determined by the department to be equivalent to passing the examination. A person passing said examination or receiving an examination waiver shall be ~~((certified))~~ accredited accordingly by the ~~((director of the))~~ department of ~~((personnel. PROVIDED, HOWEVER, That))~~ revenue.

(3) The department of revenue may by rule establish continuing education requirements for persons assessing real property for purposes of taxation. The department shall provide accreditation of completion of requirements imposed under this section. No person shall assess real property for purposes of taxation without complying with requirements imposed under this subsection.

(4) To the extent practical, the department of revenue shall coordinate accreditation requirements under this section with the requirements for certified real estate appraisers under chapter 18.140 RCW.

(5) The examination requirements of subsection (2) of this section shall not apply to any person who shall have either:

~~((1))~~ (a) Been certified as a real property appraiser by the department of personnel prior to ~~((May 21, 1971))~~ July 1, 1992; or

~~((2))~~ (b) Attended and satisfactorily completed the assessor's school operated jointly by the department of revenue and the Washington state assessors association prior to August 9, 1971.

Sec. 4. RCW 36.21.100 and 1987 c 138 s 8 are each amended to read as follows:

Every county assessor shall report to the department of revenue on the property tax levies and related matters within the county annually at a date and in a form prescribed by the department of revenue. The report shall include, but need not be limited to, the results of sales-assessment ratio studies performed by the assessor. The ratio studies shall be based on use classes of real property and shall be performed under a plan approved by the department of revenue.

NEW SECTION. Sec. 5. 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 shall take effect immediately, except section 3 of this act, which shall take effect July 1, 1992.

Passed the House April 28, 1991.

Passed the Senate April 28, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 219

[House Bill 1642]

PROPERTY TAX RELIEF FOR SENIOR CITIZENS

Effective Date: 7/28/91

AN ACT Relating to senior citizen property tax relief; amending RCW 84.36.383; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.36.383 and 1989 c 379 s 6 are each amended to read as follows:

As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" shall mean a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre. The term shall also include a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term shall also include a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080, 84.04.090 or 84.40.250, such a residence shall be deemed real property.

(2) The term "real property" shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities: PROVIDED, That a mobile home located on land leased by the owner of the mobile home shall be subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) The term "preceding calendar year" shall mean the calendar year preceding the year in which the claim for exemption is to be made.

(4) "Department" shall mean the state department of revenue.

(5) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the residence

for the preceding calendar year, less amounts paid by the person claiming the exemption or his or her spouse during the previous year for the treatment or care of either person in a nursing home.

(6) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains, other than nonrecognized gain on the sale of a principal residence under section 1034 of the federal internal revenue code, or gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits other than attendant-care and medical-aid payments;

(g) Federal social security act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

(7) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.

NEW SECTION. Sec. 2. This act is effective for taxes levied for collection in 1992 and thereafter.

Passed the House February 20, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 220

[Substitute House Bill 1326]

LANDLORDS—TENANT PROPERTY—DRAYAGE AND STORAGE COSTS

Effective Date: 7/28/91

AN ACT Relating to residential landlord drayage and storage costs of tenant property; and amending RCW 59.18.310.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 59.18.310 and 1989 c 342 s 10 are each amended to read as follows:

If the tenant defaults in the payment of rent and reasonably indicates by words or actions the intention not to resume tenancy, the tenant shall be

liable for the following for such abandonment: PROVIDED, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

(a) The entire rent due for the remainder of the term; or

(b) All rent accrued during the period reasonably necessary to rent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in rerenting the premises together with statutory court costs and reasonable attorney's fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in any reasonably secure place. A landlord shall make reasonable efforts to provide the tenant with a notice containing the name and address of the landlord and the place where the property is stored and informing the tenant that a sale or disposition of the property shall take place pursuant to this section, and the date of the sale or disposal, and further informing the tenant of the right under RCW 59.18.230 to have the property returned prior to its sale or disposal. The landlord's efforts at notice under this subsection shall be satisfied by the mailing by first class mail, postage prepaid, of such notice to the tenant's last known address and to any other address provided in writing by the tenant or actually known to the landlord where the tenant might receive the notice. The landlord shall return the property to the tenant after the tenant has paid the actual or reasonable drayage and storage costs whichever is less if the tenant makes a written request for the return of the property before the landlord has sold or disposed of the property. After forty-five days from the date the notice of such sale or disposal is mailed or personally delivered to the tenant, the landlord may sell or dispose of such property, including personal papers, family pictures, and keepsakes. The landlord may apply any income derived therefrom against moneys due the landlord, including actual or reasonable costs whichever is less of drayage and storage of the property. If the property has a cumulative value of fifty dollars or less, the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes, after seven days from the date the notice of sale or disposal is mailed or personally delivered to the tenant: PROVIDED, That the landlord shall make reasonable efforts, as defined in this section, to notify the tenant. Any excess income derived from

the sale of such property under this section shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord, including any interest paid on the income.

Passed the House March 11, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 221

[Engrossed Substitute Senate Bill 5825]

FIREARMS—RESTRICTIONS ON POSSESSION BY OFFENDERS SUPERVISED BY DEPARTMENT OF CORRECTIONS

Effective Date: 7/28/91

AN ACT Relating to restricting possession of firearms by offenders under the supervision of the department of corrections; amending RCW 9.94A.120; and adding a new section to chapter 9.41 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 9.41 RCW to read as follows:

As a sentence condition and requirement, offenders under the supervision of the department of corrections pursuant to chapter 9.94A RCW shall not own, use, or possess firearms or ammunition. In addition to any penalty imposed pursuant to RCW 9.41.040 when applicable, offenders found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions as provided for in RCW 9.94A.200. Firearms or ammunition owned, used, or possessed by offenders may be confiscated by community corrections officers and turned over to the Washington state patrol for disposal as provided in RCW 9.41.098.

Sec. 2. RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (5), and (7) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact

and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years, and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum five-year term except for the purpose of commitment to an inpatient treatment facility. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
 - (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
 - (c) Pursue a prescribed, secular course of study or vocational training;
 - (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
 - (e) Report as directed to the court and a community corrections officer;
- or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent

offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall

not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

- (I) Devote time to a specific employment or occupation;
- (II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (III) Report as directed to the court and a community corrections officer;
- (IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in

treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) After July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender is convicted of any felony sex offense committed before July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of social and health services for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary of social and health services cannot begin the evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

If the offender does not comply with the conditions of the treatment program, the secretary of social and health services may refer the matter to the sentencing court. The sentencing court shall commit the offender to the department of corrections to serve the balance of the term of confinement.

If the offender successfully completes the treatment program before the expiration of the term of confinement, the court may convert the balance of confinement to community supervision and may place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

After June 30, 1993, this subsection (b) shall cease to have effect.

(c) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his community supervision, the court may order the offender to serve out the balance of his community supervision term in confinement in the custody of the department of corrections.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (c) does not apply to any crime committed after July 1, 1990.

(d) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(8)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as

a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances; and

(v) The offender shall pay supervision fees as determined by the department of corrections.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol;

(v) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(vi) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(9) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(10) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(12) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer of any change in the offender's address or employment.

(13) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(14) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

~~((+4))~~ (15) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

~~((+5))~~ (16) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

~~((+6))~~ (17) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

~~((+7))~~ (18) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release or in a program of home detention.

~~((+8))~~ (19) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid

where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

Passed the Senate March 15, 1991.

Passed the House April 24, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 222

[House Bill 2037]

RADIOLOGICAL TECHNOLOGISTS

Effective Date: 7/1/91

AN ACT Relating to the regulation of persons who apply ionizing radiation to human beings; amending RCW 18.84.010, 18.84.020, 18.84.030, and 18.84.040; adding new sections to chapter 18.84 RCW; adding a new section to chapter 18.25 RCW; repealing RCW 43.131-.349, 43.131.350, and 18.84.900; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.84.010 and 1987 c 412 s 1 are each amended to read as follows:

It is the intent and purpose of this chapter to protect the public ((~~by setting standards of qualification, education, training, and experience for use~~)) by the certification and registration of practitioners of radiological technology. By promoting high standards of professional performance, by requiring professional accountability, and by credentialing those persons who seek to provide radiological technology under the title of radiological technologists, and by regulating all persons utilizing ionizing radiation on human beings this chapter identifies those practitioners who have achieved a particular level of competency. Nothing in this chapter shall be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person certified under this chapter.

The legislature finds and declares that this chapter conforms to the guidelines, terms, and definitions for the credentialing of health or health-related professions specified under chapter 18.120 RCW.

Sec. 2. RCW 18.84.020 and 1991 c 3 s 204 are each amended to read as follows:

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

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health.

(3) "Licensed practitioner" means (~~a physician or osteopathic physician licensed under chapter 18.71 or 18.57 RCW, respectively, a registered nurse licensed under chapter 18.88 RCW, or a podiatrist licensed under~~

chapter 18.22 RCW)) any licensed health care practitioner performing services within the person's authorized scope of practice.

(4) "Radiologic technologist" means an individual certified under this chapter, other than a licensed practitioner, who practices radiologic technology as a:

(a) Diagnostic radiologic technologist, who is a person who actually handles x-ray equipment in the process of applying radiation on a human being for diagnostic purposes (~~((under the supervision))~~) at the direction of a licensed practitioner; or

(b) Therapeutic radiologic technologist, who is a person who uses radiation-generating equipment for therapeutic purposes on human subjects at the direction of a licensed practitioner; or

(c) Nuclear medicine technologist, who is a person who prepares radiopharmaceuticals and administers them to human beings for diagnostic and therapeutic purposes and who performs in vivo and in vitro detection and measurement of radioactivity for medical purposes (~~((under the supervision))~~) at the direction of a licensed practitioner.

(5) "Advisory committee" means the Washington state radiologic technology advisory committee.

(6) "Approved school of radiologic technology" means a school of radiologic technology approved by the council on medical education of the American medical association or a school found to maintain the equivalent of such a course of study as determined by the department. Such school may be operated by a medical or educational institution, and for the purpose of providing the requisite clinical experience, shall be affiliated with one or more general hospitals.

(7) "Radiologic technology" means the use of ionizing radiation upon a human being for diagnostic or therapeutic purposes.

(8) "Radiologist" means a physician certified by the American board of radiology or the American osteopathic board of radiology.

(9) "Registered x-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner.

Sec. 3. RCW 18.84.030 and 1987 c 412 s 2 are each amended to read as follows:

No person may (~~((represent himself or herself to the public as a certified radiologic technologist without holding a valid certificate to practice under this chapter))~~) practice radiologic technology without being registered or certified under this chapter, unless that person is a licensed practitioner as defined in RCW 18.84.020(3). A person represents himself or herself to the public as a certified radiological technologist when that person adopts or uses a title or description of services that incorporates one or more of the following items or designations:

(1) Certified radiologic technologist or CRT, for persons so certified under this chapter;

(2) Certified radiologic therapy technologist, CRTT, or CRT, for persons certified in the therapeutic field;

(3) Certified radiologic diagnostic technologist, CRDT, or CRT, for persons certified in the diagnostic field; or

(4) Certified nuclear medicine technologist, CNMT, or CRT, for persons certified as nuclear medicine technologists.

NEW SECTION. Sec. 4. The secretary may issue a registration to an applicant who submits, on forms provided by the department, the applicant's name, the address, occupational title, name and location of business where applicant performs his or her services, and other information as determined by the secretary, including information necessary to determine whether there are grounds for denial of registration under this chapter or chapter 18.130 RCW. Each applicant shall pay a fee as determined by the secretary as provided in RCW 43.70.250. The secretary shall establish by rule the procedural requirements and fees for registration and for renewal of registrations.

NEW SECTION. Sec. 5. The secretary may provide educational materials and training to registered x-ray technicians, certified radiologic technologists, licensed practitioners and the public concerning, but not limited to, health risks associated with ionizing radiation, proper radiographic techniques, and x-ray equipment maintenance. The secretary may charge fees to recover the cost of providing educational materials and training.

NEW SECTION. Sec. 6. Nothing in this chapter may be construed to prohibit or restrict the practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of this state who is performing services within the person's authorized scope of practice.

NEW SECTION. Sec. 7. This chapter does not apply to practitioners licensed under chapter 18.32 RCW or unlicensed persons supervised by persons licensed under chapter 18.32 RCW.

NEW SECTION. Sec. 8. This chapter does not apply to practitioners licensed under chapter 18.25 RCW or unlicensed persons supervised by persons licensed under chapter 18.25 RCW.

NEW SECTION. Sec. 9. A new section is added to chapter 18.25 RCW to read as follows:

(1) A chiropractor may employ a technician to operate x-ray equipment after the technician has registered with the board.

(2) The board may adopt rules necessary and appropriate to carry out the purposes of this section.

NEW SECTION. Sec. 10. Persons required to register under this chapter must be registered by January 1, 1992.

Sec. 11. RCW 18.84.040 and 1991 c 3 s 205 are each amended to read as follows:

(1) In addition to any other authority provided by law, the secretary may in consultation with the advisory committee:

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

(b) Set all registration, certification, and renewal fees in accordance with RCW 43.70.250;

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

(d) Evaluate and designate those schools from which graduation will be accepted as proof of an applicant's eligibility to receive a certificate;

(e) Determine whether alternative methods of training are equivalent to formal education, and to establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to receive a certificate;

(f) Issue a certificate to any applicant who has met the education, training, and conduct requirements for certification; and

(g) Issue a registration to an applicant who meets the requirement for a registration.

(2) The secretary may hire clerical, administrative, and investigative staff as needed to implement this chapter.

~~((2))~~ (3) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of registrations and certifications, unregistered and uncertified practice, and the discipline of registrants and certificants under this chapter. The secretary ~~((shall be))~~ is the disciplining authority under this chapter.

NEW SECTION. Sec. 12. Sections 4 through 8 and 10 of this act are each added to chapter 18.84 RCW.

NEW SECTION. Sec. 13. The following acts or parts of acts are each repealed:

(1) RCW 43.131.349 and 1990 c 6 s 1 & 1987 c 412 s 18;

(2) RCW 43.131.350 and 1990 c 6 s 2 & 1987 c 412 s 19; and

(3) RCW 18.84.900 and 1987 c 412 s 13.

NEW SECTION. Sec. 14. 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 shall take effect July 1, 1991.

Passed the House March 20, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 223

[House Bill 1853]

NONPROFIT CORPORATIONS—FEES

Effective Date: 7/1/91

AN ACT Relating to nonprofit corporation fees; amending RCW 24.03.405, 24.06.450, and 24.03.388; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 24.03.405 and 1987 c 117 s 5 are each amended to read as follows:

The secretary of state shall charge and collect for:

(1) Filing articles of incorporation (~~and issuing a certificate of incorporation, twenty~~) or an application for reinstatement under RCW 24.03-.386, thirty dollars.

(2) Filing articles of amendment or restatement (~~and issuing a certificate of amendment or a restated certificate of incorporation, ten~~) or an amendment or supplement to an application for reinstatement, twenty dollars.

(3) Filing articles of merger or consolidation (~~and issuing a certificate of merger or consolidation, ten~~), twenty dollars.

(4) Filing a statement of change of address of registered office or change of registered agent, or revocation, resignation, (~~affidavit of nonappointment~~;) or any combination of these, (~~five~~) ten dollars. A separate fee for filing such statement shall not be charged if the statement appears in an amendment to articles of incorporation or in conjunction with the filing of the annual report.

(5) Filing articles of dissolution, no fee.

(6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state (~~and issuing a certificate of authority, twenty~~), thirty dollars.

(7) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state (~~and issuing an amended certificate of authority, ten~~), twenty dollars.

(8) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, no fee.

(9) Filing a certificate by a foreign corporation of the appointment of a registered agent, (~~five~~) ten dollars. A separate fee for filing such certificate

shall not be charged if the statement appears in conjunction with the filing of the annual report.

(10) Filing a certificate of election adopting the provisions of chapter 24.03 RCW, twenty dollars.

(11) Filing an application to reserve a corporate name, ~~((ten))~~ twenty dollars.

(12) Filing a notice of transfer of a reserved corporate name, ~~((five))~~ twenty dollars.

(13) Filing a name registration, twenty dollars per year, or part thereof.

(14) Filing an annual report of a domestic or foreign corporation, ~~((five))~~ ten dollars.

(15) Filing any other statement or report authorized for filing under this chapter, ten dollars.

Sec. 2. RCW 24.06.450 and 1982 c 35 s 154 are each amended to read as follows:

The secretary of state shall charge and collect for:

(1) Filing articles of incorporation ~~((and issuing a certificate of incorporation, twenty)),~~ thirty dollars.

(2) Filing articles of amendment or restatement ~~((and issuing a certificate of amendment or a restated certificate of authority, ten)),~~ twenty dollars.

(3) Filing articles of merger or consolidation ~~((and issuing a certificate of merger or consolidation, ten)),~~ twenty dollars.

(4) Filing a statement of change of address of registered office or change of registered agent, or revocation, resignation, ~~((affidavit of nonappointment;))~~ or any combination of these, ~~((five))~~ ten dollars. A separate fee for filing such statement shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.

(5) Filing articles of dissolution, no fee.

(6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state ~~((and issuing a certificate of authority, twenty)),~~ thirty dollars.

(7) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state ~~((and issuing an amended certificate of authority, ten)),~~ twenty dollars.

(8) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state, ~~((ten))~~ twenty dollars.

(9) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, ~~((ten))~~ twenty dollars.

(10) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, no fee.

(11) Filing a certificate by a foreign corporation of the appointment of a registered agent, ~~((five))~~ ten dollars. A separate fee for filing such certificate shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.

(12) Filing a certificate by a foreign corporation of the revocation of the appointment of a registered agent, ~~((five))~~ ten dollars. A separate fee for filing such certificate shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.

(13) Filing an application to reserve a corporate name, ~~((ten))~~ twenty dollars.

(14) Filing a notice of transfer of a reserved corporate name, ~~((five))~~ twenty dollars.

(15) Filing any other statement or report, including an annual report, of a domestic or foreign corporation, ~~((five))~~ ten dollars.

Sec. 3. RCW 24.03.388 and 1987 c 117 s 2 are each amended to read as follows:

(1) An application processing fee ~~((of twenty-five dollars))~~ as provided in RCW 24.03.405 shall be charged for an application for reinstatement under RCW 24.03.386.

(2) An application processing fee ~~((of ten dollars))~~ as provided in RCW 24.03.405 shall be charged for each amendment or supplement to an application for reinstatement.

(3) The corporation seeking reinstatement shall file all annual reports and pay the full amount of all annual corporation fees which would have been assessed for the years of the period of administrative revocation, had the corporation been in active status, including the reinstatement year.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on July 1, 1991.

Passed the House March 12, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 224

[House Bill 1400]

RURAL HEALTH CARE PROJECTS

Effective Date: 7/28/91

AN ACT Relating to rural health; and amending RCW 70.175.050.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.175.050 and 1989 1st ex.s. c 9 s 705 are each amended to read as follows:

The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. ~~((Up to six)) Project sites ((shall be selected which are eligible to))~~ that receive seed grant funding~~((Funding shall be used to))~~ may hire consultants and shall perform other activities necessary to meet participant requirements defined in this chapter. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) where a financially vulnerable health care facility is present, (c) where a financially vulnerable health care facility is present and an adjoining community in the same catchment area has a competing facility, or (d) where improvements in the delivery of primary care services, including preventive care services, is needed.

~~((Up to six additional))~~ The department may obtain technical assistance support for project sites ((shall be selected which receive no funding)) that are not selected to be funded sites. The secretary shall select ~~((unfunded))~~ these assisted project sites based upon merit and to the extent possible, based upon the desire to address specific health status outcomes;

(2) To design acceptable outcome measures which are based upon health status outcomes and are to be part of the community plan, to work with communities to set acceptable local outcome targets in the health care delivery system strategic plan, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve community strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To define health care catchment areas, identify financially vulnerable health care facilities, and to identify rural populations which are not receiving adequate health care services;

(5) To identify existing private and public resources which may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource

services available and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(6) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(7) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(8) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(9) To act as facilitator for multiple applicants and entrants to the project;

(10) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project.

Passed the House February 11, 1991.

Passed the Senate April 27, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 225

[Senate Bill 5231]

REAL ESTATE BROKERS AND SALESPERSONS—CONTINUING EDUCATION REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to real estate continuing education; and amending RCW 18.85.165 and 18.85.140.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.85.165 and 1988 c 205 s 1 are each amended to read as follows:

All real estate brokers and salespersons shall furnish proof as the director may require that they have successfully completed a total of thirty clock hours of instruction every two years in real estate courses approved by the director in order to renew their licenses. Up to fifteen clock hours of instruction beyond the thirty hours in two years may be carried forward for credit in a subsequent two-year period. To count towards this requirement, a course shall be commenced within thirty-six months before the proof date for renewal. Examinations shall not be required to fulfill any part of the education requirement in this section. This section shall apply to renewal dates after January 1, 1991.

Sec. 2. RCW 18.85.140 and 1989 c 161 s 2 are each amended to read as follows:

Before receiving his or her license every real estate broker, every associate real estate broker, and every real estate salesperson must pay a license fee as prescribed by the director by rule. Every license issued under the provisions of this chapter expires on the applicant's second birthday following issuance of the license. Licenses issued to partnerships expire on a date prescribed by the director by rule. Licenses issued to corporations expire on a date prescribed by the director by rule, except that if the corporation registration or certificate of authority filed with the secretary of state expires, the real estate broker's license issued to the corporation shall expire on that date. Licenses must be renewed every two years on or before the date established under this section and a biennial renewal license fee as prescribed by the director by rule must be paid.

If the application for a renewal license is not received by the director on or before the renewal date, a penalty fee as prescribed by the director by rule shall be paid. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency.

The license of any person whose license renewal fee is not received within one year from the date of expiration shall be canceled. This person may obtain a new license by satisfying the procedures and ~~((qualifications for initial licensing, including the successful completion of any applicable examinations))~~ requirements as prescribed by the director by rule.

The director shall issue to each active licensee a license and a pocket identification card in such form and size as he or she shall prescribe.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 226

[Engrossed Substitute Senate Bill 5256]

FRANCHISE INVESTMENT PROTECTION

Effective Date: 7/28/91

AN ACT Relating to franchise investment protection; amending RCW 19.100.010, 19.100.020, 19.100.030, 19.100.040, 19.100.070, 19.100.080, 19.100.100, 19.100.140, 19.100.160, 19.100.170, 19.100.180, 19.100.220, and 19.100.240; and adding new sections to chapter 19.100 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 19.100.010 and 1979 c 158 s 83 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.

(2) (~~"Community interest" means a continuing financial interest between the franchisor and franchisee in the operation of the franchise business.~~) "Affiliate" means a person controlling, controlled by, or under common control with another person, every officer or director of such person, and every person occupying a similar status or performing similar functions.

(3) "Director" means the director of licensing.

(4) "Franchise" means:

(a) An ((oral or written contract or)) agreement, ((either expressed)) express or implied, ((in)) oral or written, by which:

(i) A person ((grants to another person, a license to use a trade name;)) is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

(ii) The operation of the business is substantially associated with a trademark, service mark, trade ((mark, logotype or related characteristic in which there is a community interest in the business of offering, selling, distributing goods or services at wholesale or retail, leasing, or otherwise and in which the franchisee)) name, advertising, or other commercial symbol designating, owned by, or licensed by the grantor or its affiliate; and

(iii) The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee((: PROVIDED, That none of the)).

(b) The following shall not be construed as a franchise within the meaning of this chapter:

~~((a))~~ (i) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card or any transaction relating to a bank credit card plan;

~~((b))~~ (ii) Actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state;

~~((c))~~ (iii) Any motor vehicle dealer franchise subject to the provisions of chapter 46.70 RCW.

(5) "Marketing plan" means a plan or system concerning an aspect of conducting business. A marketing plan may include one or more of the following:

(a) Price specifications, special pricing systems or discount plans;

(b) Sales or display equipment or merchandising devices;

(c) Sales techniques;

(d) Promotional or advertising materials or cooperative advertising;

(e) Training regarding the promotion, operation or, management of the business; or

(f) Operational, managerial, technical, or financial guidelines or assistance.

(6) "Bank credit card plan" means a credit card plan in which the issuer of credit cards ((as defined by RCW 9.26A.010(1))) is a national bank, state bank, trust company or any other banking institution subject to the supervision of the supervisor of banking of this state or any parent or subsidiary of such bank.

~~((6))~~ (7) "Franchisee" means a person to whom a franchise is offered or granted.

~~((7))~~ (8) "Franchisor" means a person who grants a franchise to another person.

~~((8) "Area franchise" means any contract or agreement between a franchisor or subfranchisor whereby the subfranchisor is granted the right to))~~ (9) "Subfranchise" means an agreement, express or implied, oral or written, by which a person pays or agrees to pay, directly or indirectly, a franchisor or affiliate for the right to grant, sell or negotiate the sale of ((franchises in the name or on behalf of the franchisor)) a franchise.

~~((9))~~ (10) "Subfranchisor" means a person to whom ((an area franchise)) a subfranchise is granted.

~~((10))~~ (11) "Franchise broker ((or selling agent))" means a person who directly or indirectly engages in the business of the offer or sale of franchises. The term does not include a franchisor, subfranchisor, or their officers, directors, or employees.

~~((11))~~ (12) "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (a) the purchase or agreement to purchase goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (e) the purchase or lease or agreement to purchase or lease supplies or fixtures necessary to enter into the business or to continue the business under the franchise

agreement at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market or rental value; (g) amounts paid for trading stamps redeemable in cash only; (h) amounts paid for trading stamps to be used as incentives only and not to be used in, with, or for the sale of any goods.

~~((12))~~ (13) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

~~((13))~~ (14) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

~~((14))~~ (15) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

~~((15))~~ (16) "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

Sec. 2. RCW 19.100.020 and 1971 ex.s. c 252 s 2 are each amended to read as follows:

(1) It is unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under this chapter or exempted under RCW 19.100.030.

(2) For the purpose of this section, an offer to sell a franchise is made in this state when: (a) The offer is directed by the offeror into this state from within or outside this state and is received where it is directed, (b) the offer originates from this state and violates the franchise or business opportunity law of the state or foreign jurisdiction into which it is directed, (c) the offeree is a resident of this state, or (d) the franchise business that is the subject of the offer is to be located or operated, wholly or partly, in this state.

(3) For the purpose of this section, a sale of any franchise is made in this state when: (a) An offer to sell is accepted in this state, (b) an offer originating from this state is accepted and violates the franchise or business opportunity law of the state or foreign jurisdiction in which it is accepted, (c) the purchaser of the franchise is a resident of this state, or (d) the franchise business that is the subject of the sale is to be located or operated, wholly or partly, in this state.

(4) For the purpose of this section, an offer to sell is not made in this state solely because the offer appears: (a) In a newspaper or other publication of general and regular circulation if the publication has had more than two-thirds of its circulation outside this state during the twelve months before the offer is published, or (b) in a broadcast or transmission originating outside this state.

Sec. 3. RCW 19.100.030 and 1972 ex.s. c 116 s 2 are each amended to read as follows:

The registration requirements of this chapter shall not apply to:

(1) ~~((A))~~ The offer or sale or transfer of a franchise by a franchisee ((whether voluntary or involuntary if such sale is an isolated sale)) who is not an affiliate of the franchisor for the franchisee's own account if the franchisee's entire franchise is sold and the sale is not effected by or through the franchisor. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove the sale or requires payment of a reasonable transfer fee. Such right to approve or disapprove the sale shall be exercised in a reasonable manner.

(2) ~~((Any transaction))~~ The offer or sale of a franchise by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, ((or)) conservator, or pursuant to a court-approved offer or sale, on behalf of a person other than the franchisor or the estate of the franchisor.

(3) ~~((Any))~~ The offer or sale of a franchise to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer or to a broker dealer where the purchaser is acting for itself or in some fiduciary capacity.

(4) ~~((Any))~~ The offer or sale of a franchise by a franchisor:

(a) ~~Who has ((disclosed))~~ delivered in writing to each prospective franchisee, at least ~~((forty-eight hours))~~ ten business days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least ~~((forty-eight hours))~~ ten business days prior to the receipt of any consideration, ~~((the following information:~~

(i) ~~The name of the franchisor and the name under which the franchisor is doing or intends to do business:~~

(ii) ~~The franchisor's principal business address and the name and address of his agent in the state of Washington authorized to receive process:~~

(iii) ~~The business form of the franchisor whether corporate, partnership, or otherwise:~~

(iv) ~~A statement of when, where, and how long the franchisor has:~~

~~(A) Conducted a business of the type to be operated by the franchisees;~~

~~(B) Has granted franchises for such business; and~~

~~(C) Has granted franchises in other lines of business:~~

~~(v) A copy of the typical franchise contract or agreement proposed for use including all amendments thereto:~~

~~(vi) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases; a statement indicating whether and under what conditions all or part of the initial franchise fee may be returned to the franchisee; and a statement of the estimated total investment to be made by the franchisee for:~~

~~(A) The initial franchise fee and other fees, whether payable in one sum or in installments;~~

~~(B) Fixed assets other than real property and leases for real property, whether or not financed by contract or installment purchase, leasing or otherwise;~~

~~(C) Working capital, deposits and prepaid expenses;~~

~~(D) Real property, whether or not financed by contract or installment purchase or otherwise, and leases for real property, and~~

~~(E) All other goods and services which the franchisee will be required to purchase or lease:~~

~~(vii) A statement describing a payment of fees other than franchise fees that the franchisee is required to pay to the franchisor including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.~~

~~(viii) A statement of the conditions under which the franchise agreement may be terminated or renewed or renewal refused:~~

~~(ix) A statement of the conditions under which the franchise may be sold, transferred, or assigned:~~

~~(x) A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or his designee together with a statement of whether and of the means by which the franchisor derives income from such purchases:~~

~~(xi) A statement of any restriction or condition imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is limited and/or required in the goods or services offered by him:~~

~~(xii) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his agent or affiliate:~~

~~(xiii) A statement of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part:~~

~~(xiv) A copy of any statement of estimated or projected franchisee sales or earnings prepared for presentation to prospective franchisees or other persons together with a statement immediately following such statement setting forth the data upon which the estimations or projections are based and explaining clearly the manner and extent to which such data relates to the actual operations of businesses conducted by the franchisor or its franchisees:~~

~~(xv) A statement of business failures of franchisees, resales to the franchisor, sales of the franchise to others, and transfers in the state of Washington during the two year period preceding the date of the statement:~~

~~(xvi) A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee:~~

~~(xvii) A statement as to whether or not franchisees are granted a specific area or territory within which the franchisor agrees not to operate or grant additional franchises for the operation of the franchise business or in which the franchisor will operate or grant franchises for the operation of no more than a specified number of additional franchise businesses:~~

~~(xviii) A list of the names, addresses and telephone numbers of all operating franchise businesses under franchise agreement with the franchisor located in the state of Washington:~~

~~(xix) A statement explaining the terms and effects of any covenant not to compete which is or will be included in the franchise or other agreement to be executed by the franchisee:~~

~~(xx) A statement setting forth such additional information and such comments and explanations relative to the information contained in the disclosure statement as the franchisor may desire to present)) whichever occurs first, an offering circular complying with guidelines adopted by rule of the director. The director shall be guided in adopting such a rule by the guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association, Inc., or its successor, as such guidelines may be revised from time to time; and~~

(b) Who either:

(i) (A) Has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars or who has a net worth, according to its most recent audited financial statement, of not less than one million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars; and

(B) Has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale or has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale or if any corporation which owns at least eighty percent of the franchisor, has had at least twenty-five ~~((franchises {franchisees}))~~ franchisees conducting business at all times during the five-year period immediately preceding the offer or sale or such corporation has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; and

(C) Requires an initial investment by the franchisee of more than one hundred thousand dollars; and

(D) Files annually with the director a statement prescribed by rule of the director giving notice of such claim, and pays a filing fee as set forth in RCW 19.100.240; or

(ii) (A) Has ((and is offering for sale fewer than ten franchises)) no outstanding franchises granted for businesses located or to be located outside the state of Washington; and

(B) Has granted and grants no more than three franchises for franchise businesses to be situated within the state of Washington ((under franchise agreement)); and

((B) does not advertise, using radio, television, newspaper, magazine, billboard, or other advertising medium the principal office of which is located in the state of Washington or Oregon, concerning the sale of or offer to sell franchises)); and

(C) Does not publish an advertisement or engage in general solicitation for the franchise offering; and

(D) The buyer is represented or advised in the transaction by independent legal counsel or certified public accountant; or

(iii) ((A)) Does not charge a franchise fee, as defined in RCW 19.100.010((A)) (12), in excess of ((fifteen)) five hundred dollars ((per year, and

(B) does not advertise, using radio, television, newspaper, magazine, billboard, or other advertising medium, the principal office of which is located in the state of Washington or Oregon, concerning the sale of or offer to sell franchises)); and

(c) Who has not been found by a court of competent jurisdiction to have been in violation of this chapter, chapter 19.86 RCW, or any of the various federal statutes dealing with the same or similar matters, within seven years of any sale or offer to sell franchise business under franchise agreement in the state of Washington.

(5) ((Neither the registration requirements nor the provisions of RCW 19.100.180(2), as now or hereafter amended, shall apply to any franchisor:

(a) Who meets the tests and requirements set forth in subsections (4)(a), (4)(b)(i)(A), 4(b)(i)(B), and 4(c) of this section; and

(b) Who is engaged in the business of renting or leasing motor vehicles through an interdependent system of direct and franchised operations in interstate commerce in twenty or more states; and

(c) Who is subject to the jurisdiction of the federal trade commission and the federal anti-trust laws:

Any franchisor or subfranchisor who claims an exemption under subsection 4(a) and 4(b)(i) of this section shall file with the director a statement giving notice of such claim and setting forth the name and address of franchisor or subfranchisor and the name under which the franchisor or subfranchisor is doing or intends to do business:)) The offer or sale of a

franchise to an accredited investor, as defined by rule adopted by the director. The director shall be guided in adopting such a rule by the rules defining accredited investor promulgated by the federal securities and exchange commission.

(6) The offer or sale of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account that is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered in the state of Washington.

Sec. 4. RCW 19.100.040 and 1972 ex.s. c 116 s 3 are each amended to read as follows:

(1) The application for registration of the offer, signed by the franchisor, subfranchisor, or by any person on whose behalf the offering is to be made, must be filed with the director and shall contain:

~~((1) The name of the franchisor and the name under which the franchisor is doing or intends to do business:~~

~~(2) The franchisor's principal business address and the name and address of his agent in the state of Washington authorized to receive process:~~

~~(3) The business form of the franchisor whether corporate, partnership, or otherwise:~~

~~(4) Such other information concerning the identity and business experience of persons affiliated with the franchisor including franchise brokers as the director may by rule prescribe:~~

~~(5) A statement whether any person identified in the application for registration:~~

~~(a) Has been found guilty of a felony or held liable in a civil action by final judgment if such civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property, within ten years of the date of such application; or~~

~~(b) Is subject to any currently effective order of the securities and exchange commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment advisor or is subject to any currently effective order of any national security association or national securities exchange (as defined in the Securities & Exchange Act of 1934) suspending or expelling such person from membership of such association or exchange; or~~

~~(c) Is subject to any currently effective order or ruling of the Federal Trade Commission pertaining to any franchise granted by franchisor or is subject to any currently effective order relating to business activity as a franchisor as a result of an action brought by the attorney general's office or by any public agency or department.~~

~~Such statement shall set forth the court, the date of conviction or judgment, any penalty imposed, or damages assessed or the date, nature, and issue of such order.~~

~~(6) A statement of when, where, and how long the franchisor has:~~

~~(a) Conducted a business of the type to be operated by the franchisees;~~

~~(b) Has granted franchises for such business; and~~

~~(c) Has granted franchises in other lines of business.~~

~~(7) A financial statement of the franchisor. The director may describe:~~

~~(a) Form and content of the financial statements required under this law;~~

~~(b) The circumstances under which consolidated financial statements can be filed; and~~

~~(c) The circumstances under which financial statements shall be audited by independent, certified public accountants.~~

~~(8) A copy of the typical franchise contract or agreement proposed for use including all amendments thereto.~~

~~(9) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases; a statement indicating whether and under what conditions all or part of the initial franchise fee may be returned to the franchisee; and a statement of the estimated total investment to be made by the franchisee for:~~

~~(a) The initial franchise fee and other fees, whether payable in one sum or in installments;~~

~~(b) Fixed assets other than real property and leases for real property, whether or not financed by contract or installment purchase, leasing or otherwise;~~

~~(c) Working capital, deposits and prepaid expenses;~~

~~(d) Real property, whether or not financed by contract or installment purchase or otherwise, and leases for real property; and~~

~~(e) All other goods and services which the franchisee will be required to purchase or lease.~~

~~(10) A statement describing a payment of fees other than franchise fees that the franchisee is required to pay to the franchisor including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.~~

~~(11) A statement of the conditions under which the franchise agreement may be terminated or renewed or renewal refused.~~

~~(12) A statement of the conditions under which the franchise may be sold, transferred, or assigned.~~

~~(13) A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the~~

~~franchise business from the franchisor or his designee together with a statement of whether and of the means by which the franchisor derives income from such purchases.~~

~~(14) A statement of any restriction or condition imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is limited and/or required in the goods and services offered by him.~~

~~(15) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his agent or affiliate.~~

~~(16) A statement of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part.~~

~~(17) A copy of any statement of estimated or projected franchisee sales or earnings prepared for presentation to prospective franchisees or other persons, together with a statement immediately following such statement setting forth the data upon which the estimations or projections are based and explaining clearly the manner and extent to which such data relates to the actual operations of businesses conducted by the franchisor or its franchisees.~~

~~(18) A statement of business failures of franchisees, resales to the franchisor, sales of the franchise to others, and transfers in the state of Washington during the two year period preceding the date of the statement.~~

~~(19) A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee.~~

~~(20) Such other information as the director may reasonably require.~~

~~(21) A list of the names, addresses and telephone numbers of all operating franchise businesses under franchise agreement with the franchisor located in the state of Washington.~~

~~(22) A statement explaining the terms and effects of any covenant not to compete which is or will be included in the franchise or other agreement to be executed by the franchisee.~~

~~(23) A statement setting forth such additional information and such comments and explanations relative to the information contained in the disclosure statement as the franchisor may desire to present.~~

(24)) (a) A copy of the franchisor's or subfranchisor's offering circular which shall be prepared in compliance with guidelines adopted by rule of the director. The director shall be guided in adopting such rule by the guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association, Inc., or its successor, as such guidelines may be revised from time to time;

(b) A copy of all agreements to be proposed to franchisees;

(c) A consent to service of process as required by RCW 19.100.160;

(d) The application for registration of a franchise broker, if any;

(e) The applicable filing fee; and

(f) Such other information as the director determines, by rule or order, to be necessary or appropriate to facilitate the administration of this chapter.

(2) The director may require the filing of financial statements of the franchisor or subfranchisor audited by an independent certified public accountant and prepared in accordance with generally accepted accounting principles.

When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section.

Sec. 5. RCW 19.100.070 and 1972 ex.s. c 116 s 5 are each amended to read as follows:

(1) A franchise offering shall be deemed duly registered, and a claim of exemption under RCW 19.100.030(4)(b)(i) shall be duly filed, for a period of one year from the effective date of registration or filing unless the director by rule or order specifies a different period.

(2) Registration of a franchise offer may be renewed for additional periods of one year each, unless the director by rule or order specifies a different period, by filing with the director no later than fifteen business days prior to the expiration thereof a renewal application containing such information as the director may require to indicate any substantial changes in the information contained in the original application (~~((for a))~~) or the previous renewal application and payment of the (~~((proscribed))~~) prescribed fee.

(3) If a material adverse change in the condition of the franchisor or the subfranchisor or any material change in the information contained in its offering circular should occur (~~((during any year, a supplemental report shall be filed))~~) the franchisor or subfranchisor shall so amend the registration on file with the director as soon as reasonably possible and in any case, before the further sale of any franchise.

Sec. 6. RCW 19.100.080 and 1972 ex.s. c 116 s 6 are each amended to read as follows:

~~((Any person offering for sale or selling a franchise within this state, whether or not one or more franchises will be located within this state, must present to the prospective franchisee or his representative, at least forty-eight hours prior))~~ It is unlawful for any person to sell a franchise that is registered or required to be registered under this chapter without first delivering to the offeree, at least ten business days prior to the execution by the offeree of any binding franchise or other agreement, or at least ten business days prior to the receipt of any consideration, whichever occurs first, a copy of the offering circular required under RCW 19.100.040, with any addition or amendment to the offering circular required by RCW 19.100.070, together with a copy of the proposed agreements relating to the sale of the franchise(~~((copies of the materials specified in RCW~~

~~19.100.030(4)(a) and all supplemental reports of the franchisor and the subfranchisor on file with the director).~~

Sec. 7. RCW 19.100.100 and 1971 ex.s. c 252 s 10 are each amended to read as follows:

No person((s)) shall publish in this state any advertisements offering a franchise subject to the registration requirements of this law unless a true copy of the advertisement has been filed in the office of the director at least seven days prior to the publication or such shorter period as the director by rule or order may allow.

Sec. 8. RCW 19.100.140 and 1972 ex.s. c 116 s 9 are each amended to read as follows:

(1) It is unlawful for any ((person)) franchise broker to offer to sell or sell a franchise ((which is subject to the registration requirements of RCW 19.100.040)) in this state unless ((he)) the franchise broker is registered under this chapter. It is unlawful for any franchisor, subfranchisor, or franchisee((, except if the transaction is exempt under RCW 19.100.030)) to employ a franchise broker ((or selling agent)) unless ((he)) the franchise broker is registered.

(2) The franchise broker ((or selling agent may)) shall apply for registration by filing with the director an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in RCW 19.100.240.

(3) The application shall contain whatever information the director requires concerning such matters as:

- (a) The applicant's form and place of organization.
- (b) The applicant's proposed method of doing business.
- (c) The qualifications and business history of the applicant.
- (d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
- (e) The applicant's financial condition and history.

Sec. 9. RCW 19.100.160 and 1971 ex.s. c 252 s 16 are each amended to read as follows:

Any person who is engaged or hereafter engaged directly or indirectly in the sale or offer to sell a franchise or a subfranchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to the provisions of this chapter, shall be amenable to the jurisdiction of the courts of this state and shall be amenable to the service of process under RCW 4.28.180, 4.28.185 and 19.86.160. Every applicant for registration of a franchise under this law (by other than a Washington corporation) shall file with the director in such form as he by rule prescribed, an irrevocable consent appointing the director or his successor in office to be his attorney, to receive service or any lawful process in

any noncriminal suit, action, or proceeding against him or his successors, executor, or administrator which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing consent. A person who has filed such a consent in connection with a previous registration under this law need not file another. Service may be made by leaving a copy of the process in the office of the director but it is not as effective unless:

(1) The plaintiff, who may be the director, in a suit, action, or proceeding instituted by him forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the director; and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further times the court allows.

Sec. 10. RCW 19.100.170 and 1971 ex.s. c 252 s 17 are each amended to read as follows:

It is unlawful for any person in connection with the offer, sale, or purchase of any franchise or subfranchise in this state directly or indirectly:

(1) To make any untrue statement of a material fact in any application, notice, or report filed with the director under this law or willfully to omit to state in any application, notice or report, any material fact which is required to be stated therein or fails to notify the director of any material change as required by RCW 19.100.070(3).

(2) To sell or offer to sell (~~a franchise in this state~~) by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.

(3) To employ any device, scheme, or artifice to defraud.

(4) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(5) To violate any order of the director.

Sec. 11. RCW 19.100.180 and 1980 c 63 s 1 are each amended to read as follows:

Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the franchisees:

(1) The parties shall deal with each other in good faith.

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

(a) Restrict or inhibit the right of the franchisees to join an association of franchisees.

(b) Require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is: (i) Reasonable, ((is)) (ii) based on franchises granted at materially different times and such discrimination is reasonably related to such difference in time, or is based on other proper and justifiable distinctions considering the purposes of this chapter, and (iii) is not arbitrary. However, nothing in (c) of this subsection precludes negotiation of the terms and conditions of a franchise at the initiative of the franchisees.

(d) Sell, rent, or offer to sell to a franchisee any product or service for more than a fair and reasonable price.

(e) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless such benefit is disclosed to the franchisee.

(f) If the franchise provides that the franchisee has an exclusive territory, which exclusive territory shall be specified in the franchise agreement, for the franchisor or subfranchisor to compete with the franchisee in an exclusive territory or to grant competitive franchises in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, except as otherwise permitted by RCW 19.100.220.

(h) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

(i) Refuse to renew a franchise without fairly compensating the franchisee for the fair market value, at the time of expiration of the franchise, of the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor, and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchise business: PROVIDED, That compensation need not be made to a

franchisee for good will if (i) the franchisee has been given one year's notice of nonrenewal and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor: **PROVIDED FURTHER**, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

(j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: **PROVIDED**, That after three willful and material breaches of the same term of the franchise agreement occurring within a twelve-month period, for which the franchisee has been given notice and an opportunity to cure as provided in this subsection, the franchisor may terminate the agreement upon any subsequent willful and material breach of the same term within the twelve-month period without providing notice or opportunity to cure: **PROVIDED FURTHER**, That a franchisor may terminate a franchise without giving prior notice or opportunity to cure a default if the franchisee: (i) Is adjudicated a bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchise business; (iii) voluntarily abandons the franchise business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchise business. Upon termination for good cause, the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee's inventory and supplies, exclusive of (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchise business; and (iii), if the franchisee is to retain control of the premises of the franchise business, any inventory and supplies not purchased from the franchisor or on his express requirement: **PROVIDED**, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

NEW SECTION. Sec. 12. A new section is added to chapter 19.100 RCW to read as follows:

This chapter does not preclude negotiation of the terms and conditions of a franchise at the initiative of the franchisee, provided that such negotiated terms and conditions do not violate any provision of this chapter. After the initial offer to a franchisee using the offering circular required by RCW 19.100.030, 19.100.040, or 19.100.070 a franchisor need not provide an amended offering circular to that franchisee by reason of a change in the

terms and conditions of a franchise being negotiated at the initiative of that franchisee or amend the registration by reason of such change.

Sec. 13. RCW 19.100.220 and 1972 ex.s. c 116 s 14 are each amended to read as follows:

(1) In any proceeding under this chapter, the burden of proving an exception from a definition or an exemption from ~~((definition))~~ registration is upon the person claiming it.

(2) Any agreement, condition, stipulation or provision, including a choice of law provision, purporting to bind any person ~~((acquiring a franchise at the time of entering into a franchise or other agreement))~~ to waive compliance with any provision of this chapter or any rule or order hereunder is void. A release or waiver executed by any person pursuant to a negotiated settlement in connection with a bona fide dispute between a franchisee and a franchisor, arising after their franchise agreement has taken effect, in which the person giving the release or waiver is represented by independent legal counsel, is not an agreement prohibited by this subsection.

(3) This chapter represents a fundamental policy of the state of Washington.

Sec. 14. RCW 19.100.240 and 1971 ex.s. c 252 s 24 are each amended to read as follows:

The director shall charge and collect fees fixed by this section. All fees collected under this chapter shall be deposited in the state treasury and shall not be refundable except as herein provided:

(1) The fee for filing an application for registration on the sale of franchise under RCW 19.100.040 is ~~((five))~~ six hundred dollars;

(2) The fee for filing an application for renewal of a registration under RCW 19.100.070 is one hundred dollars;

(3) The fee for filing an amendment to the application filed under RCW 19.100.040 is one hundred dollars;

(4) The fee for registration of a franchise broker ~~((or selling agent))~~ shall be fifty dollars for original registration and twenty-five dollars for each annual renewal;

(5) The fee for filing a notice of claim of exemption is one hundred dollars for the original filing and one hundred dollars for each annual renewal.

****NEW SECTION. Sec. 15. A new section is added to chapter 19.100 RCW to read as follows:***

An action for rescission under RCW 19.100.190 for failure to register may not be commenced more than one year after the act or transaction on which the action is based. Any other action under RCW 19.100.190 may not be commenced more than three years after the cause of action accrues.

*Sec. 15 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 16. A new section is added to chapter 19.100 RCW to read as follows:

The director may by order deny, suspend, or revoke registration of any franchise broker if the director finds that the order is in the public interest and that the applicant or registrant, or any partner, officer, or director of the applicant or registrant:

(1) Has filed an application for registration as a franchise broker under RCW 19.100.140 which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Has willfully violated or willfully failed to comply with any provision of this chapter;

(3) Has been convicted, within the past five years of any misdemeanor involving a franchise, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any aspect of the franchise industry;

(5) Is the subject of an order of the director denying, suspending, or revoking registration as a franchise broker;

(6) Has engaged in dishonest or unethical practices in the franchise industry;

(7) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature.

The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

NEW SECTION. Sec. 17. A new section is added to chapter 19.100 RCW to read as follows:

The director may by order deny, suspend, or revoke any exemption from registration otherwise available under RCW 19.100.030 for the offer or sale of the franchise if he or she finds that the order is in the public interest and that:

(1) Any provision of this chapter or any rule or order or condition lawfully imposed under this chapter has been violated or is about to be violated in connection with the offering by the franchisor, any partner, officer, or director of a franchisor, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlled by the franchisor, or any franchise broker offering or selling the offering;

(2) The franchise offering is the subject of a permanent or temporary injunction of a court of competent jurisdiction entered under any federal or state act applicable to the offering; but (a) the director may not enter an order of revocation or suspension under this subsection more than one year

from the date of the injunction relied on, and (b) the director may not enter an order under this subsection on the basis of an injunction unless that injunction was based on facts that currently constitute a ground for an order under this section;

(3) The franchisor's enterprise or method of business includes or would include activities which are illegal where performed;

(4) The offering has worked or tended to work or would tend to work a fraud on purchasers;

(5) The franchisor has failed to pay the required filing fee for a claim of exemption but the director may enter only a denial order under this subsection and shall vacate such order when the deficiency has been corrected;

(6) The franchisor has made a claim of exemption which is incomplete in a material respect or contains any statement which in the light of the circumstances under which it was made is false or misleading with respect to any material fact.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 16, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 16, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 15, Engrossed Substitute Senate Bill No. 5256 entitled:

"AN ACT Relating to franchise investment protection."

Washington State's Franchise Investment Protection Act is an important consumer protection statute that, through protection of franchisees, has fostered a healthy business environment for reputable franchisors. Section 15 of this act would reduce the statute of limitations to only one year for an action by a franchisee for rescission based on a failure of a franchisor to register. Further, the statute of limitations would be reduced to three years for all other actions under RCW 19.100.190. Currently, the statute of limitations may vary between two and six years depending on judicial interpretation.

While I agree that providing greater certainty in the limitation of actions is desirable, the original Washington State Bar Association Franchise Act Revision Committee's recommendation provided for a more reasonable statute of limitation of two years for failure to register and four years for other actions. This initial recommendation was modified by the Legislature.

A veto of section 15 is necessary to assure continued consumer protection. Some problems with franchise agreements may not arise during the first year. Experience has shown that franchisors who fail to register often have the weakest franchises to sell and do not provide the disclosures required by the Franchise Investment Protection Act, thus exposing the purchaser to unnecessary risk. Also, the one year statute of limitations could provide an incentive to unscrupulous franchisors to sell unregistered franchises hoping the year will pass before discovery of a problem and the franchisee's claim, however valid, will be barred from legal action.

With the exception of section 15, Engrossed Substitute Senate Bill No. 5256 is approved."

CHAPTER 227

[Substitute Senate Bill 5108]

PRIZES—REGULATION OF PROMOTIONAL ADVERTISING OF

Effective Date: 7/28/91

AN ACT Relating to the regulation of promotional advertising of prizes; amending RCW 19.105.365 and 64.36.320; creating a new chapter in Title 19 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds that deceptive promotional advertising of prizes is a matter vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

(2) Deceptive promotional advertising of prizes is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW, and constitutes an act of deceptive promotional advertising.

(3) This chapter applies to a promotion offer:

- (a) Made to a person in Washington;
- (b) Used to induce or invite a person to come to the state of Washington to claim a prize, attend a sales presentation, meet a promoter, sponsor, sales person, or their agent, or conduct any business in this state; or
- (c) Used to induce or invite a person to contact by any means a promoter, sponsor, sales person, or their agent in this state.

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

(1) "Person" means an individual, corporation, the state or its subdivisions or agencies, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(2) "Prize" means a gift, award, travel coupon or certificate, free item, or any other item offered in a promotion that is different and distinct from the goods, service, or property promoted by a sponsor. "Prize" does not include an item offered in a promotion where all of the following elements are present:

- (a) No element of chance is involved in obtaining the item offered in the promotion;
- (b) The recipient has the right to review the merchandise offered for sale without obligation for at least seven days, and has a right to obtain a full refund in thirty days for the return of undamaged merchandise;
- (c) The recipient may keep the item offered in the promotion without obligation; and
- (d) The recipient is not required to attend any sales presentation or spend any sum in order to receive the item offered in the promotion.

(3) "Promoter" means a person conducting a promotion.

(4) "Promotion" means an advertising program, sweepstakes, contest, direct giveaway, or solicitation directed to specific named individuals, that includes the award of or chance to be awarded a prize.

(5) "Offer" means a written notice delivered by hand, mail, or other print medium offering goods, services, or property made as part of a promotion to a person based on a representation that the person has been awarded, or will be awarded, a prize.

(6) "Sponsor" means a person on whose behalf a promotion is conducted to promote or advertise goods, services, or property of that person.

(7) "Simulated check" means a document that is not currency or a check, draft, note, bond, or other negotiable instrument but has the visual characteristics thereof. "Simulated check" does not include a nonnegotiable check, draft, note, or other instrument that is used for soliciting orders for the purchase of checks, drafts, notes, bonds, or other instruments and that is clearly marked as a sample, specimen, or nonnegotiable.

(8) "Continuing obligation check" means a document that is a check, draft, note, bond, or other negotiable instrument that, when cashed, deposited, or otherwise used, imposes on the payee an obligation to enter into a loan transaction. This definition does not include checks, drafts, or other negotiable instruments that are used by consumers to take advances on revolving loans, credit cards, or revolving credit accounts.

(9) "Verifiable retail value" means:

(a) A price at which a promoter or sponsor can demonstrate that a substantial number of prizes have been sold at retail in the local market by a person other than the promoter or sponsor; or

(b) If the prize is not available for retail sale in the local market, the retail fair market value in the local market of an item substantially similar in each significant aspect, including size, grade, quality, quantity, ingredients, and utility; or

(c) If the value of the prize cannot be established under (a) or (b) of this subsection, then the prize may be valued at no more than three times its cost to the promoter or sponsor.

(10) "Financial institution" means any bank, trust company, savings bank, savings and loan association, credit union, industrial loan company, or consumer finance lender subject to regulation by an official agency of this state or the United States, and any subsidiary or affiliate thereof.

NEW SECTION. Sec. 3. (1) The offer must identify the name and address of the promoter and the sponsor of the promotion.

(2) The offer must state the verifiable retail value of each prize offered in it.

(3)(a) If an element of chance is involved, each offer must state the odds the participant has of being awarded each prize. The odds must be

expressed in Arabic numerals, in ratio form, based on the total number of prizes to be awarded and the total number of offers distributed.

(b) If the promotion identified in the offer is part of a collective promotion with more than one participating sponsor, that fact must be clearly and conspicuously disclosed.

(c) The odds must be stated in a manner that will not deceive or mislead a person about that person's chance of being awarded a prize.

(4) The verifiable retail value and odds for each prize must be stated in immediate proximity on the same page with the first listing of each prize in type at least as large as the typeface used in the standard text of the offer.

(5) If a person is required or invited to view, hear, or attend a sales presentation in order to claim a prize that has been awarded, may have been awarded, or will be awarded, the requirement or invitation must be conspicuously disclosed to the person in the offer in type at least as large as the typeface used in the standard text of the offer on the first page of the offer.

(6) No item in an offer may be denominated a prize, gift, award, premium, or similar term that implies the item is free if, in order to receive the item or use the item for its intended purpose the intended recipient is required to spend any sum of money, including but not limited to shipping fees, deposits, handling fees, payment for one item in order to receive another at no charge, or the purchase of another item or the expenditure of funds in order to make meaningful use of the item awarded in the promotion. The payment of any applicable state or federal taxes by a recipient directly to a government entity is not a violation of this section.

(7) If the receipt of the prize is contingent upon certain restrictions or qualifications that the recipient must meet, or if the use or availability of the prize is restricted or qualified in any way, including, but not limited to restrictions on travel dates, travel times, classes of travel, airlines, accommodations, travel agents, or tour operators, the restrictions or qualifications must be disclosed on the offer in immediate proximity on the same page with the first listing of the prize in type at least as large as the typeface used in the standard text of the offer or, in place thereof, the following statement printed in direct proximity to the prize or prizes awarded in type at least as large as the typeface used in the standard text of the offer:

"Major restrictions may apply to the use, availability, or receipt of the prize(s) awarded."

This statement must be followed by a disclosure, in the same size type as the statement, indicating where in the offer the restrictions may be found. The restrictions must be printed in type at least as large as the typeface used in the standard text of the offer.

(8) If a prize will not be awarded or given unless a winning ticket, the offer itself, a token, number, lot, or other device used to determine winners

in a particular promotion is presented to a promoter or a sponsor, this fact must be clearly stated on the first page of the offer.

NEW SECTION. Sec. 4. (1) Before a demonstration, seminar, or sales presentation begins, the promoter shall inform the person of the prize, if any, the person will receive.

(2) A prize or a voucher, certificate, or other evidence of obligation given instead of a prize shall be given to a person at the time the person is informed of the prize, if any, the person will receive.

(3) A copy of the offer shall be returned to the person receiving the prize at the time the prize is awarded.

(4) It is a violation of this chapter for a promoter or sponsor to include a prize in an offer when the promoter or sponsor knows or has reason to know that the prize will not be available in a sufficient quantity based upon the reasonably anticipated response to the offer.

(5)(a) If the prize is not available for immediate delivery to the recipient, the recipient shall be given, at the promoter or sponsor's option, a rain check for the prize, the verifiable retail value of the prize in cash, or a substitute item of equal or greater verifiable retail value.

(b) If the rain check cannot be honored within thirty days, the promoter or sponsor shall mail to the person a valid check or money order for the verifiable retail value of the prize described in this chapter.

(6) A sponsor shall fulfill the rain check within thirty days if the person named as being responsible fails to honor it.

(7) The offer shall contain the following clear and conspicuous statement of recipients' rights printed in type at least as large as the typeface used in the standard text of the offer:

"If you receive a rain check in lieu of the prize, you are entitled by law to receive the prize, an item of equal or greater value, or the cash equivalent of the offered prize within thirty days of the date on which you claimed the prize."

(8) It is a violation of this chapter to misrepresent the quality, type, value, or availability of a prize.

NEW SECTION. Sec. 5. (1) No person may produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state a simulated check unless the document bears the phrase "THIS IS NOT A CHECK," diagonally printed in type at least as large as the predominant typeface in the simulated check on the front of the check itself.

(2) No person, other than a financial institution, may produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state a continuing obligation check unless the document bears the phrase "THIS IS A LOAN" or "CASHING THIS REQUIRES REPAYMENT," diagonally printed in type at least as large as the predominant typeface in the continuing obligation check on the front of the check itself.

NEW SECTION. Sec. 6. (1) A person who suffers damage from an act of deceptive promotional advertising may bring an action against the sponsor or promoter of the advertising, or both. Damages include, but are not limited to, fees paid in violation of section 3(6) of this act and the dollar value of a prize represented to be awarded to a person, but not received by that person.

(2) In an action for deceptive promotional advertising, the court may award the greater of five hundred dollars or three times the actual damages sustained by the person, not to exceed ten thousand dollars; equitable relief, including, but not limited to an injunction and restitution of money and property; attorneys' fees and costs; and any other relief that the court deems proper.

NEW SECTION. Sec. 7. A person who knowingly violates any provision of this chapter is guilty of a gross misdemeanor.

NEW SECTION. Sec. 8. The remedies prescribed in this chapter do not limit or bar any existing remedies at law or equity.

Sec. 9. RCW 19.105.365 and 1988 c 159 s 12 are each amended to read as follows:

(1) It is unlawful for a camping resort operator or other person, in connection with an advertisement or offer for sale of a camping resort contract in this state, to promise or offer a free gift, award, prize, or other item of value if the operator or person knows or has reason to know that the offered item is unavailable in a sufficient quantity based upon the reasonably anticipated response to the advertisement or offer.

(2) A person who responds to an advertisement or offer in the manner specified, who performs all stated requirements, and who meets the qualifications disclosed shall ~~((promptly)) receive the offered item ((offered)) subject to ((the following exception. If the camping resort operator fails to provide the item because of insufficient supply or unacceptable quality not reasonably foreseeable by the camping resort operator, the operator shall provide, at the operator's option, a rain check for the item offered, its cash equivalent, a substitute item of greater retail value, or a rain check for such substitute item. If a rain check is provided, the camping resort operator shall, within thirty days, deliver the item, its cash equivalent, or a substitute item to the recipient's address without additional cost or requirement to the recipient))~~ chapter 19.— RCW (sections 1 through 8 of this act).

(3) The director may, upon making a determination that a violation of subsection (1) or (2) of this section has occurred, require any person, including an operator or other registrant found in violation, who continues, or proposes to continue, offering a free gift, award, prize, or other item of value in this state for purposes of advertising a camping resort or inducing persons to purchase a camping resort contract, to provide evidence of the ability to deliver on promised gifts, prizes, or awards by means such as

bonds, irrevocable letters of credit, cash deposits, or other security arrangements acceptable to the director.

(4) The director may require that any fees or funds of any description collected in advance from persons for purposes of obtaining promised gifts, awards, prizes, or other items of value, be placed in trust in a depository in this state until after delivery of the promised gift, prize, award, or other item of value.

(5) Operators or other registrants or persons promising gifts, prizes, awards, or other items of consideration as part of a membership referral program shall be considered to be offering or selling promotional programs.

(6) Chapter 19.— RCW (sections 1 through 8 of this act) applies to free gifts, awards, or prizes regulated under this chapter.

Sec. 10. RCW 64.36.320 and 1987 c 370 s 13 are each amended to read as follows:

(1) No person, including a promoter, may advertise, sell, contract for, solicit, arrange, or promise a free gift, an award, a prize, or other item of value in this state as a condition for attending a sales presentation, touring a facility, or performing other activities in connection with the offer or sale of a timeshare under this chapter, without first providing the director with a bond, letter of credit, cash depository, or other security arrangement that will assure performance by the promisor and delivery of the promised gift, award, sweepstakes, prize, or other item of value.

(2) Promoters under this chapter shall be strictly liable for delivering promised gifts, prizes, awards, or other items of value offered or advertised in connection with the marketing of timeshares.

(3) Persons promised but not receiving gifts, prizes, awards, or other items of consideration covered under this section, shall be entitled in any cause of action in the courts of this state in which their causes prevail, to be awarded treble the stated value of the gifts, prizes, or awards, court costs, and reasonable attorney fees.

(4) The director may require that any fees or funds of any description collected from persons in advance, in connection with delivery by the promisor of gifts, prizes, awards, or other items of value covered under this section, be placed in a depository in this state, where they shall remain until performance by the promisor.

(5) The director may require commercial promotional programs to be registered and require the provision of whatever information, including financial information, the department deems necessary for protection of purchasers.

(6) Persons offering commercial promotional programs shall sign and present to the department a consent to service of process, in the manner required of promoters in this chapter.

(7) Registrants or their agents or other persons shall not take possession of promotional materials covered under this section and RCW 64.36-.310, from recipients who have received the materials for attending a sales presentation or touring a project, unless the permission of the recipient is received and the recipient is provided with an accurate signed copy describing such promotional materials. The department shall adopt rules enforcing this subsection.

(8) Chapter 19.— RCW (sections 1 through 8 of this act) applies to free gifts, awards, prizes, or other items of value regulated under this chapter.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. Sections 1 through 8 of this act shall constitute a new chapter in Title 19 RCW.

Passed the Senate April 23, 1991.

Passed the House April 9, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 228

[Senate Bill 5475]

COLLEGES AND UNIVERSITIES—GRADUATE ASSISTANTS—ENGLISH COMPETENCY REQUIRED

Effective Date: 7/28/91

AN ACT Relating to higher education; amending RCW 28B.108.010, 28B.108.030, and 28B.108.070; adding new sections to Title 28B RCW; adding new sections to chapter 28B.80 RCW; adding a new section to chapter 28B.15 RCW; creating new sections; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the quality of undergraduate education is enhanced by association with graduate assistants from other countries who can effectively communicate their knowledge and diverse cultural backgrounds.

It is the intent of the legislature to assist the institutions in their effort to improve the quality of undergraduate education at the state's four-year colleges and universities. Attainment of an excellent education is facilitated when communication is clear, concise, sensitive to cultural differences, and demonstrative of proven pedagogical skills. It is the further intent of the legislature to assure students and parents that graduate teaching assistants at our state institutions of higher education are able to communicate effectively and understandably with undergraduate students.

NEW SECTION. Sec. 2. The Washington state legislature affirms the following principles:

(1) Washington's college and university students are entitled to excellent instruction at the state's institutions of higher education. Excellent education requires the ability to communicate effectively in college classrooms and laboratories.

(2) The presence of students, faculty, and staff from other countries on Washington's college campuses enriches the educational experience of Washington's students and enhances scholarship and research at the state's colleges and universities.

(3) With the exception of courses designed to be taught primarily in a foreign language, undergraduate students shall be provided with classroom instruction, laboratory instruction, clinics, seminars, studios, and other participatory and activity courses by a person fluent in both the spoken and written English language.

(4) Persons of all nationalities, races, religions, and ethnic backgrounds are welcome and valued in the state of Washington.

NEW SECTION. Sec. 3. The governing board of each state university, regional university, state college, and community college shall ensure that the principles in section 1 of this act are implemented at its institution of higher education.

NEW SECTION. Sec. 4. The council of presidents, in consultation with the higher education coordinating board, shall convene a task force of representatives from the four-year universities and colleges. The task force shall:

(1) Review institutional policies and procedures designed to ensure that faculty and teaching assistants are able to communicate effectively with undergraduate students in classrooms and laboratories;

(2) Research methods and procedures designed to improve the communication and teaching skills of any person funded by state money who instructs undergraduate students in classrooms and laboratories;

(3) Share the results of that research with each participating university and college; and

(4) Work with each participating university and college to assist the institution in its efforts to improve the communication and pedagogical skills of faculty and teaching assistants instructing undergraduate students.

***NEW SECTION.** Sec. 5. *The legislature finds that sick leave policies for faculty members and administrators at the state's institutions of higher education are inconsistent. The legislature further finds that sick leave policies for faculty and administrators at some institutions of higher education differ substantially from policies for other state employees. It is the intent of*

the legislature that sick leave policies are uniform and consistent for all faculty and administrators hired after May 1, 1992, at the state's community colleges, regional universities, state college and research universities.

*Sec. 5 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 6. *The higher education coordinating board, in consultation with the state board for community college education, shall study institutional sick leave policies and shall recommend a mandated uniform and consistent policy for all faculty and administrators hired after May 1, 1992, at all public higher education institutions. By December 1, 1991, the uniform policy, and proposed legislation to implement that policy, shall be submitted to the senate and house committees on higher education.*

*Sec. 6 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 7. The higher education coordinating board shall establish an advisory committee on access to higher education for students with disabilities. The committee shall include but need not be limited to representation from the following: Students with disabilities, coordinators of services for students with disabilities, the governor's committee on disability issues and employment, and agencies and organizations that work with or represent persons with disabilities.

NEW SECTION. Sec. 8. In consultation with the advisory committee on access to higher education for students with disabilities the board shall:

(1) Inventory existing campus and agency resources available to address the accommodation needs of students with disabilities;

(2) Distribute the inventory to institutions of higher education and to the superintendent of public instruction for further distribution to appropriate personnel in the K-12 system;

(3) Survey institutions of higher education and students with disabilities to identify specific services that have been requested but not provided;

(4) Report the results of the survey, with recommendations on a phased plan to meet identified needs in priority order, to the governor, the house of representatives and senate higher education and fiscal committees, and the institutions of higher education;

(5) In coordination with the state board for community college education, conduct a state-wide training workshop for coordinators of services for students with disabilities.

NEW SECTION. Sec. 9. Sections 7 and 8 of this act are each added to chapter 28B.80 RCW.

Sec. 10. RCW 28B.108.010 and 1990 c 287 s 2 are each amended to read as follows:

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

(1) "Institution of higher education" or "institution" means a college or university in the state of Washington which is accredited by an accrediting association recognized as such by rule of the higher education coordinating board.

(2) "Board" means the higher education coordinating board.

(3) "Eligible student" or "student" means an American Indian (~~student as defined by the board in consultation with the advisory committee described in RCW 28B.108.030;~~) who is a financially needy student, as defined in RCW 28B.10.802, who is a resident student, as defined by RCW 28B.15.012(2), who is a full-time student at an institution of higher education, and who promises to use his or her education to benefit other American Indians.

Sec. 11. RCW 28B.108.030 and 1990 c 287 s 4 are each amended to read as follows:

The higher education coordinating board shall establish an advisory committee to assist in program design and to develop criteria for the screening and selection of scholarship recipients. The committee shall be composed of representatives of the same groups as the screening committee described in RCW 28B.108.020. ~~((These))~~ The criteria shall assess the student's social and cultural ties to an American Indian community within the state. The criteria shall include a priority for upper-division or graduate students. The criteria may include a priority for students who are majoring in program areas in which expertise is needed by the state's American Indians.

Sec. 12. RCW 28B.108.070 and 1990 c 287 s 8 are each amended to read as follows:

The higher education coordinating board may request that the treasurer deposit ~~((five hundred))~~ fifty thousand dollars of state matching funds into the American Indian scholarship endowment fund when the board can match the state funds with an equal amount of private cash donations. Private cash donations means moneys from nonstate sources that include, but are not limited to, federal moneys, tribal moneys, and assessments by commodity commissions authorized to conduct research activities, including but not limited to research studies authorized under RCW 15.66.030 and 15.65.040.

NEW SECTION. Sec. 13. It is the intent of the legislature to enable Washington residents who have actively served in the Persian Gulf combat zone to attend any Washington institution of higher education at 1990 tuition rates.

NEW SECTION. Sec. 14. A new section is added to chapter 28B.15 RCW to read as follows:

A veteran of the Persian Gulf combat zone shall be exempted from increases in tuition and fees at any public institution of higher education that

occur during and after their period of service, and shall not be required to pay more than the total amount of tuition and fees established for the 1990-91 academic year, if the veteran could have qualified as a Washington resident student under RCW 28B.15.012(2), had he or she been enrolled as a student on August 1, 1990, and if the veteran's adjusted gross family income as most recently reported to the internal revenue service does not exceed Washington state's median family income as established by the federal bureau of the census. For the purposes of this section, "a veteran of the Persian Gulf combat zone" means a person who during any portion of calendar year 1991 served in active federal service as a member of the armed military or naval forces of the United States in a combat zone as designated by the president of the United States by executive order.

NEW SECTION. Sec. 15. Sections 13 and 14 of this act shall expire on June 30, 1994.

NEW SECTION. Sec. 16. Sections 1 through 4 of this act are each added to Title 28B RCW.

Passed the Senate April 27, 1991.

Passed the House April 26, 1991.

Approved by the Governor May 16, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 16, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 5 and 6, Senate Bill No. 5475 entitled:

"AN ACT Relating to higher education."

Section 5 of Senate Bill No. 5475 states the intent of the Legislature that sick leave policies be uniform and consistent for all faculty and administrators hired after May 1, 1992 at the state's community colleges, regional universities, state colleges and research universities. Section 6 requires the Higher Education Coordinating Board, in consultation with the State Board for Community College Education, to study institutional sick leave policies and recommend mandated uniform and consistent policy for all faculty and administrators hired after May 1, 1992.

The rationale for passing this legislation is not clear. The Legislative Budget Committee reviewed higher education sick leave policies in 1989 and concluded that, prior to modifying the sick leave policies, better data should be collected to permit informed decision-making. In 1990, a law was passed requiring the institutions of higher education to maintain complete and accurate sick leave records. One year of data collection is insufficient to conclude that uniform and consistent sick leave policies are appropriate for the institutions of higher education. As the Legislative Budget Committee correctly observed in their report, sick leave benefits should be considered in the broader context of an overall compensation package, and compensation should be related to the complexity and amount of work assignments.

This legislation disregards the advice of the Legislative Budget Committee and inappropriately prescribes the outcome of the Higher Education Coordinating Board study required in section 6.

For the reasons stated above, I have vetoed sections 5 and 6 of Senate Bill No. 5475.

With the exception of sections 5 and 6, Senate Bill No. 5475 is approved."

CHAPTER 229

[Substitute House Bill 2048]

PHARMACISTS—LICENSE RENEWAL FEES

Effective Date: 7/28/91

AN ACT Relating to license renewal fees; amending RCW 18.64.043, 18.64.045, 18.64.046, 18.64.047, 18.64.140, 69.45.070, and 69.50.301; adding a new section to chapter 18.130 RCW; adding a new section to chapter 18.64 RCW; and adding a new section to chapter 18.64A RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 18.130 RCW to read as follows:

The disciplining authority may adopt rules pursuant to this section authorizing a retired active license status. An individual credentialed by a disciplining authority regulated in the state under RCW 18.130.040, who is practicing only in emergent or intermittent circumstances as defined by rule established by the disciplining authority, may hold a retired active license at a reduced renewal fee established by the secretary under RCW 43.70.250. Such a license shall meet the continuing education or continued competency requirements, if any, established by the disciplining authority for renewals, and is subject to the provisions of this chapter. Individuals who have entered into retired status agreements with the disciplinary authority in any jurisdiction shall not qualify for a retired active license under this section.

NEW SECTION. Sec. 2. A new section is added to chapter 18.64 RCW to read as follows:

The board may adopt rules pursuant to this section authorizing a retired active license status. An individual licensed pursuant to this chapter, who is practicing only in emergent or intermittent circumstances as defined by rule established by the board, may hold a retired active license at a reduced renewal fee established by the secretary under RCW 43.70.250. Such a license shall meet the continuing education requirements, if any, established by the board for renewals, and is subject to the provisions of the uniform disciplinary act, chapter 18.130 RCW. Individuals who have entered into retired status agreements with the disciplinary authority in any jurisdiction shall not qualify for a retired active license under this section.

Sec. 3. RCW 18.64.043 and 1989 1st ex.s. c 9 s 414 are each amended to read as follows:

(1) The owner of each pharmacy shall pay an original license fee to be determined by the secretary, and annually thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary, for which he or she shall receive a license of location, which shall entitle the owner to operate such pharmacy at the location specified, or such other temporary location as the secretary may approve, for the period ending on a

date to be determined by the secretary, and each such owner shall at the time of filing proof of payment of such fee as provided in RCW 18.64.045 as now or hereafter amended, file with the department on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of ownership of the pharmacy mentioned therein.

(2) It shall be the duty of the owner to immediately notify the department of any change of location or ownership and to keep the license of location or the renewal thereof properly exhibited in said pharmacy.

(3) Failure to comply with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense.

(4) In the event such license fee remains unpaid (~~for sixty days from~~) on the date due, no renewal or new license shall be issued except upon payment of the license renewal fee and a penalty fee equal to the original license fee.

Sec. 4. RCW 18.64.045 and 1989 1st ex.s. c 9 s 416 are each amended to read as follows:

The owner of each and every place of business which manufactures drugs shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary, for which the owner shall receive a license of location from the department, which shall entitle the owner to manufacture drugs at the location specified for the period ending on a date to be determined by the board, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location or ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business. Failure to conform with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense. In event such license fee remains unpaid (~~for sixty days from~~) on the date due, no renewal or new license shall be issued except upon payment of the license renewal fee and a penalty fee equal to the license renewal fee.

Sec. 5. RCW 18.64.046 and 1989 1st ex.s. c 9 s 417 are each amended to read as follows:

The owner of each place of business which sells legend drugs and non-prescription drugs, or nonprescription drugs at wholesale shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary, a like fee to be determined by the secretary, for which the owner shall receive a license of location from the department,

which shall entitle such owner to either sell legend drugs and nonprescription drugs or nonprescription drugs at wholesale at the location specified for the period ending on a date to be determined by the board, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location and ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business. Failure to conform with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense. In event such license fee remains unpaid (~~for sixty days from~~) on the date due, no renewal or new license shall be issued except upon payment of the license renewal fee and a penalty fee equal to the license renewal fee.

Sec. 6. RCW 18.64.047 and 1989 1st ex.s. c 9 s 418 are each amended to read as follows:

Any itinerant vendor or any peddler of any nonprescription drug or preparation for the treatment of disease or injury, shall pay a registration fee determined by the secretary on a date to be determined by the secretary. The department may issue a registration to such vendor on an approved application made to the department. Any itinerant vendor or peddler who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, shall be guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense. In event such registration fee remains unpaid (~~for sixty days from~~) on the date due, no renewal or new registration shall be issued except upon payment of the registration renewal fee and a penalty fee equal to the renewal fee. This registration shall not authorize the sale of legend drugs or controlled substances.

Sec. 7. RCW 18.64.140 and 1989 1st ex.s. c 9 s 421 are each amended to read as follows:

Every licensed pharmacist who desires to practice pharmacy shall secure from the department a license, the fee for which shall be determined by the secretary. The renewal fee shall also be determined by the secretary. The date of renewal may be established by the secretary by regulation and the department may by regulation extend the duration of a licensing period for the purpose of staggering renewal periods. Such regulation may provide a method for imposing and collecting such additional proportional fee as may be required for the extended period. Payment of this fee shall entitle the licensee to a pharmacy law book, subsequent current mailings of all additions, changes, or deletions in the pharmacy practice act, chapter 18.64 RCW, and all additions, changes, or deletions of pharmacy board and department regulations. Pharmacists shall pay the license renewal fee and a

penalty equal to the license renewal fee for the late renewal of their license (~~(more than sixty days after the renewal is due)~~). The current license shall be conspicuously displayed to the public in the pharmacy to which it applies. Any licensed pharmacist who desires to leave the active practice of pharmacy in this state may secure from the department an inactive license. The initial license and renewal fees shall be determined by the secretary. The holder of an inactive license may reactivate his or her license to practice pharmacy in accordance with rules adopted by the board.

Sec. 8. RCW 69.45.070 and 1989 1st ex.s. c 9 s 447 are each amended to read as follows:

The department may charge reasonable fees for registration. The registration fee shall not exceed the fee charged by the department for a pharmacy location license. If the registration fee is not paid on or before the date due, a renewal or new registration may be issued only upon payment of the registration renewal fee and a penalty fee equal to the registration renewal fee.

Sec. 9. RCW 69.50.301 and 1989 1st ex.s. c 9 s 431 are each amended to read as follows:

The state board of pharmacy may promulgate rules and the secretary may set fees (~~(of not less than ten dollars or more than fifty dollars)~~) in accordance with RCW 43.70.250 relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

NEW SECTION. Sec. 10. A new section is added to chapter 18.64A RCW to read as follows:

If a pharmacy assistant allows his or her certificate to lapse by failing to renew on or before the date due, a renewal or new license may be issued only upon payment of the certification fee and a penalty fee equal to the original certification fee.

Passed the House March 13, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 230

[Engrossed Substitute House Bill 1172]

SCHOOL PATHWAY AND BUS STOP IMPROVEMENT PROGRAM

Effective Date: 7/28/91

AN ACT Relating to student pedestrian safety; adding new sections to chapter 28A.160 RCW; creating new sections; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the number of motor vehicles on the roads of the state has increased dramatically in recent years, and that this increase has created unsafe conditions for many of our children as they travel to and from school. The legislature further finds that responsibility to ensure safe walking conditions and bus stops for our children is fragmented, and that inadequate resources have been devoted to improving pedestrian safety.

NEW SECTION. Sec. 2. The school pathway and bus stop improvement program is hereby created. The purpose of the program is to establish a council to make recommendations about roads, streets, and bus stops that the council considers inadequate for school children as they travel to school, and develop a program for making safety improvements.

NEW SECTION. Sec. 3. The school pathway and bus stop improvement program council is established. Membership on the council shall include two members of the senate, two members of the house of representatives, and representatives from the department of transportation, the office of the superintendent of public instruction, school district administrators, school board members, counties, cities, the traffic safety commission, school bus drivers, and parents. The president of the senate shall select the senate members and the speaker of the house of representatives shall select the house of representatives members. Representatives of state agencies shall be selected by the respective agency. Other representatives shall be selected by appropriate state-wide organizations. The council shall select a chair from among its members. Staffing and administrative support shall be provided by the Washington traffic safety commission.

NEW SECTION. Sec. 4. (1) The council established in section 3 of this act shall:

(a) Formulate criteria for identifying roads and school bus stops that the council considers inadequate for elementary school students and establish recommendations for standards for making safety improvements;

(b) Based on the criteria and standards in (a) of this subsection, inventory those roads within a one-mile radius of elementary schools and those school bus stops considered inadequate by the council, and recommend priority safety improvement projects;

(c) Develop a plan by which the recommended priority safety improvement projects may be implemented, and make the plan available to applicable local jurisdictions;

(d) Based on the criteria and standards in (a) of this subsection, formulate recommended guidelines for student pedestrian safety within a one-mile radius of new elementary schools. At a minimum, the council shall develop recommended guidelines for incorporating pedestrian safety considerations into school siting decisions, constructing pedestrian safety infrastructure improvements within a specified time after new elementary

schools are opened, and creating incentives and enforcement measures to ensure that the safety improvements are completed; and

(e) Estimate the cost of implementing state-wide sidewalk crossing rules.

(2) By June 30, 1993, the council shall submit its recommendations and findings required in subsection (1) of this section to the appropriate committees of the house of representatives and the senate, the governor, local governments, school districts, and other appropriate agencies and organizations. After July 1, 1992, the council shall provide general oversight, coordination, and assistance to local governments, state agencies, and private parties in the consideration and implementation of the recommendations.

(3) The recommendations of the council are advisory only and shall not constitute proof of an actual unsafe condition.

(4) Local jurisdictions may adopt, in whole or in part, the recommendations of the council.

NEW SECTION. Sec. 5. Sections 2 through 4 of this act are each added to chapter 28A.160 RCW.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 7. Sections 1 through 4 of this act shall expire June 30, 1996.

Passed the House March 18, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 231

[Substitute House Bill 1452]

HIGH-SPEED TRANSPORTATION SYSTEM ASSESSMENT

Effective Date: 5/16/91

AN ACT Relating to high-speed ground transportation; amending RCW 47.86.030; creating new sections; making an appropriation; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes that major transportation corridors in this state are reaching unacceptable levels of congestion. Proposed improvements such as extension of the HOV-lane system or regional high-capacity systems, can, at best, only temporarily reduce the rate at which congestion increases. Further, such improvements do not address cross-state travel demands, whether north-south or east-west.

Therefore, the legislature finds that 1991 is an appropriate time for the legislature and the governor to direct that a comprehensive assessment be made of the feasibility of developing a high-speed ground transportation system within the state and that a plan be developed for implementation of potential alternatives.

Congress has set aside federal funds in the amount of five hundred thousand dollars for the state of Washington to carry out such an assessment, with the stipulation that the state provide an equal amount of state funds for the effort.

NEW SECTION. Sec. 2. The high-speed ground transportation steering committee is created, consisting of fifteen members, appointed jointly by the governor, the chair of the legislative transportation committee, and the chair of the transportation commission. The appointing authorities shall also designate the chair of the steering committee.

The committee must include representatives from the following:

- (1) Cities and counties, including both elected officials and planners, and if possible, representatives of regional transportation planning organizations;
- (2) Public transportation systems;
- (3) The United States department of transportation;
- (4) Public ports; and
- (5) The private sector, including:
 - (a) The financial community;
 - (b) The engineering and construction community;
 - (c) Railroad companies;
 - (d) Environmental interests; and
 - (e) The legal profession.

The secretary of the state department of transportation, or the secretary's designee, shall also be a member.

Members of the steering committee shall receive no compensation for their service, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 3. The following persons shall serve as voting liaison members to the steering committee:

- (1) The governor or a designee;
- (2) Four legislators, one from each caucus of each house, appointed by the chair of the legislative transportation committee; and
- (3) The chair of the transportation commission.

In addition to those persons, the governor shall attempt to obtain appropriate nonvoting liaison representation to the steering committee from the state of Oregon and the province of British Columbia.

NEW SECTION. Sec. 4. The steering committee shall initially address the feasibility of a high-speed ground transportation system within this state, including such issues as:

- (1) When such a system would be economically feasible;
- (2) The forecasted demand, assessing whether the focus should be on passenger travel or freight or both;
- (3) Identification of the corridors to be analyzed;
- (4) Land use and economic development implications;
- (5) Environmental considerations;
- (6) The compatibility of such a system with regional transportation plans along proposed corridors;
- (7) Impacts on and interfaces with other travel modes;
- (8) Technological options for high-speed ground transportation, both foreign and domestic;
- (9) Required specifications for speed, safety, access, and frequency;
- (10) Identification of existing highway or railroad rights of way that are suitable for high-speed travel;
- (11) Identification of additional rights of way that may be needed and the process for acquiring those rights of way;
- (12) The recommended institutional arrangement for carrying out detailed planning for such a system, for constructing it, and for operating it;
- (13) Whether financing of construction should be public or private or some combination of both;
- (14) Whether financing of operations should be public or private or some combination of both;
- (15) If public sector financing for any portion of capital or operation costs is deemed necessary, which existing or new tax sources would be appropriate.

The steering committee shall coordinate its work with that of the air transportation commission established in RCW 47.86.030.

NEW SECTION. Sec. 5. In order to provide technical and administrative support to the steering committee, the office of high-speed ground transportation is created within the department of transportation. That office may contract with consultants at the direction of the steering committee and shall provide other support functions as requested by the committee.

NEW SECTION. Sec. 6. The steering committee shall present a final report to the governor, the legislature, and the transportation commission by October 15, 1992. It shall present interim progress reports as appropriate. The final report must include findings of the steering committee, a recommended plan for implementation, and proposed legislation to implement the next phase of a high-speed ground transportation program.

Sec. 7. RCW 47.86.030 and 1990 c 298 s 41 are each amended to read as follows:

The commission shall conduct studies to determine Washington's long-range air transportation policy, including an assessment of intermodal needs, and to assess the impacts of increasing air traffic upon surrounding communities, including an evaluation of noise mitigation and surface transportation impacts at existing facilities, and the potential impact at new or expanded facilities.

The studies shall include, but are not limited to the following:

(1) The feasibility of acquiring the Stampede Pass rail line for use as a utility corridor, intermodal high speed transportation corridor or other transportation uses. The study shall include an examination of the ownership of the Stampede Pass rail line right of way and evaluate the advantages and disadvantages of preserving the Stampede Pass rail line corridor. It shall include interested public and private agencies when conducting the study. The commission shall encourage local communities and the private sector to financially participate in the study. The commission shall make a presentation of the feasibility findings to the legislative transportation committee on or before December 1, 1990.

(2) Recommendations to the legislature on future Washington state air transportation policy, including the expansion of existing and potential air carrier and reliever facilities and the siting of such new facilities, specifically taking into consideration intermodal needs. The commission shall consider the development of wayports in eastern Washington, taking into account similar developments in Japan and Germany, in order to reduce congestion resulting from rapid growth in the Puget Sound region. The commission shall ~~((examine high speed rail transportation systems, including but not limited to magnetic levitation trains, personal rapid transit systems, and complimentary transportation systems, using to the extent possible the existing rights of way along I-90, I-5, and the Stampede Pass rail corridor))~~ coordinate its study of airport siting policy issues with the efforts of the high-speed ground transportation steering committee.

The commission shall submit findings and recommendations to the legislative transportation committee by December 1, 1994, with an interim report to be presented to the legislative transportation committee by December 1, 1992.

NEW SECTION. Sec. 8. The sum of five hundred thousand dollars, or as much thereof as may be necessary, is appropriated from the transportation fund to the department of transportation program T, for the biennium ending June 30, 1993, to carry out the purposes of this act. The appropriation shall be expended in accordance with the work plan developed by the high-speed ground transportation steering committee created in section 2 of this act.

NEW SECTION. Sec. 9. Sections 1 through 6 of this act shall expire December 31, 1992.

NEW SECTION. Sec. 10. 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 shall take effect immediately.

Passed the House March 8, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 232

[Engrossed House Bill 1572]

SALMON—LABELING REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to salmon labeling for human consumption; adding new sections to chapter 69.04 RCW; creating a new section; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 69.04 RCW to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 2 through 4 of this act.

(1) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

| SCIENTIFIC NAME | COMMON NAME |
|---|-----------------|
| <i>Oncorhynchus tshawytscha</i> | Chinook salmon |
| <i>Oncorhynchus kisutch</i> | Coho salmon |
| <i>Oncorhynchus keta</i> | Chum salmon |
| <i>Oncorhynchus gorbuscha</i> | Pink salmon |
| <i>Oncorhynchus nerka</i> | Sockeye salmon |
| <i>Salmo salar</i> (in other than its landlocked form) | Atlantic salmon |

(2) "Commercially caught" means salmon harvested by commercial fishers.

NEW SECTION. Sec. 2. A new section is added to chapter 69.04 RCW to read as follows:

No person may label, advertise, or offer for retail sale any fresh or frozen salmon food fish and cultured aquatic salmon without identifying the species of salmon by its common name. Any person violating the provisions

of this section shall be guilty of misbranding under the provisions of this chapter.

NEW SECTION. Sec. 3. A new section is added to chapter 69.04 RCW to read as follows:

No person may label, advertise, or offer for retail sale any fresh or frozen:

(1) Private sector cultured aquatic salmon without identifying the product as farm raised salmon; or

(2) Commercially caught salmon designated as food fish under Title 75 RCW without identifying the product as commercially caught salmon; or

(3) Private sector cultured aquatic salmon or commercially caught salmon without identifying the product as "domestic" or "imported," and, if caught or grown in Washington, as "Washington-caught" or "Washington-grown."

Any person violating the provisions of this section shall be guilty of misbranding under the provisions of this chapter.

NEW SECTION. Sec. 4. A new section is added to chapter 69.04 RCW to read as follows:

To promote honesty and fair dealing for consumers, the director, in consultation with the director of the department of fisheries, shall promulgate rules:

(1) Fixing and establishing a reasonable definition and standard of identity for salmon for purposes of consumer labeling and advertising; and

(2) Enforcing the provisions of sections 2 and 3 of this act.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the House March 12, 1991.

Passed the Senate April 8, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 233

[Substitute Senate Bill 5010]
OCCUPATIONAL THERAPY
Effective Date: 7/28/91

AN ACT Relating to occupational therapy; amending RCW 74.09.700; reenacting and amending RCW 74.09.520; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 74.09.520 and 1990 c 33 s 594 and 1990 c 25 s 1 are each reenacted and amended to read as follows:

(1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) skilled nursing home services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a handicapped child by a school district as part of an individualized education program established pursuant to RCW 28A.155.010 through 28A.155.100. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services. Services included in an individualized education program for a handicapped child under RCW 28A.155.010 through 28A.155.100 shall not qualify as medical assistance prior to the implementation of the funding process developed under RCW 74.09.524.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care must be approved by a physician and reviewed by a nurse every ninety days.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons

should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) The department shall report to the appropriate fiscal committees of the legislature on the utilization and associated costs of the personal care option under Title XIX of the federal social security act, as defined in 42 C.F.R. 440.170(f), in the categorically needy program. This report shall be submitted by January 1, 1990, and submitted on a yearly basis thereafter.

(6) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds. The department shall provide a complete accounting of the costs of providing hospice services under this section by December 20, 1990. The report shall include an assessment of cost savings which may result by providing hospice to persons who otherwise would use hospitals, nursing homes, or more expensive care. The hospice benefit under this section shall terminate on June 30, 1991, unless extended by the legislature.

Sec. 2. RCW 74.09.700 and 1989 c 87 s 3 are each amended to read as follows:

(1) To the extent of available funds, medical care may be provided under the limited casualty program to persons not otherwise eligible for medical assistance or medical care services who are medically needy as defined in the social security Title XIX state plan and medical indigents in accordance with medical eligibility requirements established by the department. This includes residents of skilled nursing homes, intermediate care facilities, and intermediate care facilities for the mentally retarded who are aged, blind, or disabled as defined in Title XVI of the federal social security act and whose income exceeds three hundred percent of the federal supplement security income benefit level.

(2) Determination of the amount, scope, and duration of medical coverage under the limited casualty program shall be the responsibility of the department, subject to the following:

(a) Only inpatient hospital services; outpatient hospital and rural health clinic services; physicians' and clinic services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; skilled nursing home services, intermediate care facility services, and intermediate care facility services for the mentally retarded; home health services; other laboratory and x-ray services; rehabilitative services, including occupational therapy; medically necessary transportation; and other services for which funds are specifically provided in the omnibus appropriations act shall be covered;

(b) Persons who are medically indigent and are not eligible for a federal aid program shall satisfy a deductible of not less than one hundred dollars nor more than five hundred dollars in any twelve-month period;

(c) Medical care services provided to the medically indigent and received no more than seven days prior to the date of application shall be retroactively certified and approved for payment on behalf of a person who was otherwise eligible at the time the medical services were furnished: PROVIDED, That eligible persons who fail to apply within the seven-day time period for medical reasons or other good cause may be retroactively certified and approved for payment.

(3) The department shall establish standards of assistance and resource and income exemptions. All nonexempt income and resources of limited casualty program recipients shall be applied against the cost of their medical care services.

NEW SECTION. Sec. 3. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the Senate March 15, 1991.
Passed the House April 27, 1991.
Approved by the Governor May 16, 1991.
Filed in Office of Secretary of State May 16, 1991.

CHAPTER 234

[Second Substitute Senate Bill 5167]
JUVENILE ISSUES TASK FORCE
Effective Date: 5/16/91

AN ACT Relating to juvenile justice; creating new sections; and declaring an emergency.
Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A juvenile issues task force is created to review the operation of the 1977 Juvenile Justice Act, the Family Reconciliation Act, the 1990 "at-risk" youth legislation, and to study related issues. The task force is charged with issuing a report and making recommendations to the legislature by December 15, 1991.

The task force shall consist of the following members:

(1) Three co-chairs, one from the state senate appointed by the president of the senate; one from the state house of representatives appointed by the speaker of the house of representatives; and one appointed by the governor from among the members of the task force named in subsection (3) of this section.

(2) Eight legislators in addition to the two legislative cochairmen selected under subsection (1) of this section, two each from the majority and minority caucuses of the senate and two each from the majority and minority caucuses of the house of representatives.

(3) The governor shall appoint the following members of the task force:

- (a) Three superior court judges;
- (b) Two prosecuting attorneys;
- (c) Two juvenile public defenders;
- (d) The secretary of social and health services or the secretary's designee;
- (e) Two juvenile court administrators;
- (f) One police chief or county sheriff;
- (g) One child psychologist;
- (h) One child psychiatrist;
- (i) Two directors of a youth organization;
- (j) One person from the Washington council on crime and delinquency;
- (k) One person from a parents' organization;
- (l) One person from a crisis residential center;
- (m) One juvenile court caseworker;
- (n) One representative of the executive branch;
- (o) One member of the mental health treatment community; and
- (p) One member from the substance abuse treatment community.

The department of social and health services shall fund the task force in an amount sufficient to meet its mission. The task force shall be staffed, to the extent possible, by staff available from the membership of the task force.

The governor shall ensure that the racial diversity of the task force membership appointed by the governor reflects the racial diversity of juveniles served under the Family Reconciliation Act, the 1977 Juvenile Justice Act, and the 1990 "at-risk" youth legislation.

NEW SECTION. Sec. 2. The department of social and health services, in cooperation with the commission on African American affairs, shall contract for an independent study of racial disproportionality in the juvenile justice system. The study shall identify key decision points in the juvenile justice system where race and/or ethnicity-based disproportionality exists in the treatment and incarceration of juvenile offenders. The study shall identify the causes of disproportionality, and propose new policies and procedures to address disproportionality.

The department shall submit the study's preliminary findings and recommendations to the juvenile justice task force established under section 1 of this act by September 13, 1991. The final report shall be submitted to the appropriate committees of the legislature by December 1, 1991.

The juvenile justice task force shall utilize the information on disproportionality in developing its report and recommendations to the legislature required under section 1 of this act. If by June 30, 1991, the omnibus operating budget appropriations act for the 1991-93 biennium does not provide specific funding for this section, referencing this section by bill number and section, this section is null and void.

NEW SECTION. Sec. 3. 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 shall take effect immediately.

Passed the Senate April 28, 1991.
Passed the House April 27, 1991.
Approved by the Governor May 16, 1991.
Filed in Office of Secretary of State May 16, 1991.

CHAPTER 235

[Senate Bill 5474]

CHILDREN'S EDUCATION AND WELL-BEING—DATA COLLECTION AND REPORTING SYSTEM

Effective Date: 7/28/91 – Except Sections 1 through 3 which become effective on 5/16/91.

AN ACT Relating to a data collection and reporting system on children's education and well-being; amending RCW 28A.175.010; creating new sections; providing expiration dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A task force is created to improve the collection and reporting of data about conditions affecting the education and well-being of children. The primary objective of the task force is to provide data aggregated by school districts for use by school districts and state and local policymakers in the planning and evaluation of local and state education programs, practices, and activities.

NEW SECTION. Sec. 2. (1) One representative shall be appointed to the task force created in section 1 of this act from each of the following: Office of the superintendent of public instruction, department of social and health services, department of health, employment security department, department of community development, department of information services, office of financial management, the administrator for the courts, Washington association of school administrators, Washington state school directors' association, Washington state association of counties, association of Washington cities, house of representatives staff, and senate staff.

(2) The task force shall select a chair from among its members.

(3) The task force shall consult with the Washington school information processing cooperative, educational service districts, groups representing racial and ethnic minorities, and other interested parties.

(4) The Washington state institute for public policy shall coordinate and staff the task force, and may contract for technical consulting services as needed.

NEW SECTION. Sec. 3. The task force shall, by December 1, 1991:

(1) Identify the likely uses for demographic data on the education and well-being of children, and determine what type of data is needed, or would

be useful, in the planning and evaluation of local and state education programs, practices, and activities;

(2) Determine the feasibility, cost, and actions required to aggregate the data identified in subsection (1) of this section by school districts;

(3) Determine the feasibility, cost, and actions required to report the data identified in subsection (1) of this section to school districts and state and local policymakers, ensuring that quality control and appropriate confidentiality and privacy safeguards are provided;

(4) Identify measures necessary to ensure the adequate collection and reporting of the data, including the use of common data definitions and reporting timelines;

(5) Implement those actions that can be taken with little or no cost, and identify actions, with proposed timelines, in which additional resources are required;

(6) Examine related issues as the task force deems appropriate; and

(7) Report to the appropriate committees of the legislature its findings, specific actions taken to improve data collection and reporting, and what additional actions and resources are needed to further improve data collection and reporting on the well-being and education of children.

Sec. 4. RCW 28A.175.010 and 1986 c 151 s 1 are each amended to read as follows:

~~(((1) Beginning with the 1986-87 school year;))~~ 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:

~~(((a)))~~ (1) For students enrolled in each of a school district's high school programs:

(a) The number of students eligible for graduation 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 who enter from other schools;

(f) The number of students in the ninth through twelfth grade who drop out of school over a four-year period; and

(g) The number of students whose status is unknown.

(2) Dropout rates of students in each of the grades nine through twelve((:)).

~~(((b)))~~ (3) Dropout rates for student populations((,-by-ethnicity;)) in each of the grades nine through twelve by:

(a) Ethnicity;

(b) Gender;

(c) Socioeconomic status; and

(d) Disability status.

~~((c))~~ (4) The causes or reasons, or both, attributed to students for having dropped out of school in grades nine through twelve.

~~((2))~~ (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.

~~((3))~~ (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.

~~((4) Beginning with the 1987 legislative session,))~~ (7) The superintendent of public instruction shall report annually to the legislature the information collected under subsections (1) through (4) of this section. ~~((Beginning with the 1991 legislative session, the report shall include the number of students in the ninth through twelfth grades who drop out of school over a four-year period.))~~

***NEW SECTION. Sec. 5. Section 4 of this act shall expire June 1, 1994.**

*Sec. 5 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 6. Sections 1 through 3 of this act shall expire December 1, 1991.

NEW SECTION. Sec. 7. Sections 1 through 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 28, 1991.

Passed the House April 28, 1991.

Approved by the Governor May 16, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 16, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 5, Senate Bill No. 5474 entitled:

"AN ACT Relating to a data collection and reporting system on children's education and well-being."

This bill creates a task force with representation from a broad range of agencies to review available data sources related to children's programs and recommend

methods to make such data more user-friendly to state and local policy makers. The bill also requires local school districts to report new information that will improve the accuracy of the state's annual report on drop out rates. Both objectives are to be commended and I am glad to add my support.

Section 5 of the bill, however, provides that the new reporting requirements will expire in 1994. The brief life of this reporting requirement makes it appear to be a pilot project and may cause some school districts to be hesitant about incorporating this data into their permanent data collection systems. If the state hopes to reduce its drop out rate, accurate data is essential. Eliminating section 5 establishes these new reporting provisions as permanent requirements.

For the reasons stated above, I have vetoed section 5 of Senate Bill No. 5474.

With the exception of section 5, Senate Bill No. 5474 is approved."

CHAPTER 236

[Substitute House Bill 1712]

ATHLETE AGENT REGISTRATION

Effective Date: 7/28/91

AN ACT Relating to the registration of athlete agents; adding a new chapter to Title 18 RCW; prescribing penalties; and making an appropriation.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds it necessary to regulate the practice of athlete agents and athlete agent firms to protect the public health, safety, and welfare. The public has a right to be kept informed about the role of athlete agents. The purpose of this chapter is to help ensure that public information is available and that the integrity of interscholastic athletics is preserved.

NEW SECTION. Sec. 2. (1) It is a violation of this chapter for a person to practice or represent himself or herself as an athlete agent or athlete agent firm without a certificate of registration as an athlete agent or athlete agent firm.

(2) It is a violation of this chapter for a person other than a registered athlete agent or an employee or representative of a professional sport team to directly or indirectly solicit an individual to enter into an agent contract or professional sport services contract or procure, offer, promise, or attempt to obtain employment for an individual with a professional sport team or as a professional athlete.

NEW SECTION. Sec. 3. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of licensing.

(2) "Director" means the director of licensing.

(3) "Athlete agent" means an individual registered under this chapter.

(4) "Athlete agent firm" means a sole proprietorship, partnership, association, corporation, or other entity that employs one or more individuals to act as an athlete agent on behalf of the entity.

(5) "Agent contract" means a contract or agreement pursuant to which a person authorizes or empowers an athlete agent to negotiate or solicit on behalf of the person with one or more professional sport teams for the employment of the person by a professional sport team or to negotiate or solicit on behalf of the person for the employment of the person as a professional athlete.

(6) "Institution of higher education" means a public or private college or university in this state.

(7) "Professional athlete" means a person who is under contract to a professional sports team and is no longer enrolled in an institution of higher education as an undergraduate student.

(8) "Professional sport services contract" means a contract or agreement pursuant to which a person is employed or agrees to render services as a player on a professional sport team or as a professional athlete.

(9) "Student athlete" means a person who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program in this state. The term also includes an individual who has applied for enrollment to an institution of higher education. A person ceases to be a "student athlete" as soon as his or her collegiate eligibility in the sport in which he or she is under scholarship has expired.

NEW SECTION. Sec. 4. The registration provisions of this chapter do not apply to a person:

(1) Who is related to the student athlete by blood or marriage;

(2) Who represents or advises no more than one student athlete in any given year; or

(3) Who represents only professional athletes.

NEW SECTION. Sec. 5. In addition to any other authority provided by law, the director may:

(1) Adopt rules in accordance with chapter 34.05 RCW as necessary to implement this chapter;

(2) Establish forms and procedures as necessary to administer this chapter;

(3) Register applicants;

(4) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter;

(5) Maintain the official departmental record of all applicants and registrants; and

(6) Set all registration, renewal, and late renewal fees in accordance with RCW 43.24.086.

NEW SECTION. Sec. 6. (1) An athlete agent shall file with the department a disclosure statement which contains all of the following:

(a) The educational background, training, and experience of the athlete agent with respect to practice as an athlete agent;

(b) The business name and address of each athlete agent firm represented by the athlete agent;

(c) A record of all felony convictions, or misdemeanor convictions punishable by imprisonment, of the athlete agent and each owner, partner, officer, or shareholder of ten percent or more of the stock of the athlete agent firm represented by the athlete agent; and

(d) A record of any sanctions issued to or disciplinary actions taken against the athlete agent, the athlete agent firm, or any athlete, professional sport team, or institution of higher education as a result of the conduct of the athlete agent or the athlete agent firm.

(2) An athlete agent shall file an updated disclosure statement with the department within thirty days of a change in the information required under subsection (1)(b), (c), or (d) of this section.

(3) Before entering into negotiations for an agent contract, an athlete agent shall give to the prospective client a copy of the current disclosure statement on file with the department.

(4) The department shall make disclosure statements available to the public for inspection and copying.

NEW SECTION. Sec. 7. (1) It is a gross misdemeanor punishable according to chapter 9A.20 RCW for an athlete agent, athlete agent firm, or any person exempt under section 4 of this act to:

(a) Induce a student athlete to enter into an agent contract or professional sport services contract; or

(b) Enter into an agreement whereby the athletic agent offers anything of value to an employee of an institution of higher education in return for the referral of a student athlete by that employee.

(2) It is a class C felony punishable according to chapter 9A.20 RCW for an athlete agent, athlete agent firm, or any person exempt under section 4 of this act to offer money or any valuable consideration to a student athlete to induce the student athlete to enter into a professional sports services contract.

NEW SECTION. Sec. 8. The regulation of athlete agents is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. Activities of athlete agents prohibited under this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW.

NEW SECTION. Sec. 9. Sections 1 through 8 of this act shall constitute a new chapter in Title 18 RCW.

NEW SECTION. Sec. 10. The sum of forty-two thousand dollars, or as much thereof as may be necessary, is appropriated from the general fund

to the department of licensing for the biennium ending June 30, 1993, to carry out the purposes of this act.

Passed the House March 19, 1991.

Passed the Senate April 17, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 237

[Engrossed House Bill 2141]

STATE ORAL POLITICAL HISTORY PROGRAM

Effective Date: 7/1/91

AN ACT Relating to the state oral history program; amending RCW 40.14.020; adding new sections to chapter 43.07 RCW; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The secretary of state, at the direction of the oral history advisory committee, shall administer and conduct a program to record and document oral histories of current and former members and staff of the Washington state legislature, current and former state government officials and personnel, and other citizens who have participated in the political history of Washington state. The secretary of state shall contract with independent oral historians and through the history departments of the state universities to interview and record oral histories. The tapes and tape transcripts shall be indexed and made available for research and reference through the state archives. The transcripts, together with current and historical photographs, may be published for distribution to libraries and for sale to the general public.

NEW SECTION. Sec. 2. An oral history advisory committee is created, which shall consist of the following individuals:

(1) Four members of the house of representatives, two from each of the two largest caucuses of the house, appointed by the speaker of the house of representatives;

(2) Four members of the senate, two from each of the two largest caucuses of the senate, appointed by the president of the senate;

(3) The chief clerk of the house of representatives;

(4) The secretary of the senate; and

(5) The secretary of state.

NEW SECTION. Sec. 3. The oral history advisory committee shall have the following responsibilities:

(1) To select appropriate oral history interview subjects;

(2) To select transcripts or portions of transcripts, and related historical material, for publication;

(3) To advise the secretary of state on the format and length of individual interview series and on appropriate issues and subjects for related series of interviews;

(4) To advise the secretary of state on the appropriate subjects, format, and length of interviews and on the process for conducting oral history interviews with subjects currently serving in the Washington state legislature;

(5) To advise the secretary of state on joint programs and activities with state universities, colleges, museums, and other groups conducting oral histories; and

(6) To advise the secretary of state on other aspects of the administration of the oral history program and on the conduct of individual interview projects.

Sec. 4. RCW 40.14.020 and 1986 c 275 s 1 are each amended to read as follows:

All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter. In order to insure the proper management and safeguarding of public records, the division of archives and records management is established in the office of the secretary of state (~~(-and, under the administration of)~~). The state archivist, who shall administer the division and have reasonable access to all public records, wherever kept, for purposes of information, surveying, or cataloguing, shall undertake the following functions, duties, and responsibilities:

(1) To manage the archives of the state of Washington;

(2) To centralize the archives of the state of Washington, to make them available for reference and scholarship, and to insure their proper preservation;

(3) To inspect, inventory, catalog, and arrange retention and transfer schedules on all record files of all state departments and other agencies of state government;

(4) To insure the maintenance and security of all state public records and to establish safeguards against unauthorized removal or destruction;

(5) To establish and operate such state record centers as may from time to time be authorized by appropriation, for the purpose of preserving, servicing, screening and protecting all state public records which must be preserved temporarily or permanently, but which need not be retained in office space and equipment;

(6) To set standards by rule for the durability and permanence of records required by law or for other reasons to be filed and maintained permanently or for very long periods of time by state and local agencies;

(7) To gather and disseminate to interested agencies information on all phases of records management and current practices, methods, procedures,

techniques, and devices for efficient and economical management and preservation of records;

(8) To operate a central microfilming bureau which will microfilm, at cost, records approved for filming by the head of the office of origin and the archivist; to approve microfilming projects undertaken by state departments and all other agencies of state government; and to maintain proper standards for this work;

(9) To maintain necessary facilities for the review of records approved for destruction and for their economical disposition by sale or burning; directly to supervise such destruction of public records as shall be authorized by the terms of this chapter;

~~(10) ((To conduct an oral history program to record and document the oral history of former members and staff of the Washington state legislature, former state government officials and personnel, and other citizens of interest through recording memoirs, processing and making transcripts of the tapes, and taking photographs. The tapes, transcripts, and photographs shall be indexed, shall be available for reference, and shall be properly preserved;~~

~~(+))~~ To adopt rules under chapter 34.05 RCW to carry out the state archivist's duties under this chapter.

NEW SECTION. Sec. 5. Sections 1 through 3 of this act are each added to chapter 43.07 RCW.

NEW SECTION. Sec. 6. 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 shall take effect on July 1, 1991.

Passed the House March 13, 1991.

Passed the Senate April 3, 1991.

Approved by the Governor May 16, 1991.

Filed in Office of Secretary of State May 16, 1991.

CHAPTER 238

[Engrossed Substitute Senate Bill 5184]

WORK FORCE TRAINING AND EDUCATION

Effective Date: 7/28/91, Except Sections 33, 114, & 142 through 144 which take effect on 5/17/91; Sections 1 through 8, 14 through 19, 24 through 28, 76 through 81, 85 through 111, 140, 141, & 164 which take effect on 7/1/91; Sections 20 through 23, 29 through 32, 34 through 75, 82 through 84, 112, 113, 115 through 139, and 145 through 158 which take effect on 9/1/91; & Sections 8 through 13 which take effect 10/1/91.

AN ACT Relating to work force training and education; amending RCW 28B.50.010, 28B.50.020, 28B.50.030, 28B.50.040, 28B.50.050, 28B.50.060, 28B.50.085, 28B.50.090, 28B.50.092, 28B.50.093, 28B.50.095, 28B.50.100, 28B.50.130, 28B.50.140, 28B.50.142, 28B.50.143, 28B.50.145, 28B.50.150, 28B.50.205, 28B.50.242, 28B.50.250, 28B.50.320, 28B.50.330, 28B.50.340, 28B.50.350, 28B.50.360, 28B.50.370, 28B.50.402, 28B.50.404, 28B.50.405, 28B.50.409, 28B.50.520, 28B.50.535, 28B.50.551, 28B.50.600, 28B.50.740, 28B.50.835, 28B.50.837, 28B.50.839, 28B.50.841, 28B.50.843, 28B.50.850, 28B.50.851, 28B.50.867, 28B.50.869, 28B.50.870, 28B.50.873, 28B.50.875, 15.76.120, 28A.305.270, 28C.10.020, 28B.10.016, 43.19.190, 28B.52.010, 28B.52.020, 28B.52.030, 28B.52.035, 28B.52.050, 28B.52.060, 28B.52.070, 28B.52.078, 28B.52.090, 28B.52.200, and 28B.52.210; adding new sections to chapter 28B.50 RCW; adding a new section to chapter 28A.150 RCW; adding a new section to chapter 28A.300 RCW; adding a new section to chapter 50.12 RCW; adding a new section to chapter 41.06 RCW; adding a new section to chapter 41.05 RCW; adding a new section to chapter 41.04 RCW; adding a new section to chapter 28B.16 RCW; adding a new section to chapter 41.40 RCW; adding a new section to chapter 28B.52 RCW; adding a new section to chapter 43.01 RCW; adding a new section to chapter 41.56 RCW; adding a new section to chapter 28A.320 RCW; adding a new chapter to Title 28A RCW; adding new chapters to Title 28C RCW; adding a new chapter to Title 50 RCW; creating new sections; repealing RCW 28B.50.055, 28C.15.010, 28C.15.020, 28C.15.030, 28C.15.900, 28C.04.015, 28C.04.024, 28C.04.035, and 28C.04.045; decodifying RCW 28B.50.300; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the state's system of work force training and education is inadequate for meeting the needs of the state's workers, employers, and economy. A growing shortage of skilled workers is already hurting the state's economy. There is a shortage of available workers and too often prospective employees lack the skills and training needed by employers. Moreover, with demographic changes in the state's population employers will need to employ a more culturally diverse work force in the future.

The legislature further finds that the state's current work force training and education system is fragmented among numerous agencies, councils, boards, and committees, with inadequate overall coordination. No comprehensive strategic plan guides the different parts of the system. There is no single point of leadership and responsibility. There is insufficient guidance from employers and workers built into the system to ensure that the system is responsive to the needs of its customers. Adult work force education lacks a uniform system of governance, with an inefficient division in governance

between community colleges and vocational technical institutes, and inadequate local authority. The parts of the system providing adult basic skills and literacy education are especially uncoordinated and lack sufficient visibility to adequately address the needs of the large number of adults in the state who are functionally illiterate. The work force training and education system's data and evaluation methods are inconsistent and unable to provide adequate information for determining how well the system is performing on a regular basis so that the system may be held accountable for the outcomes it produces. Much of the work force training and education system provides inadequate opportunities to meet the needs of people from culturally diverse backgrounds. Finally, our educational institutions are not producing the number of people educated in vocational/technical skills needed by employers.

The legislature recognizes that we must make certain that our institutions of education place appropriate emphasis on the needs of employers and on the needs of the approximately eighty percent of our young people who enter the world of work without completing a four-year program of higher education. We must make our work force education and training system better coordinated, more efficient, more responsive to the needs of business and workers and local communities, more accountable for its performance, and more open to the needs of a culturally diverse population.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Board" means the work force training and education coordinating board.

(2) "Director" means the director of the work force training and education coordinating board.

(3) "Training system" means programs and courses of secondary vocational education, technical college programs and courses, community college vocational programs and courses, adult basic education programs and courses, programs and courses funded by the job training partnership act, programs and courses funded by the federal vocational act, programs and courses funded under the federal adult education act, publicly funded programs and courses for adult literacy education, and apprenticeships, and programs and courses offered by private and public nonprofit organizations that are representative of communities or significant segments of communities and provide job training or adult literacy services.

(4) "Work force skills" means skills developed through applied learning that strengthen and reinforce an individual's academic knowledge, critical thinking, problem solving, and work ethic and, thereby, develop the employability, occupational skills, and management of home and work responsibilities necessary for economic independence.

(5) "Vocational education" means organized educational programs offering a sequence of courses which are directly related to the preparation or

retraining of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.

(6) "Adult basic education" means instruction designed to achieve mastery of skills in reading, writing, oral communication, and computation at a level sufficient to allow the individual to function effectively as a parent, worker, and citizen in the United States, commensurate with that individual's actual ability level, and includes English as a second language and preparation and testing service for the general education development exam.

NEW SECTION. Sec. 3. (1) There is hereby created the work force 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 work force 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 state-wide 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 state-wide 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 state-wide organizations representing business or labor, respectively.

(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 work force 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 work force training and education coordinating board.

NEW SECTION. Sec. 4. The purpose of the board is to provide planning, coordination, evaluation, monitoring, and policy analysis for the state training system as a whole, and advice to the governor and legislature concerning the state training system, in cooperation with the agencies which comprise the state training system, and the higher education coordinating board.

NEW SECTION. Sec. 5. (1) The director shall serve as chief executive officer of the board who shall administer the provisions of this chapter, employ such personnel as may be necessary to implement the purposes of this chapter, and utilize staff of existing operating agencies to the fullest extent possible.

(2) The director shall not be the chair of the board.

(3) Subject to the approval of the board, the director shall appoint necessary deputy and assistant directors and other staff who shall be exempt from the provisions of chapter 41.06 RCW. The director's appointees shall serve at the director's pleasure on such terms and conditions as the director determines but subject to the code of ethics contained in chapter 42.18 RCW.

(4) The director shall appoint and employ such other employees as may be required for the proper discharge of the functions of the board.

(5) The director shall, as permissible under P.L. 101-392, as amended, integrate the staff of the council on vocational education, and contract with the state board for community and technical colleges for assistance for adult basic skills and literacy policy development and planning as required by P.L. 100-297, as amended.

NEW SECTION. Sec. 6. (1) The board shall be designated as the state board of vocational education as provided for in P.L. 98-524, as amended, and shall perform such functions as is necessary to comply with federal directives pertaining to the provisions of such law.

(2) The board shall monitor for consistency with the state comprehensive plan for work force training and education the policies and plans established by the state job training coordinating council, the advisory council

on adult education, and the Washington state plan for adult basic education, and provide guidance for making such policies and plans consistent with the state comprehensive plan for work force training and education.

NEW SECTION. Sec. 7. The board, in cooperation with the operating agencies of the state training system shall:

(1) Concentrate its major efforts on planning, coordination evaluation, policy analysis, and recommending improvements to the state's training system.

(2) Advocate for the state training system and for meeting the needs of employers and the work force for work force education and training.

(3) Establish and maintain an inventory of the programs of the state training system, and related state programs, and perform a biennial assessment of the vocational education, training, and adult basic education and literacy needs of the state; identify ongoing and strategic education needs; and assess the extent to which employment, training, vocational and basic education, rehabilitation services, and public assistance services represent a consistent, integrated approach to meet such needs.

(4) Develop and maintain a state comprehensive plan for work force training and education, including but not limited to, goals, objectives, and priorities for the state training system, and review the state training system for consistency with the state comprehensive plan. In developing the state comprehensive plan for work force training and education, the board shall use, but shall not be limited to: Economic, labor market, and populations trends reports in office of financial management forecasts; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome, net-impact and cost-benefit evaluations; the needs of employers as evidenced in formal employer surveys and other employer input; and the needs of program participants and workers as evidenced in formal surveys and other input from program participants and the labor community.

(5) In consultation with the higher education coordinating board, review and make recommendations to the office of financial management and the legislature on operating and capital facilities budget requests for operating agencies of the state training system for purposes of consistency with the state comprehensive plan for work force training and education.

(6) Provide for coordination among the different operating agencies of the state training system at the state level and at the regional level.

(7) Develop a consistent and reliable data base on vocational education enrollments, costs, program activities, and job placements from publicly funded vocational education programs in this state.

(8) Establish standards for data collection and maintenance for the operating agencies of the state training system in a format that is accessible

to use by the board. The board shall require a minimum of common core data to be collected by each operating agency of the state training system.

The board shall develop requirements for minimum common core data in consultation with the office of financial management and the operating agencies of the training system.

(9) Establish minimum standards for program evaluation for the operating agencies of the state training system, including, but not limited to, the use of common survey instruments and procedures for measuring perceptions of program participants and employers of program participants, and monitor such program evaluation.

(10) Every two years administer scientifically based outcome evaluations of the state training system, including, but not limited to, surveys of program participants, surveys of employers of program participants, and matches with employment security department payroll and wage files. Every five years administer scientifically based net-impact and cost-benefit evaluations of the state training system.

(11) In cooperation with the employment security department, provide for the improvement and maintenance of quality and utility in occupational information and forecasts for use in training system planning and evaluation. Improvements shall include, but not be limited to, development of state-based occupational change factors involving input by employers and employees, and delineation of skill and training requirements by education level associated with current and forecasted occupations.

(12) Provide for the development of common course description formats, common reporting requirements, and common definitions for operating agencies of the training system.

(13) Provide for effectiveness and efficiency reviews of the state training system.

(14) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between institutions of the state training system, and encourage articulation agreements for programs encompassing two years of secondary work force education and two years of postsecondary work force education.

(15) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between private training institutions and institutions of the state training system.

(16) Participate in the development of coordination criteria for activities under the job training partnership act with related programs and services provided by state and local education and training agencies.

(17) Make recommendations to the commission of student assessment, the state board of education, and the superintendent of public instruction, concerning basic skill competencies and essential core competencies for K-12 education. Basic skills for this purpose shall be reading, writing, computation, speaking, and critical thinking, essential core competencies for this

purpose shall be English, math, science/technology, history, geography, and critical thinking. The board shall monitor the development of and provide advice concerning secondary curriculum which integrates vocational and academic education.

(18) Establish and administer programs for marketing and outreach to businesses and potential program participants.

(19) Facilitate the location of support services, including but not limited to, child care, financial aid, career counseling, and job placement services, for students and trainees at institutions in the state training system, and advocate for support services for trainees and students in the state training system.

(20) Facilitate private sector assistance for the state training system, including but not limited to: Financial assistance, rotation of private and public personnel, and vocational counseling.

(21) Facilitate programs for school-to-work transition that combine classroom education and on-the-job training in industries and occupations without a significant number of apprenticeship programs.

(22) Encourage and assess progress for the equitable representation of racial and ethnic minorities, women, and people with disabilities among the students, teachers, and administrators of the state training system. Equitable, for this purpose, shall mean substantially proportional to their percentage of the state population in the geographic area served. This function of the board shall in no way lessen more stringent state or federal requirements for representation of racial and ethnic minorities, women, and people with disabilities.

(23) Participate in the planning and policy development of governor set-aside grants under P.L. 97-300, as amended.

(24) Administer veterans' programs, licensure of private vocational schools, the job skills program, and the Washington award for vocational excellence.

(25) Allocate funding from the state job training trust fund.

(26) Adopt rules as necessary to implement this chapter.

The board may delegate to the director any of the functions of this section.

NEW SECTION. Sec. 8. All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state board for vocational education shall be delivered to the custody of the work force training and education coordinating board. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the state board for vocational education shall be made available to the work force training and education coordinating board. All funds, credits, or other assets held by the state board for vocational education shall be assigned to the work force training and education coordinating board.

Any appropriations made to the state board for vocational education shall, on the effective date of this section, be transferred and credited to the work force training and education coordinating board.

Whenever 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.

NEW SECTION. Sec. 9. All employees of the state board for vocational education who are classified under chapter 41.06 RCW, the state civil service law, are assigned to the work force training and education coordinating 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.

NEW SECTION. Sec. 10. All rules and all pending business before the state board for vocational education shall be continued and acted upon by the work force training and education coordinating board. All existing contracts and obligations shall remain in full force and shall be performed by the work force training and education coordinating board.

NEW SECTION. Sec. 11. The transfer of the powers, duties, functions, and personnel of the state board for vocational education shall not affect the validity of any act performed prior to the effective date of this section.

NEW SECTION. Sec. 12. If apportionments of budgeted funds are required because of the transfers directed by sections 8 through 11 of this act, 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. 13. Nothing contained in sections 8 through 12 of this act may 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 personnel board as provided by law.

NEW SECTION. Sec. 14. (1) There is hereby created the Washington state job training coordinating council for so long as a state council is required by federal law or regulation as a condition for receipt of federal funds. The council shall perform all duties of state job training coordinating council as specified in the federal job training partnership act, P.L. 97-300, as amended, including the preparation of a coordination and special services

plan for a two-year period, consistent with the state comprehensive plan for work force training and education prepared by the work force training and education coordinating board as provided for in section 7 of this act.

(2) The work force training and education coordinating board shall monitor the need for the council as described in subsection (1) of this section, and, if that need no longer exists, propose legislation to terminate the council.

NEW SECTION. Sec. 15. (1) Current members of the Washington state job training coordinating council appointed pursuant to P.L. 97-300, as amended, shall serve as the state council for purposes of this chapter until new appointments are made consistent with this section.

(2) New appointments to the state council shall be made by July 1, 1991. Members of the Washington state job training council shall be appointed by the governor as required by federal law and shall be representative of the population of the state with regard to sex, race, ethnic background, and geographical distribution. To the maximum extent feasible, the governor shall give consideration to providing overlapping membership with the membership of the work force training and education coordinating board. One voting member of the council shall be a representative of the administrators for the service delivery areas established under P.L. 97-300. One voting member of the council shall be a representative of the private industry councils established under P.L. 97-300.

(3) The Washington state job training coordinating council shall provide staff and allocate funds to the work force training and education coordinating board, as appropriate, to carry out the overlapping functions of the two bodies.

NEW SECTION. Sec. 16. (1) There is hereby created the Washington state council on vocational education for so long as a state council is required by federal law or regulation as a condition for receipt of federal funds. The council on vocational education shall perform all duties of councils on vocational education as specified in P.L. 101-392, as amended.

(2) The work force training and education coordinating board shall monitor the need for the council as described in subsection (1) of this section, and, if that need no longer exists, propose legislation to terminate the council.

NEW SECTION. Sec. 17. Current members of the Washington state council on vocational education appointed pursuant to P.L. 98-524, as amended, shall serve as the state council on vocational education for purposes of this chapter until new appointments are made consistent with this section. New appointments to the state council on vocational education shall be made by July 1, 1991. The council on vocational education shall consist of thirteen members appointed by the governor consistent with the provisions of P.L. 101-392, as amended. In making these appointments, to the

maximum extent feasible, the governor shall give consideration to providing overlapping membership with the membership of the state job training coordinating council.

NEW SECTION. Sec. 18. The council on vocational education shall perform its functions consistent with the state comprehensive plan for work force training and education prepared by the work force training and education coordinating board as provided for in section 7 of this act.

NEW SECTION. Sec. 19. (1) There is hereby created the Washington advisory council on adult education. The advisory council shall advise the state board for community and technical colleges and the work force training and education coordinating board concerning adult basic education and literacy programs. The advisory council shall perform all duties of state advisory councils on adult education as specified in P.L. 100-297, as amended. The advisory council's actions shall be consistent with the state comprehensive plan for work force training and education prepared by the work force training and education coordinating board as provided for in section 7 of this act.

(2) The advisory council on adult education shall consist of nine members as required by federal law, appointed by the governor. In making these appointments, to the maximum extent feasible, the governor shall give consideration to providing overlapping membership with the membership of the state job training coordinating council, and the governor shall give consideration to individuals with expertise and experience in adult basic education.

(3) The work force training and education coordinating board shall monitor the need for the council as described in subsection (1) of this section, and, if that need no longer exists, propose legislation to terminate the council.

Sec. 20. RCW 28B.50.010 and 1969 ex.s. c 223 s 28B.50.010 are each amended to read as follows:

This chapter shall be known as and may be cited as the community and technical college act of ((1967)) 1991.

Sec. 21. RCW 28B.50.020 and 1969 ex.s. c 261 s 17 are each amended to read as follows:

The purpose of this chapter is to provide for the dramatically increasing number of students requiring high standards of education either as a part of the continuing higher education program or for occupational education and training, or for adult basic skills and literacy education, by creating a new, independent system of community and technical colleges which will:

(1) Offer an open door to every citizen, regardless of his or her academic background or experience, at a cost normally within his or her economic means;

(2) Ensure that each ((community)) college district shall offer thoroughly comprehensive educational, training and service programs to meet

the needs of both the communities and students served by combining ~~((, with equal emphasis;))~~ high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and work force literacy programs and services. However, college districts containing only technical colleges shall maintain programs solely for occupational education, basic skills, and literacy purposes, and, for as long as a need exists, may continue those programs, activities, and services offered by the technical colleges during the twelve-month period preceding the effective date of this section;

(3) Provide for basic skills and literacy education, and occupational education and technical training at technical colleges in order to prepare students for careers in a competitive work force;

(4) Provide or coordinate related and supplemental instruction for apprentices at community and technical colleges;

(5) Provide administration by state and local boards which will avoid unnecessary duplication of facilities or programs; and which will encourage efficiency in operation and creativity and imagination in education, training and service to meet the needs of the community and students;

~~((4))~~ (6) Allow for the growth, improvement, flexibility and modification of the community colleges and their education, training and service programs as future needs occur; and

~~((5))~~ (7) Establish firmly that community colleges are, for purposes of academic training, two year institutions, and are an independent, unique, and vital section of our state's higher education system, separate from both the common school system and other institutions of higher learning, and never to be considered for conversion into four-year liberal arts colleges.

Sec. 22. RCW 28B.50.030 and 1985 c 461 s 14 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise, the term:

(1) "System" shall mean the state system of community and technical colleges, which shall be a system of higher education~~((;)).~~

(2) "Board" shall mean the work force training and education coordinating board.

(3) "College board" shall mean the state board for community and technical colleges ~~((education))~~ created by this chapter~~((;)).~~

~~((3))~~ (4) "Director" shall mean the administrative director for the state system of community and technical colleges~~((;)).~~

~~((4))~~ (5) "District" shall mean any one of the community and technical college districts created by this chapter~~((;)).~~

~~((5))~~ (6) "Board of trustees" shall mean the local community and technical college board of trustees established for each ~~((community))~~ college district within the state~~((;)).~~

~~((6) "Council" shall mean the coordinating council for occupational education;))~~

(7) "Occupational education" shall mean that education or training that will prepare a student for employment that does not require a baccalaureate degree(;;).

(8) "K-12 system" shall mean the public school program including kindergarten through the twelfth grade(;;).

(9) "Common school board" shall mean a public school district board of directors(;;).

(10) "Community college" shall include ~~((where applicable, vocational-technical and adult))~~ those higher education institutions that conduct education programs ~~((conducted by community colleges and vocational-technical institutes whose major emphasis is in post-high school education;))~~ under RCW 28B.50.020.

(11) "Technical college" shall include those higher education institutions with the sole mission of conducting occupational education, basic skills, literacy programs, and offering on short notice, when appropriate, programs that meet specific industry needs. The programs of technical colleges shall include, but not be limited to, continuous enrollment, competency-based instruction, industry-experienced faculty, curriculum integrating vocational and basic skills education, and curriculum approved by representatives of employers and labor. For purposes of this chapter, technical colleges shall include Lake Washington Vocational-Technical Institute, Renton Vocational-Technical Institute, Bates Vocational-Technical Institute, Clover Park Vocational Institute, and Bellingham Vocational-Technical Institute.

(12) "Adult education" shall mean all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate(~~(: PROVIDED, That)~~). However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate(~~(: PROVIDED, FURTHER, That)~~), nor shall "adult education" (~~shall not~~) include education or instruction provided by any four year public institution of higher education(~~(: AND PROVIDED FURTHER, That adult education shall not include education or instruction provided by a vocational-technical institute)~~).

Sec. 23. RCW 28B.50.040 and 1988 c 77 s 1 are each amended to read as follows:

The state of Washington is hereby divided into ~~((twenty-four community))~~ twenty-nine college districts as follows:

(1) The first district shall encompass the counties of Clallam and Jefferson;

(2) The second district shall encompass the counties of Grays Harbor and Pacific;

(3) The third district shall encompass the counties of Kitsap and Mason;

(4) The fourth district shall encompass the counties of San Juan, Skagit and Island;

(5) The fifth district shall encompass Snohomish county except for the Northshore common school district and that portion encompassed by the twenty-third district created in subsection (23) of this section: PROVIDED, That the fifth district shall encompass the Everett Community College;

(6) The sixth district shall encompass the present boundaries of the common school districts of Seattle and Vashon Island, King county;

(7) The seventh district shall encompass the present boundaries of the common school districts of Shoreline in King county and Northshore in King and Snohomish counties;

(8) The eighth district shall encompass the present boundaries of the common school districts of Lake Washington, Bellevue, Issaquah, Lower Snoqualmie, Mercer Island, Skykomish and Snoqualmie, King county;

(9) The ninth district shall encompass the present boundaries of the common school districts of Federal Way, Highline and South Central, King county;

(10) The tenth district shall encompass the present boundaries of the common school districts of Auburn, Black Diamond, Renton, Enumclaw, Kent, Lester and Tahoma, King county, and the King county portion of Puyallup common school district No. 3;

(11) The eleventh district shall encompass all of Pierce county, except for the present boundaries of the common school districts of Tacoma and Peninsula;

(12) The twelfth district shall encompass Lewis county, the Rochester common school district No. 401, the Tenino common school district No. 402 of Thurston county, and the Thurston county portion of the Centralia common school district No. 401;

(13) The thirteenth district shall encompass the counties of Cowlitz, and Wahkiakum;

(14) The fourteenth district shall encompass the counties of Clark, Skamania and that portion of Klickitat county not included in the sixteenth district;

(15) The fifteenth district shall encompass the counties of Chelan, Douglas and Okanogan;

(16) The sixteenth district shall encompass the counties of Kittitas, Yakima, and that portion of Klickitat county included in United States census divisions 1 through 4;

(17) The seventeenth district shall encompass the counties of Ferry, Lincoln (except consolidated school district 105-157-166J and the Lincoln county portion of common school district 167-202), Pend Oreille, Spokane, Stevens and Whitman;

(18) The eighteenth district shall encompass the counties of Adams and Grant, and that portion of Lincoln county comprising consolidated school district 105-157-166J and common school district 167-202;

(19) The nineteenth district shall encompass the counties of Benton and Franklin;

(20) The twentieth district shall encompass the counties of Asotin, Columbia, Garfield and Walla Walla;

(21) The twenty-first district shall encompass Whatcom county;

(22) The twenty-second district shall encompass the present boundaries of the common school districts of Tacoma and Peninsula, Pierce county;

(23) The twenty-third district shall encompass that portion of Snohomish county within such boundaries as the state board for community and technical colleges ((education)) shall determine: PROVIDED, That the twenty-third district shall encompass the Edmonds Community College; ((and))

(24) The twenty-fourth district shall encompass all of Thurston county except the Rochester common school district No. 401, the Tenino common school district No. 402, and the Thurston county portion of the Centralia common school district No. 401;

(25) The twenty-fifth district shall encompass all of Whatcom county;

(26) The twenty-sixth district shall encompass the Northshore, Lake Washington, Bellevue, Mercer Island, Issaquah, Riverview, Snoqualmie Valley and Skykomish school districts;

(27) The twenty-seventh district shall encompass the Renton, Kent, Auburn, Tahoma, and Enumclaw school districts and a portion of the Seattle school district described as follows: Commencing at a point established by the intersection of the Duwamish river and the south boundary of the Seattle Community College District (number six) and thence north along the centerline of the Duwamish river to the west waterway; thence north along the centerline of the west waterway to Elliot Bay; thence along Elliot Bay to a line established by the intersection of the extension of Denny Way to Elliot Bay; thence east along the line established by the centerline of Denny Way to Lake Washington; thence south along the shoreline of Lake Washington to the south line of the Seattle Community College District; and thence west along the south line of the Seattle Community College District to the point of beginning;

(28) The twenty-eighth district shall encompass all of Pierce county; and

(29) The twenty-ninth district shall encompass all of Pierce county.

NEW SECTION. Sec. 24. There is hereby created a board of trustees for district twenty-six and Lake Washington Vocational-Technical Institute, hereafter known as Lake Washington Technical College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100.

NEW SECTION. Sec. 25. There is hereby created a board of trustees for district twenty-seven and Renton Vocational-Technical Institute, hereafter known as Renton Technical College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100.

NEW SECTION. Sec. 26. There is hereby created a board of trustees for district twenty-five and Bellingham Vocational-Technical Institute, hereafter known as Bellingham Technical College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100.

NEW SECTION. Sec. 27. There is hereby created a new board of trustees for district twenty-eight and Bates Vocational-Technical Institute, hereafter known as Bates Technical College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100.

NEW SECTION. Sec. 28. There is hereby created a new board of trustees for district twenty-nine and Clover Park Vocational-Technical Institute, hereafter known as Clover Park Technical College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100.

NEW SECTION. Sec. 29. By December 1, 1996, the state board shall complete a report evaluating successes and difficulties associated with the merger of the technical and community colleges into one system. The evaluation shall include but need not be limited to consideration of all local governance models for technical colleges. The state board shall provide the report, and any recommendations, including recommendations for revisions to local governance models, to the governor, the house and senate committees on higher education, and the work force training and education coordinating board.

Sec. 30. RCW 28B.50.050 and 1988 c 76 s 1 are each amended to read as follows:

There is hereby created the "state board for community (~~college education~~) and technical colleges", to consist of (~~eight~~) nine members (~~(, one from each congressional district, as now or hereafter existing)~~) who represent the geographic diversity of the state, and who shall be appointed by the governor, with the consent of the senate. At least two members shall reside east of the Cascade mountains. In making these appointments, the governor shall attempt to provide geographic balance and give consideration to representing labor, business, women, and racial and ethnic minorities, among the membership of the board. At least one member of the board shall be from business and at least one member of the board shall be from labor.

The current members of the state board for community college education on the effective date of this section shall serve on the state board for community and technical colleges until their terms expire. Successors to these members shall be appointed according to the terms of this section. A ninth member shall be appointed by the effective date of this section for a complete term.

The successors of the members initially appointed shall be appointed for terms of four years except that ~~((any))~~ a person(s) appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of such term. Each member shall serve until the appointment and qualification of his or her successor. All members shall be citizens and bona fide residents of the state.

~~((The board shall not be deemed unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts.))~~

Members of the college board shall be compensated in accordance with RCW 43.03.240 and shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060 for each day actually spent in attending to the duties as a member of the college board.

The members of the college board may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office, in the manner provided by RCW 28B.10.500.

Sec. 31. RCW 28B.50.060 and 1975-'76 2nd ex.s. c 34 s 75 are each amended to read as follows:

A director of the state system of community and technical colleges shall be appointed by the college board and shall serve at the pleasure of the college board. ~~((He))~~ The director shall be appointed with due regard to ~~((his))~~ the applicant's fitness and background in education, ((by his)) and knowledge of and recent practical experience in the field of educational administration particularly in institutions beyond the high school level. The college board may also take into consideration an applicant's proven management background even though not particularly in the field of education.

The director shall devote his or her time to the duties of his or her office and shall not have any direct pecuniary interest in or any stock or bonds of any business connected with or selling supplies to the field of education within this state, in keeping with chapter 42.18 RCW, the executive conflict of interest act.

~~((He))~~ The director shall receive a salary to be fixed by the college board and shall be reimbursed for travel expenses incurred ~~((by him))~~ in the discharge of his or her official duties in accordance with RCW 43.03.050 and 43.03.060, as now existing or hereafter amended.

~~((He))~~ The director shall be the executive officer of the college board and serve as its secretary and under its supervision shall administer the

provisions of this chapter and the rules, regulations and orders established thereunder and all other laws of the state. ~~((He))~~ The director shall attend, but not vote at, all meetings of the college board. ~~((He))~~ The director shall be in charge of offices of the college board and responsible to the college board for the preparation of reports and the collection and dissemination of data and other public information relating to the state system of community and technical colleges. At the direction of the college board, ~~((he))~~ the director shall, together with the chairman of the college board, execute all contracts entered into by the college board.

The director shall, with the approval of the college board: (1) Employ necessary assistant directors of major staff divisions who shall serve at ~~((his))~~ the director's pleasure on such terms and conditions as ~~((he))~~ the director determines, and (2) subject to the provisions of chapter 28B.16 RCW, the higher education personnel law, the director shall, with the approval of the college board, appoint and employ such field and office assistants, clerks and other employees as may be required and authorized for the proper discharge of the functions of the college board and for whose services funds have been appropriated.

The board may, by written order filed in its office, delegate to the director any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised by the director in the name of the college board.

Sec. 32. RCW 28B.50.085 and 1981 c 246 s 4 are each amended to read as follows:

The state board for community and technical colleges ~~((education))~~ shall appoint a treasurer who shall be the financial officer of the board, who shall make such vendor payments and salary payments for the entire community and technical college system as authorized by the state board, and who shall hold office during the pleasure of the board. All moneys received by the state board and not required to be deposited elsewhere, shall be deposited in a depository selected by the board, which moneys shall be subject to the budgetary and audit provisions of law applicable to state agencies. The depository selected by the state board shall conform to the collateral requirements required for the deposit of other state funds. Disbursement shall be made by check signed by the treasurer. The treasurer shall render a true and faithful account of all moneys received and paid out by him or her and shall give bond for the faithful performance of the duties of his or her office in such amount as the board requires: PROVIDED, That the board shall pay the fee for any such bonds.

Sec. 33. RCW 28B.50.090 and 1982 c 50 s 1 are each amended to read as follows:

The college board shall have general supervision and control over the state system of community and technical colleges. In addition to the other

powers and duties imposed upon the college board by this chapter, the college board shall be charged with the following powers, duties and responsibilities:

(1) Review the budgets prepared by the ~~((community college))~~ boards of trustees, prepare a single budget for the support of the state system of community and technical colleges and adult education, and submit this budget to the governor as provided in RCW 43.88.090~~((; the coordinating council shall assist with the preparation of the community college budget that has to do with vocational education programs))~~;

(2) Establish guidelines for the disbursement of funds; and receive and disburse such funds for adult education and maintenance and operation and capital support of the ~~((community))~~ college districts in conformance with the state and district budgets, and in conformance with chapter 43.88 RCW;

(3) Ensure, through the full use of its authority:

(a) That each ~~((community))~~ college district shall offer thoroughly comprehensive educational, training and service programs to meet the needs of both the communities and students served by combining~~((; with equal emphasis;))~~ high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; and community services of an educational, cultural, and recreational nature; and adult education~~((; PROVIDED, That notwithstanding any other provisions of this chapter, a community college shall not be required to offer a program of vocational-technical training, when such a program as approved by the coordinating council for occupational education is already operating in the district))~~, including basic skills and general, family, and work force literacy programs and services. However, technical colleges, and college districts containing only technical colleges, shall maintain programs solely for occupational education, basic skills, and literacy purposes. For as long as a need exists, technical colleges may continue those programs, activities, and services they offered during the twelve-month period preceding the effective date of this section;

(b) That each ~~((community))~~ college district shall maintain an open-door policy, to the end that no student will be denied admission because of the location of ~~((his))~~ the student's residence or because of ~~((his))~~ the student's educational background or ability; that, insofar as is practical in the judgment of the college board, curriculum offerings will be provided to meet the educational and training needs of the community generally and the students thereof; and that all students, regardless of their differing courses of study, will be considered, known and recognized equally as members of the student body: PROVIDED, That the administrative officers of a community or technical college may deny admission to a prospective student or attendance to an enrolled student if, in their judgment, ~~((he))~~ the student would

not be competent to profit from the curriculum offerings of the ((community)) college, or would, by his or her presence or conduct, create a disruptive atmosphere within the ((community)) college not consistent with the purposes of the institution. This subsection (b) shall not apply to competency, conduct, or presence associated with a disability in a person twenty-one years of age or younger attending a technical college;

(4) Prepare a comprehensive master plan for the development of community and technical college education and training in the state; and assist the office of financial management in the preparation of enrollment projections to support plans for providing adequate ((community)) college facilities in all areas of the state;

(5) Define and administer criteria and guidelines for the establishment of new community and technical colleges or campuses within the existing districts;

(6) Establish criteria and procedures for modifying district boundary lines consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended and in accordance therewith make such changes as it deems advisable;

(7) Establish minimum standards to govern the operation of the community and technical colleges with respect to:

(a) Qualifications and credentials of instructional and key administrative personnel, except as otherwise provided in the state plan for vocational education,

(b) Internal budgeting, accounting, auditing, and financial procedures as necessary to supplement the general requirements prescribed pursuant to chapter 43.88 RCW,

(c) The content of the curriculums and other educational and training programs, and the requirement for degrees and certificates awarded by the colleges,

(d) Standard admission policies,

(e) Eligibility of courses to receive state fund support;

(8) Establish and administer criteria and procedures for all capital construction including the establishment, installation, and expansion of facilities within the various ((community)) college districts;

(9) Encourage innovation in the development of new educational and training programs and instructional methods; coordinate research efforts to this end; and disseminate the findings thereof;

(10) Exercise any other powers, duties and responsibilities necessary to carry out the purposes of this chapter;

(11) Authorize the various community and technical colleges to offer programs and courses in other districts when it determines that such action is consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended;

(12) Notwithstanding any other law or statute regarding the sale of state property, sell or exchange and convey any or all interest in any community and technical college real and personal property, except such property as is received by a ((community)) college district in accordance with RCW 28B.50.140(8), when it determines that such property is surplus or that such a sale or exchange is in the best interests of the community and technical college system;

(13) In order that the treasurer for the state board for community and technical colleges ((education)) appointed in accordance with RCW 28B.50.085 may make vendor payments, the state treasurer will honor warrants drawn by the state board providing for an initial advance on July 1, 1982, of the current biennium and on July 1 of each succeeding biennium from the state general fund in an amount equal to twenty-four percent of the average monthly allotment for such budgeted biennium expenditures for the state board for community and technical colleges ((education)) as certified by the office of financial management; and at the conclusion of such initial month and for each succeeding month of any biennium, the state treasurer will reimburse expenditures incurred and reported monthly by the state board treasurer in accordance with chapter 43.88 RCW: PROVIDED, That the reimbursement to the state board for actual expenditures incurred in the final month of each biennium shall be less the initial advance made in such biennium;

(14) Notwithstanding the provisions of subsection (12) of this section, may receive such gifts, grants, conveyances, devises, and bequests of real or personal property from private sources as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs and may sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof((-));

(15) The college board shall have the power of eminent domain;

(16) Provide general supervision over the state's technical colleges. The president of each technical college shall report directly to the director of the state board for community and technical colleges, or the director's designee, until local control is assumed by a new or existing board of trustees as appropriate, except that a college president shall have authority over program decisions of his or her college until the establishment of a board of trustees for that college. The directors of the vocational-technical institutes on March 1, 1991, shall be designated as the presidents of the new technical colleges.

Sec. 34. RCW 28B.50.092 and 1977 ex.s. c 131 s 1 are each amended to read as follows:

The state board for community and technical colleges ~~((education))~~ may authorize any ~~((community college))~~ board of trustees to do all things necessary to conduct an education, training, and service program authorized by chapter 28B.50 RCW, as now or hereafter amended, for United States military personnel and their dependents, and department of defense civilians and their dependents, at any geographical location: PROVIDED, That such programs shall be limited to those colleges which conducted programs for United States military personnel prior to January 1, 1977: PROVIDED FURTHER, That any high school completion program conducted pursuant to this section shall comply with standards set forth in rules and regulations promulgated by the superintendent of public instruction and the state board of education: AND PROVIDED FURTHER, That the superintendent of public instruction shall issue the certificate or diploma in recognition of high school completion education provided pursuant to this section.

Sec. 35. RCW 28B.50.093 and 1973 c 105 s 2 are each amended to read as follows:

Prior to the state board granting authorization for any programs authorized under RCW 28B.50.092, the state board shall determine that such authorization will not deter from the primary functions of the community and technical college system within the state of Washington as prescribed by chapter 28B.50 RCW.

Sec. 36. RCW 28B.50.095 and 1983 c 3 s 40 are each amended to read as follows:

In addition to other powers and duties, the college board may issue rules and regulations permitting a student to register at more than one community and technical college, provided that such student shall pay tuition and fees as if ~~((he))~~ the student were registered at a single college, but not to exceed tuition and fees charged a full-time student as established by RCW 28B.15.502.

Sec. 37. RCW 28B.50.100 and 1987 c 330 s 1001 are each amended to read as follows:

There is hereby created a ~~((community college))~~ board of trustees for each ~~((community))~~ college district as set forth in this chapter. Each ~~((community college))~~ board of trustees shall be composed of five trustees, who shall be appointed by the governor for terms commencing October 1st of the year in which appointed. In making such appointments the governor shall give consideration to geographical ~~((exigencies, and the interests of labor, industry, agriculture, the professions and ethnic groups))~~ diversity, and representing labor, business, women, and racial and ethnic minorities, in the membership of the boards of trustees. The boards of trustees for districts containing technical colleges shall include at least one member from business and one member from labor.

The successors of the trustees initially appointed shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of the term. Each member shall serve until a successor is appointed and qualified.

Every trustee shall be a resident and qualified elector of the ~~((community))~~ college district. No trustee may be an employee of the community and technical college system, a member of the board of directors of any school district, or a member of the governing board of any public or private educational institution.

Each board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a seal and may adopt such bylaws, rules and regulations as it deems necessary for its own government. Three members of the board shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The district president, or if there be none, the president of the ~~((community))~~ college, shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board.

Members of the boards of trustees may be removed for misconduct or malfeasance in office in the manner provided by RCW 28B.10.500.

Sec. 38. RCW 28B.50.130 and 1977 c 75 s 27 are each amended to read as follows:

Within thirty days of their appointment ~~((or July 1, 1967, whichever is sooner;))~~ the various district boards of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a ~~((chairman and a vice-chairman))~~ chair and vice-chair, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified. The chief executive officer of the ~~((community))~~ college district, or ~~((his))~~ designee, shall serve as secretary of the board. Three trustees shall constitute a quorum, and no action shall be taken by less than a majority of the trustees of the board. The district boards shall transmit such reports to the college board as may be requested by the college board. The fiscal year of the district boards shall conform to the fiscal year of the state.

Sec. 39. RCW 28B.50.140 and 1990 c 135 s 1 are each amended to read as follows:

Each ~~((community college))~~ board of trustees:

(1) Shall operate all existing community and technical colleges ~~((and vocational-technical institutes))~~ in its district;

(2) Shall create comprehensive programs of community and technical college education and training and maintain an open-door policy in accordance with the provisions of RCW 28B.50.090(3). However, technical colleges, and college districts containing only technical colleges, shall maintain programs solely for occupational education, basic skills, and literacy purposes. For as long as a need exists, technical colleges may continue those programs, activities, and services they offered during the twelve-month period preceding the effective date of this section;

(3) Shall employ for a period to be fixed by the board a college president for each community and technical college (~~district;~~) and (~~where applicable community college~~), may appoint a president(~~s within~~) for the district, and fix their duties and compensation, which may include elements other than salary. Compensation under this subsection shall not affect but may supplement retirement, health care, and other benefits that are otherwise applicable to the presidents as state employees. The board shall also employ for a period to be fixed by the board members of the faculty and such other administrative officers and other employees as may be necessary or appropriate and fix their salaries and duties. Compensation and salary increases under this subsection shall not exceed the amount or percentage established for those purposes in the state appropriations act by the legislature as allocated to the board of trustees by the state board for community and technical colleges (~~education~~). The state board for community and technical colleges (~~education~~) shall adopt rules defining the permissible elements of compensation under this subsection;

(4) May establish, under the approval and direction of the college board, new facilities as community needs and interests demand. However, the authority of (~~community college~~) boards of trustees to purchase or lease major off-campus facilities shall be subject to the approval of the higher education coordinating board pursuant to RCW 28B.80.340(5);

(5) May establish or lease, operate, equip and maintain dormitories, food service facilities, bookstores and other self-supporting facilities connected with the operation of the community and technical college;

(6) May, with the approval of the college board, borrow money and issue and sell revenue bonds or other evidences of indebtedness for the construction, reconstruction, erection, equipping with permanent fixtures, demolition and major alteration of buildings or other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances, for dormitories, food service facilities, and other self-supporting facilities connected with the operation of the community and technical college in accordance with the provisions of RCW 28B.10.300 through 28B.10.330 where applicable;

(7) May establish fees and charges for the facilities authorized hereunder, including reasonable rules and regulations for the government thereof, not inconsistent with the rules and regulations of the college board; each

board of trustees operating a community and technical college may enter into agreements, subject to rules and regulations of the college board, with owners of facilities to be used for housing regarding the management, operation, and government of such facilities, and any board entering into such an agreement may:

(a) Make rules and regulations for the government, management and operation of such housing facilities deemed necessary or advisable; and

(b) Employ necessary employees to govern, manage and operate the same;

(8) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs as specified by law and the regulations of the state college board; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(9) May establish and maintain night schools whenever in the discretion of the board of trustees it is deemed advisable, and authorize classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for community and technical college purposes;

(10) May make rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the (~~community college~~) district;

(11) Shall prescribe, with the assistance of the faculty, the course of study in the various departments of the community and technical college or colleges under its control, and publish such catalogues and bulletins as may become necessary;

(12) May grant to every student, upon graduation or completion of a course of study, a suitable diploma, nonbaccalaureate degree or certificate. Technical colleges shall offer only nonbaccalaureate technical degrees, certificates, or diplomas for occupational courses of study under rules of the college board. Technical colleges in districts twenty-eight and twenty-nine may offer nonbaccalaureate associate of technical or applied arts degrees only in conjunction with a community college the district of which overlaps with the district of the technical college, and these degrees may only be offered after a contract or agreement is executed between the technical college and the community college. The authority and responsibility to offer transfer level academic support and general education for students of districts twenty-one and twenty-five shall reside exclusively with Whatcom Community College;

(13) Shall enforce the rules and regulations prescribed by the state board for community and technical colleges ((education)) for the government of community and technical colleges, students and teachers, and promulgate such rules and regulations and perform all other acts not inconsistent with law or rules and regulations of the state board for community and technical colleges ((education)) as the board of trustees may in its discretion deem necessary or appropriate to the administration of ((community)) college districts: PROVIDED, That such rules and regulations shall include, but not be limited to, rules and regulations relating to housing, scholarships, conduct at the various community and technical college facilities, and discipline: PROVIDED, FURTHER, That the board of trustees may suspend or expel from community and technical colleges students who refuse to obey any of the duly promulgated rules and regulations;

(14) May, by written order filed in its office, delegate to the president or district president any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised in the name of the district board;

(15) May perform such other activities consistent with this chapter and not in conflict with the directives of the college board;

(16) Notwithstanding any other provision of law, may offer educational services on a contractual basis other than the tuition and fee basis set forth in chapter 28B.15 RCW for a special fee to private or governmental entities, consistent with rules and regulations adopted by the state board for community and technical colleges ((education)): PROVIDED, That the whole of such special fee shall go to the college district and be not less than the full instructional costs of such services including any salary increases authorized by the legislature for community and technical college employees during the term of the agreement: PROVIDED FURTHER, That enrollments generated hereunder shall not be counted toward the official enrollment level of the college district for state funding purposes;

(17) Notwithstanding any other provision of law, may offer educational services on a contractual basis, charging tuition and fees as set forth in chapter 28B.15 RCW, counting such enrollments for state funding purposes, and may additionally charge a special supplemental fee when necessary to cover the full instructional costs of such services: PROVIDED, That such contracts shall be subject to review by the state board for community and technical colleges ((education)) and to such rules as the state board may adopt for that purpose in order to assure that the sum of the supplemental fee and the normal state funding shall not exceed the projected total cost of offering the educational service: PROVIDED FURTHER, That enrollments generated by courses offered on the basis of contracts requiring payment of a share of the normal costs of the course will be discounted to the percentage provided by the college;

(18) Shall be authorized to pay dues to any association of trustees that may be formed by the various boards of trustees; such association may expend any or all of such funds to submit biennially, or more often if necessary, to the governor and to the legislature, the recommendations of the association regarding changes which would affect the efficiency of such association;

(19) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.80.340(4), may participate in higher education centers and consortia that involve any four-year public or independent college or university; and

(20) Shall perform any other duties and responsibilities imposed by law or rule and regulation of the state board.

Sec. 40. RCW 28B.50.142 and 1977 ex.s. c 331 s 1 are each amended to read as follows:

Each board of ~~((community college))~~ trustees shall appoint a treasurer who shall be the financial officer of the board and who shall hold office during the pleasure of the board. Each treasurer shall render a true and faithful account of all moneys received and paid out by him or her, comply with the provisions of RCW 28B.50.143, and shall give bond for the faithful performance of the duties of his or her office in such amount as the trustees require: PROVIDED, That the respective community and technical colleges shall pay the fees for any such bonds.

Sec. 41. RCW 28B.50.143 and 1985 c 180 s 1 are each amended to read as follows:

In order that each ~~((community))~~ college treasurer appointed in accordance with RCW 28B.50.142 may make vendor payments, the state treasurer will honor warrants drawn by each community and technical college providing for one initial advance ~~((on September 1, 1977, of the current biennium and))~~ on July 1 of each succeeding biennium from the state general fund in an amount equal to seventeen percent of each institution's average monthly allotment for such budgeted biennium expenditures as certified by the office of financial management, and at the conclusion of each such initial month, and for each succeeding month of any biennium, the state treasurer will reimburse each institution for each expenditure incurred and reported monthly by each ~~((community))~~ college treasurer in accordance with chapter 43.83 RCW: PROVIDED, That the reimbursement to each institution for actual expenditures incurred in the final month of each biennium shall be less the initial advance.

Sec. 42. RCW 28B.50.145 and 1969 ex.s. c 283 s 51 are each amended to read as follows:

The boards of trustees of the various ~~((community))~~ college districts ~~((are hereby directed to))~~ may create ~~((no later than January 1, 1970))~~ at each community or technical college ~~((or vocational-technical institute))~~

under their control a faculty senate or similar organization to be selected by periodic vote of the respective faculties thereof.

Sec. 43. RCW 28B.50.150 and 1969 ex.s. c 223 s 28B.50.150 are each amended to read as follows:

Any resident of the state may enroll in any program or course maintained or conducted by a ~~((community))~~ college district upon the same terms and conditions regardless of the district of his or her residence.

Sec. 44. RCW 28B.50.205 and 1988 c 206 s 502 are each amended to read as follows:

The state board for community and technical colleges ~~((education))~~ shall make information available to all newly matriculated students on methods of transmission of the human immunodeficiency virus and prevention of acquired immunodeficiency syndrome. The curricula and materials shall be reviewed for medical accuracy by the office on AIDS in coordination with the appropriate regional AIDS service network.

Sec. 45. RCW 28B.50.242 and 1990 c 208 s 10 are each amended to read as follows:

The state board for community and technical colleges ~~((education))~~ shall provide state-wide coordination of video telecommunications programming for the community and technical college system.

Sec. 46. RCW 28B.50.250 and 1969 ex.s. c 261 s 25 are each amended to read as follows:

The state board for community and technical colleges ~~((education))~~ and the state board of education are hereby authorized to permit, on an ad hoc basis, the common school districts to conduct pursuant to RCW 28B-.50.530 a program in adult education in behalf of a ~~((community))~~ college district when such program will not conflict with existing programs of the same nature and in the same geographical area conducted by the ~~((community))~~ college districts: PROVIDED, That federal programs for adult education ~~((which are funded directly to the state board of education))~~ shall be administered by the ~~((superintendent of public instruction in cooperation with the director of the))~~ state board for community and technical colleges ((education)), which agency is hereby declared to be the state educational agency primarily responsible for supervision of adult education in the public schools as defined by RCW 28B.50.020.

Sec. 47. RCW 28B.50.320 and 1971 ex.s. c 279 s 17 are each amended to read as follows:

All operating fees, services and activities fees, and all other income which the trustees are authorized to impose shall be deposited as the trustees may direct unless otherwise provided by law. Such sums of money shall be subject to the budgetary and audit provisions of law applicable to state agencies. The depository selected by the trustees shall conform to the collateral requirements required for deposit of other state funds.

Disbursement shall be made by check signed by the president of the ((community)) college or ((his)) the president's designee appointed in writing, and such other person as may be designated by the board of trustees of the ((community)) college district. Each person authorized to sign as provided above, shall execute a surety bond as provided in RCW 43.17.100. Said bond or bonds shall be filed in the office of the secretary of state.

Sec. 48. RCW 28B.50.330 and 1979 ex.s. c 12 s 2 are each amended to read as follows:

The boards of trustees of ((community)) college districts are empowered in accordance with the provisions of this chapter to provide for the construction, reconstruction, erection, equipping, demolition, and major alterations of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements, or appurtenances for the use of the aforementioned colleges as authorized by the college board in accordance with RCW 28B.50.140; to be financed by bonds payable out of special funds from revenues hereafter derived from income received from such facilities, gifts, bequests, or grants, and such additional funds as the legislature may provide, and payable out of a bond retirement fund to be established by the respective district boards in accordance with rules and regulations of the state board. With respect to building, improvements, or repairs, or other work, where the estimated cost exceeds ((five)) fifteen thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be prepared and such work shall be put out for public bids and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications: PROVIDED, That any project regardless of dollar amount may be put to public bid.

Where the estimated cost to any ((community)) college of any building, improvements, or repairs, or other work, is less than five thousand dollars, the publication requirements of RCW 39.04.020 and ((39.04.090)) 39.04.070 shall be inapplicable.

Sec. 49. RCW 28B.50.340 and 1985 c 390 s 54 are each amended to read as follows:

In addition to the powers conferred under RCW 28B.50.090, the ((community)) college ((state)) board is authorized and shall have the power:

(1) To permit the district boards of trustees to contract for the construction, reconstruction, erection, equipping, maintenance, demolition and major alterations of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances of the college as approved by the ((community college)) state board.

(2) To finance the same by the issuance of bonds secured by the pledge of up to one hundred percent of the building fees.

(3) Without limitation of the foregoing, to accept grants from the United States government, or any federal or state agency or instrumentality, or private corporation, association, or person to aid in defraying the costs of any such projects.

(4) To retain bond counsel and professional bond consultants to aid it in issuing bonds pursuant to RCW 28B.50.340 through 28B.50.400.

Sec. 50. RCW 28B.50.350 and 1985 c 390 s 55 are each amended to read as follows:

For the purpose of financing the cost of any projects, the college board is hereby authorized to adopt the resolution or resolutions and prepare all other documents necessary for the issuance, sale and delivery of the bonds or any part thereof at such time or times as it shall deem necessary and advisable. Said bonds:

(1) Shall not constitute:

(a) An obligation, either general or special, of the state; or

(b) A general obligation of the college or of the college board;

(2) Shall be:

(a) Either registered or in coupon form; and

(b) Issued in denominations of not less than one hundred dollars; and

(c) Fully negotiable instruments under the laws of this state; and

(d) Signed on behalf of the college board with the manual or facsimile signature of the chairman of the board, attested by the secretary of the board, have the seal of the college board impressed thereon or a facsimile of such seal printed or lithographed in the bottom border thereof, and the coupons attached thereto shall be signed with the facsimile signatures of such chairman and the secretary;

(3) Shall state:

(a) The date of issue; and

(b) The series of the issue and be consecutively numbered within the series; and

(c) That the bond is payable both principal and interest solely out of the bond retirement fund created for retirement thereof;

(4) Each series of bonds shall bear interest, payable either annually or semiannually, as the board may determine;

(5) Shall be payable both principal and interest out of the bond retirement fund;

(6) Shall be payable at such times over a period of not to exceed forty years from date of issuance, at such place or places, and with such reserved rights of prior redemption, as the board may prescribe;

(7) Shall be sold in such manner and at such price as the board may prescribe;

(8) Shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal thereof and interest

thereon and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with RCW 28B.50.330 through 28B.50.400, and as found to be necessary by the board for the most advantageous sale thereof, which may include but not be limited to:

(a) A covenant that a reserve account shall be created in the bond retirement fund to secure the payment of the principal of and interest on all bonds issued and a provision made that certain amounts be set aside and maintained therein;

(b) A covenant that sufficient moneys may be transferred from the capital projects account of the college board issuing the bonds to the bond retirement fund of the college board when ordered by the board in the event there is ever an insufficient amount of money in the bond retirement fund to pay any installment of interest or principal and interest coming due on the bonds or any of them;

(c) A covenant fixing conditions under which bonds on a parity with any bonds outstanding may be issued.

The proceeds of the sale of all bonds, exclusive of accrued interest which shall be deposited in the bond retirement fund, shall be deposited in the state treasury to the credit of the capital projects account of the college board and shall be used solely for paying the costs of the projects, the costs of bond counsel and professional bond consultants incurred in issuing the bonds, and for the purposes set forth in subsection (8)(b) ((above)) of this section;

(9) Shall constitute a prior lien and charge against the building fees of the community and technical colleges.

Sec. 51. RCW 28B.50.360 and 1985 c 390 s 56 are each amended to read as follows:

There is hereby created in the state treasury a community and technical college bond retirement fund. Within thirty-five days from the date of start of each quarter all building fees of each such community and technical college shall be paid into the state treasury, and shall be credited as follows:

(1) On or before June 30th of each year the college board if issuing bonds payable out of building fees shall certify to the state treasurer the amounts required in the ensuing twelve-month period to pay and secure the payment of the principal of and interest on such bonds. The state treasurer shall thereupon deposit the amounts so certified in the community and technical college bond retirement fund which fund as required, is hereby created in the state treasury. Such amounts of the funds deposited in the bond retirement fund as are necessary to pay and secure the payment of the principal of and interest on the building bonds issued by the college board as authorized by this chapter shall be exclusively devoted to that purpose. If in any twelve-month period it shall appear that the amount certified by the college board is insufficient to pay and secure the payment of the principal of and interest on the outstanding building bonds, the state treasurer shall

notify the college board and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal and interest on all such bonds then outstanding shall be fully met at all times.

(2) That portion of the building fees not required for or in excess of the amounts necessary to pay and secure the payment of any of the bonds as provided in subsection (1) (~~(above)~~) of this section shall be deposited in the community and technical college capital projects account which account is hereby created in the state treasury. The sums deposited in the capital projects account shall be appropriated and expended exclusively for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the state board for community and technical colleges (~~(education)~~) in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto, and for the payment of principal of and interest on any bonds issued for such purposes. All earnings of investments of balances in the (~~(community college)~~) capital projects account shall be credited to the general fund.

(3) Notwithstanding the provisions of subsections (1) and (2) (~~(above)~~) of this section, at such time as all outstanding building bonds of the college board payable from the community and technical college bond retirement fund have been paid, redeemed, and retired, or at such time as ample provision has been made by the state for full payment, from some source other than the (~~(community college)~~) bond retirement fund, of the principal of and the interest on and call premium, if applicable, of such bonds as they mature and/or upon their call prior to their maturity, through refunding or otherwise, that portion of all building fees of the community and technical colleges equal to the amount required to pay yearly debt service on any general obligation bonds issued by the state in accordance with Article VIII, section 1, Washington state Constitution, for community and technical college purposes, shall be paid into the general fund of the state treasury. The state finance committee shall determine whether ample provision has been made for payment of such bonds payable from the said bond retirement fund and shall determine the amount required to pay yearly debt service on such general obligation bonds of the state. Nothing in this subsection shall be construed as obligating the legislature or the state to provide for payment of such (~~(community)~~) college building bonds from some source other than the community and technical college bond retirement fund or as pledging the general credit of the state to the payment of such bonds.

Sec. 52. RCW 28B.50.370 and 1985 c 390 s 57 are each amended to read as follows:

For the purpose of paying and securing the payment of the principal of and interest on the bonds as the same shall become due, there shall be paid into the state treasury and credited to the bond retirement fund of the (~~(state)~~) college board (~~(for community college education)~~), the following:

(1) Amounts derived from building fees as are necessary to pay the principal of and interest on the bonds and to secure the same;

(2) Any grants which may be made, or may become available for the purpose of furthering the construction of any authorized projects, or for the repayment of the costs thereof;

(3) Such additional funds as the legislature may provide.

Said bond retirement fund shall be kept segregated from all moneys in the state treasury and shall, while any of such bonds or any interest thereon remains unpaid, be available solely for the payment thereof. As a part of the contract of sale of such bonds, the college board shall charge and collect building fees as established by this chapter and deposit such fees in the bond retirement fund in amounts which will be sufficient to pay and secure the payment of the principal of, and interest on all such bonds outstanding.

Sec. 53. RCW 28B.50.402 and 1977 ex.s. c 223 s 2 are each amended to read as follows:

Notwithstanding anything to the contrary contained in RCW 28B.50.360(1) and (2) and in RCW 28B.50.370, all moneys on deposit on or before June 30, 1977, in the community and technical college bond retirement fund, shall be transferred by the state treasurer to the state general fund, except for those moneys appropriated by section 17, chapter 1, Laws of 1977.

Sec. 54. RCW 28B.50.404 and 1985 c 390 s 60 are each amended to read as follows:

Subject to the specific provisions of RCW 28B.50.360 and 28B.50.403 through 28B.50.407, such general obligation refunding bonds shall be issued and the refunding of said community and technical college building bonds shall be carried out pursuant to chapters 39.42 and 39.53 RCW as now or hereafter amended. The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise of the state to pay the principal thereof and interest thereon when due.

Sec. 55. RCW 28B.50.405 and 1974 ex.s. c 112 s 3 are each amended to read as follows:

There is hereby created in the state treasury the community and technical college refunding bond retirement fund of 1974, which fund shall be exclusively devoted to the payment of the principal of and interest on the refunding bonds authorized by RCW 28B.50.360 and 28B.50.403 through 28B.50.407.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to pay the principal of and interest on such bonds. On July 1st of each year the state treasurer shall deposit such amount in the ((community college)) refunding bond retirement fund of 1974 from any general state revenues received in the state treasury.

Sec. 56. RCW 28B.50.409 and 1974 ex.s. c 112 s 7 are each amended to read as follows:

All bonds issued after February 16, 1974 by the college board or any ((community college)) board of trustees for any ((community)) college district under provisions of chapter 28B.50 RCW, as now or hereafter amended, shall be issued by such boards only upon the prior advice and consent of the state finance committee.

Sec. 57. RCW 28B.50.520 and 1969 ex.s. c 223 s 28B.50.520 are each amended to read as follows:

The ((state)) college board ((for community college education)) or any ((community college)) board of trustees is authorized to receive federal funds made available for the assistance of community and technical colleges, and providing physical facilities, maintenance or operation of schools, or for any educational purposes, according to the provisions of the acts of congress making such funds available.

Sec. 58. RCW 28B.50.535 and 1969 ex.s. c 261 s 30 are each amended to read as follows:

A community or technical college may issue a high school diploma or certificate, subject to rules and regulations promulgated by the superintendent of public instruction and the state board of education.

Sec. 59. RCW 28B.50.551 and 1980 c 182 s 3 are each amended to read as follows:

The board of trustees of each ((community)) college district shall adopt for each community and technical college under its jurisdiction written policies on granting leaves to employees of the district and those colleges, including but not limited to leaves for attendance at official or private institutions and conferences; professional leaves for personnel consistent with the provisions of RCW 28B.10.650; leaves for illness, injury, bereavement and emergencies, and except as otherwise in this section provided, all with such compensation as the board of trustees may prescribe, except that the board shall grant to all such persons leave with full compensation for illness, injury, bereavement and emergencies as follows:

(1) For persons under contract to be employed, or otherwise employed, for at least three quarters, not more than twelve days per year, commencing with the first day on which work is to be performed; provisions of any contract in force on June 12, 1980, which conflict with requirements of this subsection shall continue in effect until contract expiration; after expiration, any new contract executed between the parties shall be consistent with this subsection;

(2) Such leave entitlement may be accumulated after the first three-quarter period of employment for full time employees, and may be taken at any time;

(3) Leave for illness, injury, bereavement and emergencies heretofore accumulated pursuant to law, rule, regulation or policy by persons presently employed by ~~((community))~~ college districts and community and technical colleges shall be added to such leave accumulated under this section;

(4) Except as otherwise provided in this section or other law, accumulated leave under this section not taken at the time such person retires or ceases to be employed by ~~((community))~~ college districts or community and technical colleges shall not be compensable;

(5) Accumulated leave for illness, injury, bereavement and emergencies under this section shall be transferred from one ~~((community))~~ college district or community and technical college to another, to the ~~((state))~~ college board ~~((for community college education))~~, to the state superintendent of public instruction, to any educational service district, to any school district, or to any other institutions of higher learning of the state; ~~((and))~~

(6) Leave accumulated by a person in a ~~((community))~~ college district or community and technical college prior to leaving that district or college may, under the policy of the board of trustees, be granted to such person when he or she returns to the employment of that district or college; and

(7) Employees of the Seattle Vocational Institute are exempt from this section until July 1, 1993.

Sec. 60. RCW 28B.50.600 and 1969 ex.s. c 223 s 28B.50.600 are each amended to read as follows:

Whenever a common school board has contracted to redeem general obligation bonds used for the construction or acquisition of facilities which are now to be under the administration, control and occupancy of the ~~((community))~~ college district board, the common school board shall continue to redeem the bonds in accordance with the provisions of the bonds.

Sec. 61. RCW 28B.50.740 and 1969 ex.s. c 223 s 28B.50.740 are each amended to read as follows:

Notwithstanding any other statutory provision relating to indebtedness of school districts, bonds heretofore issued by any common school district for the purpose of providing funds for community and technical college facilities shall not be considered as indebtedness in determining the maximum allowable indebtedness under any statutory limitation of indebtedness when the sum of all indebtedness therein does not exceed the maximum constitutional allowable indebtedness applied to the value of the taxable property contained in such school district: PROVIDED, That nothing contained herein shall be construed to affect the distribution of state funds under any applicable distribution formula.

Sec. 62. RCW 28B.50.835 and 1990 c 29 s 1 are each amended to read as follows:

The legislature recognizes that quality in the state's community and technical colleges would be strengthened by additional partnerships between

citizens and the institutions. The legislature intends to foster these partnerships by creating a matching grant program to assist public community and technical colleges in creating endowments for funding exceptional faculty awards.

Sec. 63. RCW 28B.50.837 and 1990 c 29 s 2 are each amended to read as follows:

(1) The Washington community and technical college exceptional faculty awards program is established. The program shall be administered by the ((state)) college board ((for community college education)). The ((community)) college faculty awards trust fund hereby created shall be administered by the state treasurer.

(2) Funds appropriated by the legislature for the community and technical college exceptional faculty awards program shall be deposited in the ((community)) college faculty awards trust fund. All moneys deposited in the fund shall be invested by the state treasurer. Notwithstanding RCW 43.84.090, all earnings of investments of balances in the fund shall be credited to the fund. At the request of the ((state)) college board ((for community college education)), the treasurer shall release the state matching funds to the designated institution's local endowment fund. No appropriation is necessary for the expenditure of moneys from the fund.

Sec. 64. RCW 28B.50.839 and 1990 c 29 s 3 are each amended to read as follows:

(1) In consultation with eligible community and technical colleges, the ((state)) college board ((for community college education)) shall set priorities and guidelines for the program.

(2) Under this section, a ((community)) college shall not receive more than four faculty grants in twenty-five thousand dollar increments, with a maximum total of one hundred thousand dollars per campus in any biennium.

(3) All community and technical colleges shall be eligible for matching trust funds. Institutions may apply to the ((state)) college board ((for community college education)) for grants from the fund in twenty-five thousand dollar increments up to a maximum of one hundred thousand dollars when they can match the state funds with equal cash donations from private sources, except that in the initial year of the program, no college may receive more than one grant until every college has received one grant. These donations shall be made specifically to the exceptional faculty awards program and deposited by the institution in a local endowment fund. Otherwise unrestricted gifts may be deposited in the endowment fund by the institution.

(4) Once sufficient private donations are received by the institution, the institution shall inform the ((state)) college board ((for community college education)) and request state matching funds. The ((state)) college board ((for community college education)) shall evaluate the request for state

matching funds based on program priorities and guidelines. The ~~((state)) college~~ board ~~((for community college education))~~ may ask the state treasurer to release the state matching funds to a local endowment fund established by the institution for each faculty award created.

Sec. 65. RCW 28B.50.841 and 1990 c 29 s 4 are each amended to read as follows:

(1) The faculty awards are the property of the institution and may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the institution. The institution shall designate the use of the award. The designation shall be made or renewed annually.

(2) The institution is responsible for soliciting private donations, investing and maintaining its endowment funds, administering the faculty awards, and reporting on the program to the governor, the ~~((state)) college~~ board ~~((for community college education))~~, and the legislature, upon request. The institution may augment its endowment fund with additional unrestricted private donations. The principal of the invested endowment fund shall not be invaded.

(3) The proceeds from the endowment fund shall be used to pay expenses for faculty awards, which may include in-service training, temporary substitute or replacement costs directly associated with faculty development programs, conferences, travel, publication and dissemination of exemplary projects; to supplement the salary of the holder or holders of a faculty award; or to pay expenses associated with the holder's program area. Funds from this program shall not be used to supplant existing faculty development funds.

Sec. 66. RCW 28B.50.843 and 1990 c 29 s 5 are each amended to read as follows:

The process for determining local awards shall be subject to collective bargaining. Decisions regarding the amounts of individual awards and who receives them shall not be subject to collective bargaining and shall be subject to approval of the applicable ~~((community college))~~ board of trustees.

Sec. 67. RCW 28B.50.850 and 1969 ex.s. c 283 s 32 are each amended to read as follows:

It shall be the purpose of RCW 28B.50.850 through 28B.50.869 to establish a system of faculty tenure which protects the concepts of faculty employment rights and faculty involvement in the protection of those rights in the state system of community and technical colleges. RCW 28B.50.850 through 28B.50.869 shall define a reasonable and orderly process for appointment of faculty members to tenure status and the dismissal of the tenured faculty member.

Employees of the Seattle Vocational Institute are exempt from this section until July 1, 1993.

Sec. 68. RCW 28B.50.851 and 1988 c 32 s 2 are each amended to read as follows:

As used in RCW 28B.50.850 through 28B.50.869:

(1) "Tenure" shall mean a faculty appointment for an indefinite period of time which may be revoked only for adequate cause and by due process;

(2)(a) "Faculty appointment", except as otherwise provided in ~~((sub-section (2)))~~(b) ~~((below))~~ of this subsection, shall mean full time employment as a teacher, counselor, librarian or other position for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments; "faculty appointment" shall also mean department heads, division heads and administrators to the extent that such department heads, division heads or administrators have had or do have status as a teacher, counselor, or librarian; faculty appointment shall also mean employment on a reduced work load basis when a faculty member has retained tenure under RCW 28B.50.859;

(b) "Faculty appointment" shall not mean special faculty appointment as a teacher, counselor, librarian, or other position as enumerated in ~~((sub-section (2)))~~(a) of this subsection, when such employment results from special funds provided to a community college district from federal moneys or other special funds which other funds are designated as "special funds" by the ~~((state))~~ college board ~~((for community college education))~~: PROVIDED, That such "special funds" so designated by the ~~((state))~~ college board for purposes of this section shall apply only to teachers, counselors and librarians hired from grants and service agreements and teachers, counselors and librarians hired in nonformula positions. A special faculty appointment resulting from such special financing may be terminated upon a reduction or elimination of funding or a reduction or elimination of program: PROVIDED FURTHER, That "faculty appointees" holding faculty appointments pursuant to subsections (1) or (2)(a) of this section who have been subsequently transferred to positions financed from "special funds" pursuant to ~~((sub-section (2)))~~ (b) of this subsection and who thereafter lose their positions upon reduction or elimination of such "special funding" shall be entitled to be returned to previous status as faculty appointees pursuant to subsection (1) or (2)(a) of this section depending upon their status prior to the "special funding" transfer. Notwithstanding the fact that tenure shall not be granted to anyone holding a special faculty appointment, the termination of any such faculty appointment prior to the expiration of the term of such faculty member's individual contract for any cause which is not related to elimination or reduction of financing or the elimination or reduction of program shall be considered a termination for cause subject to the provisions of this chapter;

(3) "Probationary faculty appointment" shall mean a faculty appointment for a designated period of time which may be terminated without cause upon expiration of the probationer's terms of employment;

(4) "Probationer" shall mean an individual holding a probationary faculty appointment;

(5) "Administrative appointment" shall mean employment in a specific administrative position as determined by the appointing authority;

(6) "Appointing authority" shall mean the board of trustees of a ((community)) college district;

(7) "Review committee" shall mean a committee composed of the probationer's faculty peers, a student representative, and the administrative staff of the community or technical college: PROVIDED, That the majority of the committee shall consist of the probationer's faculty peers.

Sec. 69. RCW 28B.50.867 and 1969 ex.s. c 283 s 43 are each amended to read as follows:

Upon transfer of employment from one community or technical college to another community or technical college within a district, a tenured faculty member shall have the right to retain tenure and the rights accruing thereto which he or she had in his or her previous employment: PROVIDED, That upon permanent transfer of employment to another ((community)) college district a tenured faculty member shall not have the right to retain his tenure or any of the rights accruing thereto.

Sec. 70. RCW 28B.50.869 and 1974 ex.s. c 33 s 2 are each amended to read as follows:

The review committees required by RCW 28B.50.850 through 28B.50.869 shall be composed of members of the administrative staff, a student representative, and the teaching faculty. The representatives of the teaching faculty shall represent a majority of the members on each review committee. The members representing the teaching faculty on each review committee shall be selected by a majority of the teaching faculty and faculty department heads acting in a body. The student representative, who shall be a full time student, shall be chosen by the student association of the particular community or technical college in such manner as the members thereof shall determine.

Sec. 71. RCW 28B.50.870 and 1977 ex.s. c 282 s 1 are each amended to read as follows:

The district board of trustees of any ((community)) college district currently operating an educational program with funds provided by another state agency, including federal funds, which program has been in existence for five or more years under the administration of one or more ((community)) college districts, shall provide for the award or denial of tenure to anyone who holds a special faculty appointment in such curricular program and for as long as the program continues to be funded in such manner, utilizing

the prescribed probationary processes and procedures set forth in this chapter with the exception that no student representative shall be required to serve on the review committee defined in RCW 28B.50.851: PROVIDED, That such review processes and procedures shall not be applicable to faculty members whose contracts are renewed after the effective date of this 1977 amendatory act and who have completed at least three consecutive years of satisfactory full time service in such program, who shall be granted tenure by the ((community)) college district: PROVIDED FURTHER, That faculty members who have completed one year or more of satisfactory full time service in such program shall be credited with such service for the purposes of this section: PROVIDED, FURTHER, That provisions relating to tenure for faculty under the provisions of this section shall be distinct from provisions relating to tenure for other faculty of the ((community)) college district and faculty appointed to such special curricular program shall be treated as a separate unit as respects selection, retention, reduction in force or dismissal hereunder: AND PROVIDED FURTHER, That the provisions of this section shall only be applicable to faculty holding a special faculty appointment in an educational program operated in a state correctional institution pursuant to a written contract with a ((community)) college district.

Sec. 72. RCW 28B.50.873 and 1990 c 33 s 559 are each amended to read as follows:

The ((state)) college board ((for community college education)) may declare a financial emergency under the following conditions: (1) Reduction of allotments by the governor pursuant to RCW 43.88.110(2), or (2) reduction by the legislature from one biennium to the next or within a biennium of appropriated funds based on constant dollars using the implicit price deflator. When a district board of trustees determines that a reduction in force of tenured or probationary faculty members may be necessary due to financial emergency as declared by the state board, written notice of the reduction in force and separation from employment shall be given the faculty members so affected by the president or district president as the case may be. Said notice shall clearly indicate that separation is not due to the job performance of the employee and hence is without prejudice to such employee and need only state in addition the basis for the reduction in force as one or more of the reasons enumerated in subsections (1) and (2) of this section.

Said tenured or probationary faculty members will have a right to request a formal hearing when being dismissed pursuant to subsections (1) and (2) of this section. The only issue to be determined shall be whether under the applicable policies, rules or collective bargaining agreement the particular faculty member or members advised of severance are the proper ones to be terminated. Said hearing shall be initiated by filing a written request therefor with the president or district president, as the case may be,

within ten days after issuance of such notice. At such formal hearing the tenure review committee provided for in RCW 28B.50.863 may observe the formal hearing procedure and after the conclusion of such hearing offer its recommended decision for consideration by the hearing officer. Failure to timely request such a hearing shall cause separation from service of such faculty members so notified on the effective date as stated in the notice, regardless of the duration of any individual employment contract.

The hearing required by this section shall be an adjudicative proceeding pursuant to chapter 34.05 RCW, the Administrative Procedure Act, conducted by a hearing officer appointed by the board of trustees and shall be concluded by the hearing officer within sixty days after written notice of the reduction in force has been issued. Ten days written notice of the formal hearing will be given to faculty members who have requested such a hearing by the president or district president as the case may be. The hearing officer within ten days after conclusion of such formal hearing shall prepare findings, conclusions of law and a recommended decision which shall be forwarded to the board of trustees for its final action thereon. Any such determination by the hearing officer under this section shall not be subject to further tenure review committee action as otherwise provided in this chapter.

Notwithstanding any other provision of this section, at the time of a faculty member or members request for formal hearing said faculty member or members may ask for participation in the choosing of the hearing officer in the manner provided in RCW 28A.405.310(4), said employee therein being a faculty member for the purposes hereof and said board of directors therein being the board of trustees for the purposes hereof: PROVIDED, That where there is more than one faculty member affected by the board of trustees' reduction in force such faculty members requesting hearing must act collectively in making such request: PROVIDED FURTHER, That costs incurred for the services and expenses of such hearing officer shall be shared equally by the community or technical college and the faculty member or faculty members requesting hearing.

When more than one faculty member is notified of termination because of a reduction in force as provided in this section, hearings for all such faculty members requesting formal hearing shall be consolidated and only one such hearing for the affected faculty members shall be held, and such consolidated hearing shall be concluded within the time frame set forth herein.

Separation from service without prejudice after formal hearing under the provisions of this section shall become effective upon final action by the board of trustees.

It is the intent of the legislature by enactment of this section and in accordance with RCW 28B.52.035, to modify any collective bargaining agreements in effect, or any conflicting board policies or rules, so that any reductions in force which take place after December 21, 1981, whether in

progress or to be initiated, will comply solely with the provisions of this section: PROVIDED, That any applicable policies, rules, or provisions contained in a collective bargaining agreement related to lay-off units, seniority and re-employment rights shall not be affected by the provisions of this paragraph.

Nothing in this section shall be construed to affect the right of the board of trustees or its designated appointing authority not to renew a probationary faculty appointment pursuant to RCW 28B.50.857.

Sec. 73. RCW 28B.50.875 and 1969 ex.s. c 261 s 35 are each amended to read as follows:

Local law enforcement agencies or such other public agencies that shall be in need of such service may contract with any community or technical college for laboratory services for the analyzing of samples that chemists associated with such ((community)) colleges may be able to perform under such terms and conditions as the individual ((community)) college may determine.

Employees of the Seattle Vocational Institute are exempt from this section until July 1, 1993.

Sec. 74. RCW 15.76.120 and 1961 c 61 s 3 are each amended to read as follows:

For the purposes of this chapter all agricultural fairs in the state which may become eligible for state allocations shall be divided into categories, to wit:

(1) "Area fairs"—those not under the jurisdiction of boards of county commissioners; organized to serve an area larger than one county, having both open and junior participation, and having an extensive diversification of classes, displays and exhibits;

(2) "County and district fairs"—organized to serve the interests of single counties other than those in which a recognized area fair or a district fair as defined in RCW 36.37.050, is held and which are under the direct control and supervision of the county commissioners of the respective counties, which have both open and junior participation, but whose classes, displays and exhibits may be more restricted or limited than in the case of area or district fairs. There may be but one county fair in a single county: PROVIDED, HOWEVER, That the county commissioners of two or more counties may, by resolution, jointly sponsor a county fair.

(3) "Community fairs"—organized primarily to serve a smaller area than an area or county fair, which may have open or junior classes, displays, or exhibits. There may be more than one community fair in a county.

(4) "Youth shows and fairs"—approved by duly constituted agents of Washington State University and/or the Washington ((state board for vocational education)) work force training and education coordinating board, serving three or more counties, and having for their purpose the education and training of rural youth in matters of rural living.

Sec. 75. RCW 28A.305.270 and 1989 c 146 s 2 are each amended to read as follows:

(1) The Washington state minority teacher recruitment program is established. The program shall be administered by the state board of education. The state board of education shall consult with the higher education coordinating board, representatives of institutions of higher education, education organizations having an interest in teacher recruitment issues, the superintendent of public instruction, the state board for community and technical colleges ~~((education))~~, the department of employment security, and the ~~((state board of vocational education within the office of the governor))~~ work force training and education coordinating board. The program shall be designed to recruit future teachers from students in the targeted groups who are in the ninth through twelfth grades and from adults in the targeted groups who have entered other occupations.

(2) The program shall include the following:

(a) Encouraging students in targeted groups in grades nine through twelve to acquire the academic and related skills necessary to prepare for the study of teaching at an institution of higher education;

(b) Promoting teaching career opportunities to develop an awareness of opportunities in the education profession;

(c) Providing opportunities for students to experience the application of regular high school course work to activities related to a teaching career; and

(d) Providing for increased cooperation among institutions of higher education including community colleges, the superintendent of public instruction, the state board of education, and local school districts in working toward the goals of the program.

NEW SECTION. Sec. 76. A new section is added to chapter 28A.150 RCW to read as follows:

(1) Each local education agency or college district offering vocational educational programs shall establish local advisory committees to provide that agency or district with advice on current job needs and on the courses necessary to meet these needs.

(2) The local program committees shall:

(a) Participate in the determination of program goals;

(b) Review and evaluate program curricula, equipment, and effectiveness;

(c) Include representatives of business and labor who reflect the local industry, and the community; and

(d) Actively consult with other representatives of business, industry, labor, and agriculture.

NEW SECTION. Sec. 77. (1) Each local education agency or college district offering vocational educational programs shall establish local advisory committees to provide that agency or district with advice on current job needs and on the courses necessary to meet these needs.

(2) The local program committees shall:

(a) Participate in the determination of program goals;

(b) Review and evaluate program curricula, equipment, and effectiveness;

(c) Include representatives of business and labor who reflect the local industry, and the community; and

(d) Actively consult with other representatives of business, industry, labor, and agriculture.

NEW SECTION. Sec. 78. A new section is added to chapter 28A.300 RCW to read as follows:

The superintendent shall cooperate with the work force training and education coordinating board in the conduct of the board's responsibilities under section 7 of this act and shall provide information and data in a format that is accessible to the board.

NEW SECTION. Sec. 79. The college board shall cooperate with the work force training and education coordinating board in the conduct of the board's responsibilities under section 7 of this act and shall provide information and data in a format that is accessible to the board.

NEW SECTION. Sec. 80. A new section is added to chapter 50.12 RCW to read as follows:

The commissioner shall cooperate with the work force training and education coordinating board in the conduct of the board's responsibilities under section 7 of this act and shall provide information and data in a format that is accessible to the board.

Sec. 81. RCW 28C.10.020 and 1990 c 188 s 5 are each amended to read as follows:

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

(1) "Agency" means the ~~((state board for vocational education))~~ work force training and education coordinating board or its successor.

(2) "Agent" means a person owning an interest in, employed by, or representing for remuneration a private vocational school within or without this state, who enrolls or personally attempts to secure the enrollment in a private vocational school of a resident of this state, offers to award educational credentials for remuneration on behalf of a private vocational school, or holds himself or herself out to residents of this state as representing a private vocational school for any of these purposes.

(3) "Degree" means any designation, appellation, letters, or words including but not limited to "associate," "bachelor," "master," "doctor," or

"fellow" which signify or purport to signify satisfactory completion of an academic program of study beyond the secondary school level.

(4) "Education" includes but is not limited to, any class, course, or program of training, instruction, or study.

(5) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify or appear to signify enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for any educational program.

(6) "Entity" includes, but is not limited to, a person, company, firm, society, association, partnership, corporation, or trust.

(7) "Private vocational school" means any location where [there is] an entity offering postsecondary education in any form or manner for the purpose of instructing, training, or preparing persons for any vocation or profession.

(8) "To grant" includes to award, issue, sell, confer, bestow, or give.

(9) "To offer" includes, in addition to its usual meanings, to advertise or publicize. "To offer" also means to solicit or encourage any person, directly or indirectly, to perform the act described.

(10) "To operate" means to establish, keep, or maintain any facility or location where, from, or through which education is offered or educational credentials are offered or granted to residents of this state, and includes contracting for the performance of any such act.

NEW SECTION. Sec. 82. Community and technical colleges may contract with local common school districts to provide occupational and academic programs for high school students. Common school districts whose students currently attend vocational-technical institutes shall not suffer loss of opportunity to continue to enroll their students at technical colleges.

For the purposes of this section, "opportunity to enroll" includes, but is not limited to, the opportunity of common school districts to enroll the same number of high school students enrolled at each vocational-technical institute during the period July 1, 1989, through June 30, 1990, and the opportunity for common school districts to increase enrollments of high school students at each technical college in proportion to annual increases in enrollment within the school districts participating on the effective date of this section. Technical colleges shall offer programs which are accessible to high school students to at least the extent that existed during the period July 1, 1989, through June 30, 1990, and to the extent necessary to accommodate proportional annual growth in enrollments of high school students within school districts participating on the effective date of this section. Accommodating such annual increases in enrollment or program offerings shall be the first priority within technical colleges subject to any enrollment or budgetary restrictions. Technical colleges shall not charge tuition or student services and activities fees to high school students enrolled in the college.

Technical colleges may enter into interlocal agreements with local school districts to provide instruction in courses required for high school graduation, basic skills, and literacy training for students enrolled in technical college programs.

NEW SECTION. Sec. 83. When the state system of community and technical colleges assumes administrative control of the vocational-technical institutes, personnel employed by the vocational-technical institutes shall:

(1) Suffer no reduction in compensation, benefits, seniority, or employment status. After the effective date of this section, classified employees shall continue to be covered by chapter 41.56 RCW and faculty members and administrators shall be covered by chapter 28B.50 RCW;

(2) To the extent applicable to faculty members, any faculty currently employed on a "continuing contract" basis under RCW 28A.405.210 be awarded tenure pursuant to RCW 28B.50.851 through 28B.50.873, except for any faculty members who are provisional employees under RCW 28A.405.220;

(3) Be eligible to participate in the health care and other insurance plans provided by the health care authority and the state employee benefits board pursuant to chapter 41.05 RCW;

(4) Be eligible to participate in old age annuities or retirement income plans under the rules of the state board for community and technical colleges pursuant to RCW 28B.10.400 or the teachers' retirement system plan I for personnel employed before July 1, 1977, or plan II for personnel employed after July 1, 1977, under chapter 41.32 RCW; however, no affected vocational-technical institute employee shall be required to choose from among any available retirement plan options prior to six months after the effective date of this section;

(5) Have transferred to their new administrative college district all accrued sick and vacation leave and thereafter shall earn and use all such leave under the rule established pursuant to RCW 28B.50.551;

(6) Be eligible to participate in the deferred compensation plan pursuant to RCW 41.04.250 and the dependent care program pursuant to RCW 41.04.600 under the rules established by the state deferred compensation committee.

An exclusive bargaining representative certified to represent a bargaining unit covering employees of a vocational technical institute on the effective date of this section shall remain the exclusive representative of such employees thereafter until and unless such representative is replaced or decertified in accordance with state law.

Any collective bargaining agreement in effect on June 30, 1991, shall remain in effect as it applies to employees of vocational technical institutes until its expiration or renewal date or until renegotiated or renewed in accordance with chapter 28B.52 or 41.56 RCW. After the expiration date of a collective bargaining agreement, all of the terms and conditions specified in

the collective bargaining agreement, as it applies to employees of vocational-technical institutes, shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. The board of trustees and the employees may mutually agree to continue the terms and conditions of the agreement beyond the one year extension. However, nothing in this section shall be construed to deny any employee right granted under chapter 28B.52 or 41.56 RCW. Labor relations processes and agreements covering faculty members of vocational technical institutes after the effective date of this section shall be governed by chapter 28B.52 RCW. Labor relations processes and agreements covering classified employees of vocational technical institutes after the effective date of this section shall continue to be governed by chapter 41.56 RCW.

NEW SECTION. Sec. 84. Notwithstanding the provisions of chapter 28B.15 RCW, technical colleges and the Seattle Vocational Institute may continue to collect student tuition and fees per their standard operating procedures in effect on the effective date of this section. The applicability of existing community college rules and statutes pursuant to chapter 28B.15 RCW regarding tuition and fees shall be determined by the state board for community and technical colleges within two years of the effective date of this section.

NEW SECTION. Sec. 85. All powers, duties, and functions of the superintendent of public instruction and the state board of education pertaining to projects of adult education, including the state-funded Even Start and including the adult education programs operated pursuant to 20 U.S.C. Sec. 1201 as amended by P.L. 100-297, are transferred to the state board for community and technical colleges. All references to the director or superintendent of public instruction or the state board of education in the Revised Code of Washington shall be construed to mean the director or the state board for community and technical colleges when referring to the functions transferred in this section.

NEW SECTION. Sec. 86. All reports, documents, surveys, books, records, files, papers, or written material in the possession of the superintendent of public instruction pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the state board for community and technical colleges. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the superintendent of public instruction in carrying out the powers, functions, and duties transferred shall be made available to the state board for community and technical colleges. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the state board for community and technical colleges.

Any appropriations made to the superintendent of public instruction for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the state board for community and technical colleges.

Whenever 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.

The superintendent or designee, and the director of the state board shall work out a mutually agreeable schedule to accomplish this transfer by no later than July 1, 1991.

NEW SECTION. Sec. 87. All employees of the superintendent of public instruction engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the state board for community and technical colleges. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the state board for community and technical colleges 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 chapter 28B.16 RCW.

NEW SECTION. Sec. 88. All rules and all pending business before the superintendent of public instruction pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the state board for community and technical colleges. All existing contracts and obligations shall remain in full force and shall be performed by the state board for community and technical colleges.

NEW SECTION. Sec. 89. The transfer of the powers, duties, functions, and personnel of the superintendent of public instruction shall not affect the validity of any act performed prior to the effective date of this section.

NEW SECTION. Sec. 90. If apportionments of budgeted funds are required because of the transfers directed by sections 86 through 89 of this act, 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. 91. Nothing contained in sections 86 through 90 of this act may 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 personnel board as provided by law.

NEW SECTION. Sec. 92. The college board personnel administering state and federally funded programs for adult basic skills and literacy education shall be known as the state office for adult literacy.

NEW SECTION. Sec. 93. The legislature finds that a vocational institute in the central area of the city of Seattle provides civic, social, and economic benefits to the people of the state of Washington. Economic development is enhanced by increasing the number of skilled individuals who enter the labor market and social welfare costs are reduced by the training of individuals lacking marketable skills. The students at the institute are historically economically disadvantaged, and include racial and ethnic minorities, recent immigrants, single-parent heads of households, and persons who are dislocated workers or without specific occupational skills. The institute presents a unique opportunity for business, labor, and community-based organizations, and educators to work together to provide effective vocational-technical training to the economically disadvantaged of urban Seattle, and to serve as a national model of such cooperation. Moreover, a trained work force is a major factor in attracting new employers, and with greater minority participation in the work force, the institute is uniquely located to deliver training and education to the individuals employers must increasingly turn to for their future workers.

NEW SECTION. Sec. 94. The public nonprofit corporation for the Washington institute for applied technology is hereby abolished and its powers, duties, and functions are hereby transferred to the sixth college district. The Washington institute for applied technology shall be renamed the Seattle Vocational Institute. The Seattle Vocational Institute shall become a fourth unit of the sixth college district. All references to the director or public nonprofit corporation for the Washington institute for applied technology in the Revised Code of Washington shall be construed to mean the director of the Seattle Vocational Institute.

NEW SECTION. Sec. 95. All reports, documents, surveys, books, records, files, papers, or written material in the possession of the public nonprofit corporation for the Washington institute for applied technology shall be delivered to the custody of the sixth college district. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the public nonprofit corporation for the Washington institute for applied technology shall be made available to the sixth college district for the use of the Seattle Vocational Institute. All funds, credits, or other assets held by the public nonprofit corporation for the Washington institute for applied technology shall be assigned to the sixth college district for the use of the institute.

Any appropriations made to the public nonprofit corporation for the Washington institute for applied technology shall, on the effective date of this section, be transferred and credited to the sixth college district.

Whenever 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.

NEW SECTION. Sec. 96. All contractual obligations, rules, and all pending business before the public nonprofit corporation for the Washington institute for applied technology shall be continued and acted upon by the sixth college district. All existing contracts and obligations shall remain in full force and shall be performed by the sixth college district.

NEW SECTION. Sec. 97. All employees of the Washington institute for applied technology engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the Seattle Vocational Institute. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Seattle Vocational Institute 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.

NEW SECTION. Sec. 98. The transfer of the powers, duties, functions, and personnel of the public nonprofit corporation for the Washington institute for applied technology shall not affect the validity of any act performed prior to the effective date of this section.

NEW SECTION. Sec. 99. If apportionments of budgeted funds are required because of the transfers directed by sections 95 through 98 of this act, 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. 100. The mission of the institute shall be to provide occupational, basic skills, and literacy education opportunities to economically disadvantaged populations in urban areas of the college district it serves. The mission shall be achieved primarily through open-entry, open-exit, short-term, competency-based basic skill, and job training programs targeted primarily to adults. The board of trustees of the sixth college district shall appoint a nine-member advisory committee consisting of equal representation from business, labor, and community representatives to provide advice and counsel to the administration of the institute and the district administration.

NEW SECTION. Sec. 101. Funding for the institute shall be included in a separate allocation to the sixth college district, and funds allocated for the institute shall be used only for purposes of the institute.

NEW SECTION. Sec. 102. The sixth college district shall conduct a survey of the capital facilities and equipment necessary to operate the program at the institute. The district shall present the survey to the state board for community and technical colleges by December 1, 1991. The board shall include the survey in its budget request to the legislature which shall consider a supplementary appropriation for the 1992-93 fiscal year to the sixth college district based on the results of this survey.

NEW SECTION. Sec. 103. The district may provide for waivers of tuition and fees and provide scholarships for students at the institute. The district may negotiate with applicable public or private service providers to conduct the instructional activities of the institute. The district may employ instructional staff or faculty. The district may also contract with private individuals for instructional services. Until at least July 1, 1993, all faculty and staff serve at the pleasure of the district. In order to allow the district flexibility in its personnel policies with the institute, the district and the institute, with reference to employees of the institute employed during an initial two-year period until July 1, 1993, are exempt from chapters 28B.16, 28B.52 (relating to collective bargaining), 41.04, 41.05, 41.06, and 41.40 RCW; from RCW 43.01.040 through 43.01.044; and from RCW 28B.50-.551 and 28B.50.850 through 28B.50.875 (relating to faculty tenure).

NEW SECTION. Sec. 104. A new section is added to chapter 41.06 RCW to read as follows:

Employees of the Seattle Vocational Institute are exempt from the provisions of this chapter until July 1, 1993.

NEW SECTION. Sec. 105. A new section is added to chapter 41.05 RCW to read as follows:

Employees of the Seattle Vocational Institute are exempt from the provisions of this chapter until July 1, 1993.

NEW SECTION. Sec. 106. A new section is added to chapter 41.04 RCW to read as follows:

Employees of the Seattle Vocational Institute are exempt from the provisions of this chapter until July 1, 1993.

NEW SECTION. Sec. 107. A new section is added to chapter 28B.16 RCW to read as follows:

Employees of the Seattle Vocational Institute are exempt from the provisions of this chapter until July 1, 1993.

NEW SECTION. Sec. 108. A new section is added to chapter 41.40 RCW to read as follows:

Employees of the Seattle Vocational Institute are exempt from the provisions of this chapter until July 1, 1993.

NEW SECTION. Sec. 109. A new section is added to chapter 28B.52 RCW to read as follows:

Employees of the Seattle Vocational Institute are exempt from the provisions of this chapter until July 1, 1993.

NEW SECTION. Sec. 110. A new section is added to chapter 43.01 RCW to read as follows:

Employees of the Seattle Vocational Institute are exempt from RCW 43.01.040 through 43.01.044 until July 1, 1993.

NEW SECTION. Sec. 111. Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of the state board for community and technical colleges and its local community and technical colleges.

NEW SECTION. Sec. 112. A new section is added to chapter 41.56 RCW to read as follows:

In addition to the entities listed in RCW 41.56.020, this chapter shall apply to classified employees of technical colleges as provided for in section 83 of this act.

Sec. 113. RCW 28B.10.016 and 1977 ex.s. c 169 s 1 are each amended to read as follows:

For the purposes of this title:

(1) "State universities" means the University of Washington and Washington State University.

(2) "Regional universities" means Western Washington University at Bellingham, Central Washington University at Ellensburg, and Eastern Washington University at Cheney.

(3) "State college" means The Evergreen State College in Thurston county.

(4) "Institutions of higher education" or "postsecondary institutions" means the state universities, the regional universities, The Evergreen State College, ~~((and))~~ the community colleges, and the technical colleges.

NEW SECTION. Sec. 114. There is hereby established the task force on technical colleges appointed by the governor. The task force shall be chaired by the director of the state board for community and technical colleges. The task force shall consist of representatives of the state board for community and technical colleges, community colleges, and the directors of the vocational-technical institutes. The purpose of the task force shall be to reach agreement on transitional issues posed by the bringing together of technical colleges and community colleges. The areas of agreement shall include the district boundaries and service areas not specified on the effective

date of this section, for technical colleges that are not specified on the effective date of this section and such other matters as are assigned to the task force by chapter —, Laws of 1991 (this act). The director of the state board shall convene the task force within thirty days after the appointment of the members. The task force shall report on its final recommendations to the college board and the governor by December 1, 1991. Those issues remaining in dispute shall be settled by the governor or the governor's designee.

NEW SECTION. Sec. 115. Title to or all interest in real estate, choses in action and all other assets, and liabilities including court claims, including but not limited to assignable contracts, cash, deposits in county funds (including any interest or premiums thereon), equipment, buildings, facilities, and appurtenances thereto held as of the effective date of this section by or for a school district and obtained identifiably with federal, state, or local funds appropriated for vocational-technical institutes purposes or postsecondary vocational educational purposes, or used or obtained with funds budgeted for postsecondary vocational educational purposes, or used or obtained primarily for vocational-technical institute educational purposes, shall, on the date on which the first board of trustees of each district takes office, vest in or be assigned to the district board. Cash, funds, accounts, or other deposits obtained or raised by a school district to pay for indebtedness, bonded or otherwise, contracted on or before the effective date of this section, for vocational-technical institute purposes shall remain with and continue to be, after February 2, 1992, an asset of the school district. Any option acquired by the school district to purchase real property which in the judgment of the school district will be used in the common school program may remain with the school district notwithstanding that such option was obtained in consideration of the purchase by such school district of other property for vocational-technical institute purposes. Unexpended funds of a common school district derived from the sale, before the effective date of this section, of bonds authorized for any purpose which includes vocational-technical institute purposes and not committed for any existing construction contract, shall remain with and continue to be an asset of such common school district, unless within thirty days after said date such common school district determines to transfer such funds to the board of trustees.

NEW SECTION. Sec. 116. All powers, duties, and functions of the school district pertaining to a vocational-technical institute are transferred to the state board for community and technical colleges until the establishment of local boards of trustees with authority for the technical college. All references to the director or school district in the Revised Code of Washington shall be construed to mean the director or state board for community and technical colleges when referring to the functions transferred in this section.

NEW SECTION. Sec. 117. All reports, documents, surveys, books, records, files, papers, licenses, or written material in the possession of the school district pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the state board for community and technical colleges. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the school district in carrying out the powers, functions, and duties transferred shall be made available to the state board for community and technical colleges. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the state board for community and technical colleges.

Any appropriations made to the school district for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the state board for community and technical colleges.

Whenever 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.

NEW SECTION. Sec. 118. All employees of the school district engaged in performing the powers, functions, and duties transferred are temporarily transferred to the jurisdiction of the state board for community and technical colleges. The transfer of employees to the state board for community and technical colleges shall not constitute termination of employment or reductions in force by the school districts and shall be excluded from the requirements of RCW 28A.405.210 through 28A.405.240 and 28A.405.300 through 28A.405.380. Until the local board of trustees assumes control of the college, all classified employees are assigned to the jurisdiction of the state board for community and technical colleges 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 chapter 41.56 RCW.

NEW SECTION. Sec. 119. All rules and all pending business before the school district pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the state board for community and technical colleges. All existing contracts and obligations shall remain in full force and shall be performed by the state board for community and technical colleges.

NEW SECTION. Sec. 120. The transfer of the powers, duties, functions, and personnel of the school district shall not affect the validity of any act performed prior to the effective date of this section.

NEW SECTION. Sec. 121. If apportionments of budgeted funds are required because of the transfers directed by sections 117 through 120 of this act, 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. 122. All powers, duties, and functions of the superintendent of public instruction pertaining to vocational-technical institutes are transferred to the state board for community and technical colleges. All references to the director or superintendent of public instruction in the Revised Code of Washington shall be construed to mean the director or state board for community and technical colleges when referring to the functions transferred in this section.

NEW SECTION. Sec. 123. All reports, documents, surveys, books, records, files, papers, licenses, or written material in the possession of the superintendent of public instruction pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the state board for community and technical colleges. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the superintendent of public instruction in carrying out the powers, functions, and duties transferred shall be made available to the state board for community and technical colleges. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the state board for community and technical colleges.

Any appropriations made to the superintendent of public instruction for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the state board for community and technical colleges.

Whenever 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.

NEW SECTION. Sec. 124. All employees of the superintendent of public instruction engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the state board for community and technical colleges. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the state board for community and technical colleges 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 chapter 28B.16 RCW.

NEW SECTION. Sec. 125. All rules and all pending business before the superintendent of public instruction pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the state board for community and technical colleges. All existing contracts and obligations shall remain in full force and shall be performed by the state board for community and technical colleges.

NEW SECTION. Sec. 126. The transfer of the powers, duties, functions, and personnel of the superintendent of public instruction shall not affect the validity of any act performed prior to the effective date of this section.

NEW SECTION. Sec. 127. If apportionments of budgeted funds are required because of the transfers directed by sections 123 through 126 of this act, 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. 128. All funds appropriated by the legislature in the capital budget for the 1991–93 biennium pertaining to vocational–technical institutes and to community colleges are hereby combined under the capital budget for the state board for community and technical colleges, provided that funds appropriated in the 1991–93 biennium pertaining to vocational–technical institutes or technical colleges shall be made available solely for the use of those entities.

NEW SECTION. Sec. 129. Capital and (RMI) projections for vocational–technical institutes are hereby incorporated into the six–year capital plan for community colleges that begins in the 1993–95 biennium and placed under the capital plans and projections for the state board for community and technical colleges.

NEW SECTION. Sec. 130. All funds appropriated by the legislature in the operating budget for the 1991–93 biennium pertaining to vocational–technical institutes and to community colleges are combined under the operating budget for the state board for community and technical colleges, provided that funds appropriated in the 1991–93 biennium pertaining to vocational–technical institutes or technical colleges shall be made available solely for the use of those entities.

NEW SECTION. Sec. 131. Title to or all interest in real estate, choses in action, and all other assets and liabilities, including court claims, including but not limited to assignable contracts, cash, deposits in county funds

(including any interest or premiums thereon), equipment, buildings, facilities, and appurtenances thereto held as of the effective date of this section by or for a school district and obtained identifiably with federal, state, or local funds appropriated for vocational-technical institute purposes or postsecondary vocational educational purposes, or used or obtained with funds budgeted for vocational-technical institute purposes or postsecondary vocational education purposes, or used or obtained primarily for vocational education purposes, and all liabilities including, but not limited to court claims incurred on behalf of a vocational-technical institute by a school district, shall, on the date on which the first board of trustees of each college district takes office, vest in or be assigned to the state board for community and technical colleges. Grounds that have been used primarily as a playground for children shall continue to be made available for such use.

Cash, funds, accounts, or other deposits obtained or raised by a school district to pay for indebtedness, bonded or otherwise, contracted on or before the effective date of this section for vocational-technical institute purposes shall remain with and continue to be, after the effective date of this section, an asset of the school district.

Any option acquired by the school district to purchase real property which in the judgment of the school district will be used in the common school program may remain with the school district notwithstanding that such option was obtained in consideration of the purchase by such school district of other property for vocational-technical institute purposes.

Unexpended funds of a common school district derived from the sale of bonds issued for vocational-technical institute capital purposes and not committed for any existing construction contract, shall be transferred to the college district of which the institute is a part for application to such projects.

For the purposes of this section and to facilitate the process of allocating the assets, the board of directors of each school district in which a vocational-technical institute is located, and the director of each vocational-technical institute, shall each submit to the state board of education, and the state board for community and technical colleges within ninety days of the effective date of this section, an inventory listing all real estate, personal property, choses in action, and other assets, held by a school district which, under the criteria of this section, will become the assets of the state board for community and technical colleges.

However, assets used primarily for vocational-technical institute purposes shall include, but not be limited to, all assets currently held by school districts which have been used on an average of at least seventy-five percent of the time during the 1989-90 school year, or if acquired subsequent to July 1, 1990, since its time of acquisition, for vocational-technical institute purposes, except that facilities used during school construction and remodeling periods to house vocational-technical institute programs temporarily

and facilities that were vacated by the vocational-technical institute and returned to the school district during 1990-91 are not subject to this requirement.

The ultimate decision and approval with respect to the allocation and dispositions of the assets and liabilities including court claims under this section shall be made by a task force appointed by the governor in consultation with the superintendent of public instruction and the state board for community and technical colleges. Any issues remaining in dispute shall be settled by the governor or the governor's designee. The decision of the governor, the governor's designee, or the task force may be appealed within sixty days after such decision is issued by appealing to the district court of Thurston county. The decision of the superior court may be appealed to the supreme court of the state in accordance with the provision of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION. Sec. 132. If, before the effective date of this section, the use of a single building facility is being shared between an existing vocational-technical institute program and a K-12 program, the respective boards shall continue to share the use of the facility until such time as it is convenient to remove one of the two programs to another facility. The determination of convenience shall be based solely upon the best interests of the students involved.

If a vocational-technical institute district board and a common school district board are sharing the use of a single facility, the program occupying the majority of the space of such facility, exclusive of space utilized equally by both, shall determine which board will be charged with the administration and control of such facility. The determination of occupancy shall be based upon the space occupied as of January 1, 1990.

The board charged with the administration and control of such facility may share expenses with the other board for the use of the facility.

In the event that the two boards are unable to agree upon which board is to administer and control the facility or upon a fair share of expenses for the use of the facility, the governor shall appoint an arbitrator to settle the matter. The decisions of the arbitrator shall be final and binding upon both boards. The expenses of the arbitration shall be divided equally by each board.

NEW SECTION. Sec. 133. All funds remaining from any public or private grant, contract, or in various auxiliary enterprise accounts for vocational-technical institute purposes shall be transferred to the appropriate college district under the state board for community and technical colleges once a district board of trustees has been appointed.

NEW SECTION. Sec. 134. In the event a new college district is created, the governor shall appoint new trustees to the district's board of trustees in accordance with RCW 28B.50.100.

Sec. 135. RCW 43.19.190 and 1987 c 414 s 10 are each amended to read as follows:

The director of general administration, through the state purchasing and material control director, shall:

(1) Establish and staff such administrative organizational units within the division of purchasing as may be necessary for effective administration of the provisions of RCW 43.19.190 through 43.19.1939;

(2) Purchase all material, supplies, services, and equipment needed for the support, maintenance, and use of all state institutions, colleges, community colleges, technical colleges, college districts, and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state: **PROVIDED**, That the provisions of RCW 43.19.190 through 43.19.1937 do not apply in any manner to the operation of the state legislature except as requested by said legislature: **PROVIDED**, That primary authority for the purchase of specialized equipment, instructional, and research material for their own use shall rest with the colleges, community colleges, and universities: **PROVIDED FURTHER**, That universities operating hospitals and the state purchasing and material control director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by cooperative hospital service organizations as defined in section 501(e) of the Internal Revenue Code, or its successor: **PROVIDED FURTHER**, That primary authority for the purchase of materials, supplies, and equipment for resale to other than public agencies shall rest with the state agency concerned: **PROVIDED FURTHER**, That authority to purchase services as included herein does not apply to personal services as defined in chapter 39.29 RCW, unless such organization specifically requests assistance from the division of purchasing in obtaining personal services and resources are available within the division to provide such assistance: **PROVIDED FURTHER**, That the authority for the purchase of insurance and bonds shall rest with the risk manager under RCW 43.19.1935 as now or hereafter amended;

(3) Provide the required staff assistance for the state supply management advisory board through the division of purchasing;

(4) Have authority to delegate to state agencies authorization to purchase or sell, which authorization shall specify restrictions as to dollar amount or to specific types of material, equipment, services, and supplies: **PROVIDED**, That acceptance of the purchasing authorization by a state agency does not relieve such agency from conformance with other sections of RCW 43.19.190 through 43.19.1939, as now or hereafter amended, or

from policies established by the director after consultation with the state supply management advisory board: PROVIDED FURTHER, That delegation of such authorization to a state agency, including an educational institution, to purchase or sell material, equipment, services, and supplies shall not be granted, or otherwise continued under a previous authorization, if such agency is not in substantial compliance with overall state purchasing and material control policies as established herein;

(5) Contract for the testing of material, supplies, and equipment with public and private agencies as necessary and advisable to protect the interests of the state;

(6) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment purchased through the division;

(7) Prescribe the manner in which supplies, materials, and equipment purchased through the division shall be delivered, stored, and distributed;

(8) Provide for the maintenance of a catalogue library, manufacturers' and wholesalers' lists, and current market information;

(9) Provide for a commodity classification system and may, in addition, provide for the adoption of standard specifications after receiving the recommendation of the supply management advisory board;

(10) Provide for the maintenance of inventory records of supplies, materials, and other property;

(11) Prepare rules and regulations governing the relationship and procedures between the division of purchasing and state agencies and vendors;

(12) Publish procedures and guidelines for compliance by all state agencies, including educational institutions, which implement overall state purchasing and material control policies;

(13) Conduct periodic visits to state agencies, including educational institutions, to determine if statutory provisions and supporting purchasing and material control policies are being fully implemented, and based upon such visits, take corrective action to achieve compliance with established purchasing and material control policies under existing statutes when required.

NEW SECTION. Sec. 136. Sick leave accumulated by employees of vocational-technical institutes shall be transferred to the college districts without loss of time subject to the provisions of RCW 28B.50.551 and the further provisions of any negotiated agreements then in force.

NEW SECTION. Sec. 137. The state employees' benefit board shall adopt rules to preclude any preexisting conditions or limitations in existing health care service contracts for school district employees at vocational-technical institutes transferred to the state board for community and technical colleges. The board shall also provide for the disposition of any dividends or refundable reserves in the school district's health care service contracts applicable to vocational-technical institute employees.

NEW SECTION. Sec. 138. If a school board has contracted to redeem general obligation bonds used for the construction or acquisition of facilities which are now to be under the administration, control, and occupancy of the college district board, the school board shall continue to redeem the bonds in accordance with the provisions of the bonds.

NEW SECTION. Sec. 139. If a technical college is created after the effective date of this section, that college may contract with an adjacent college district for administrative services until such time that an existing or new college district may assume jurisdiction over the college.

NEW SECTION. Sec. 140. The legislature finds that the needs of the work force and the economy necessitate enhanced vocational education opportunities in secondary education including curriculum which integrates vocational and academic education. In order for the state's work force to be competitive in the world market, employees need competencies in both vocational/technical skills and in core essential competencies such as English, math, science/technology, geography, history, and critical thinking. Curriculum which integrates vocational and academic education reflects that many students learn best through applied learning, and that students should be offered flexible education opportunities which prepare them for both the world of work and for higher education.

NEW SECTION. Sec. 141. The superintendent of public instruction shall with the advice of the work force training and education coordinating board develop model curriculum integrating vocational and academic education at the secondary level. The curriculum shall integrate vocational education for gainful employment with education in the academic subjects of English, math, science/technology, geography, and history, and with education in critical thinking. Upon completion, the model curriculum shall be provided for consideration and use by school districts.

NEW SECTION. Sec. 142. A new section is added to chapter 28A.320 RCW to read as follows:

As of the effective date of this section, school districts shall not remove facilities, equipment, or property from the jurisdiction or use of the technical colleges. This shall include direct and indirect funds other than those indirect charges provided for in the 1990-91 appropriations act. School districts shall not increase direct or indirect charges for central district administrative support for technical college programs above the percentage rate charged in the 1990-91 school year. This provision on administrative charges for technical college programs shall apply to any state and federal grants, tuition, and other revenues generated by technical college programs. School districts and the superintendent of public instruction shall cooperate fully with the technical colleges and the state board for community and technical colleges with regard to the implementation of chapter . . . , Laws of 1991 (this act). No employee of a technical college may be discriminated

against based on actions or opinions expressed on issues surrounding chapter . . . , Laws of 1991 (this act). Any dispute related to issues contained in this section shall be resolved under section 131 of this act.

NEW SECTION. Sec. 143. During the period from the effective date of this section until September 1, 1991:

(1) The executive director of the state board for community and technical colleges, or the executive director's designee, may enter into contracts, or agreements for goods, services, and personnel, on behalf of the technical college, which are effective after September 1, 1991. The executive director, or the executive director's designee, may conduct business, including budget approval, relevant to the operation of the technical college in the period subsequent to September 1, 1991.

(2) Vocational-technical institute directors may conduct business relevant to the operation of the vocational-technical institutes. School boards and superintendents may not restrict or remove powers previously delegated to the vocational-technical institute directors during the 1990-91 school year.

(3) Technical colleges' boards of trustees appointed before September 1, 1991, shall serve in an advisory capacity to the vocational-technical institute director.

As of September 1, 1991, technical colleges may, by interlocal agreement, continue to purchase from the school districts, support services within mutually agreed upon categories at a cost not to exceed the indirect rate charged during the 1990-91 school year. No employee of a technical college may be discriminated against based on actions or opinions expressed on issues surrounding chapter . . . , Laws of 1991 (this act). Any dispute related to issues contained in this section shall be resolved under section 131 of this act.

NEW SECTION. Sec. 144. The colleges in each overlapping service area shall jointly submit for approval to the state board for community and technical colleges not later than December 1, 1991, a regional planning agreement. The agreement shall provide for the ongoing interinstitutional coordination of community and technical college programs and services operated in the overlapping service area. The agreement shall include the means for the adjudication of issues arising from overlapping service areas. The agreement shall include a definitive statement of mission, scope, and purpose for each college including the nature of courses, programs, and services to be offered by each college. The statement shall include a provision that the technical colleges shall not offer courses designed for transfer to baccalaureate granting institutions. This shall not preclude such offerings provided through contracts or agreements with a community college in the service area.

Any part of the agreement that is not approved by all the colleges in the service area, shall be determined by the state board for community and

technical colleges. Approved regional planning agreements shall be enforced by the full authority of the state board for community and technical colleges. Changes to the agreement are subject to state board approval.

For the purpose of creating and adopting a regional planning agreement, the trustees of the colleges in Pierce county shall form a county coordinating committee. The county coordinating committee shall consist of eight members. Each college board of trustees in Pierce county shall select two of its members to serve on the county coordinating committee. The county coordinating committee shall not employ its own staff, but shall instead utilize staff of the colleges in the county. The regional planning agreement adopted by the county coordinating committee shall include, but shall not be limited to: The items listed in this section, the transfer of credits between technical and community colleges, program articulation, and the avoidance of unnecessary duplication in programs, activities, and services.

Sec. 145. RCW 28B.52.010 and 1987 c 314 s 1 are each amended to read as follows:

It is the purpose of this chapter to strengthen methods of administering employer-employee relations through the establishment of orderly methods of communication between academic employees and the ((community)) college districts by which they are employed.

It is the purpose of this chapter to promote cooperative efforts by prescribing certain rights and obligations of the employees and employers and by establishing orderly procedures governing the relationship between the employees and their employers which procedures are designed to meet the special requirements and needs of public employment in higher education. It is the intent of this chapter to promote activity that includes the elements of open communication and access to information in a timely manner, with reasonable discussion and interpretation of that information. It is the further intent that such activity shall be characterized by mutual respect, integrity, reasonableness, and a desire on the part of the parties to address and resolve the points of concern.

Sec. 146. RCW 28B.52.020 and 1987 c 314 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Employee organization" means any organization which includes as members the academic employees of a ((community)) college district and which has as one of its purposes the representation of the employees in their employment relations with the ((community)) college district.

(2) "Academic employee" means any teacher, counselor, librarian, or department head, who is employed by any ((community)) college district, whether full or part time, with the exception of the chief administrative officer of, and any administrator in, each ((community)) college district.

(3) "Administrator" means any person employed either full or part time by the ((community)) college district and who performs administrative

functions as at least fifty percent or more of his or her assignments, and has responsibilities to hire, dismiss, or discipline other employees. Administrators shall not be members of the bargaining unit unless a majority of such administrators and a majority of the bargaining unit elect by secret ballot for such inclusion pursuant to rules (~~and regulations~~) as adopted in accordance with RCW 28B.52.080.

(4) "Commission" means the public employment relations commission.

(5) "Unfair labor practice" means any unfair labor practice listed in RCW 28B.52.073.

(6) "Union security provision" means a provision in a collective bargaining agreement under which some or all employees in the bargaining unit may be required, as a condition of continued employment on or after the thirtieth day following the beginning of such employment or the effective date of the provision, whichever is later, to become a member of the exclusive bargaining representative or pay an agency fee equal to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative.

(7) "Exclusive bargaining representative" means any employee organization which has:

(a) Been certified or recognized under this chapter as the representative of the employees in an appropriate collective bargaining unit; or

(b) Before July 26, 1987, been certified or recognized under a predecessor statute as the representative of the employees in a bargaining unit which continues to be appropriate under this chapter.

(8) "Collective bargaining" and "bargaining" mean the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times to bargain in good faith in an effort to reach agreement with respect to wages, hours, and other terms and conditions of employment, such as procedures related to nonretention, dismissal, denial of tenure, and reduction in force. Prior law, practice, or interpretation shall be neither restrictive, expansive, nor determinative with respect to the scope of bargaining. A written contract incorporating any agreements reached shall be executed if requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.

In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which items are mandatory subjects for bargaining.

Sec. 147. RCW 28B.52.030 and 1987 c 314 s 3 are each amended to read as follows:

Representatives of an employee organization, which organization shall by secret ballot have won a majority in an election to represent the academic employees within its ((community)) college district, shall have the right to bargain as defined in RCW 28B.52.020(8).

Sec. 148. RCW 28B.52.035 and 1987 c 314 s 4 are each amended to read as follows:

At the conclusion of any negotiation processes as provided for in RCW 28B.52.030, any matter upon which the parties have reached agreement shall be reduced to writing and acted upon in a regular or special meeting of the boards of trustees, and become part of the official proceedings of said board meeting. Provisions of written contracts relating to salary increases shall not exceed the amount or percentage established by the legislature in the appropriations act and allocated to the board of trustees by the state board for community and technical colleges ((education)). The length of term of any such agreement shall be for not more than three fiscal years. Any provisions of these agreements pertaining to salary increases will not be binding upon future actions of the legislature. If any provision of a salary increase is changed by subsequent modification of the appropriations act by the legislature, both parties shall immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the modified provision.

Sec. 149. RCW 28B.52.050 and 1971 ex.s. c 196 s 4 are each amended to read as follows:

Nothing in this chapter shall prohibit any academic employee from appearing in his or her own behalf on matters relating to his or her employment relations with the ((community)) college district.

Sec. 150. RCW 28B.52.060 and 1987 c 314 s 9 are each amended to read as follows:

The commission shall conduct mediation activities upon the request of either party as a means of assisting in the settlement of unresolved matters considered under this chapter.

In the event that any matter being jointly considered by the employee organization and the board of trustees of the ((community)) college district is not settled by the means provided in this chapter, either party, twenty-four hours after serving written notice of its intended action to the other party, may, request the assistance and advice of the commission. Nothing in this section prohibits an employer and an employee organization from agreeing to substitute, at their own expense, some other impasse procedure or other means of resolving matters considered under this chapter.

Sec. 151. RCW 28B.52.070 and 1971 ex.s. c 196 s 6 are each amended to read as follows:

Boards of trustees of ((community)) college districts or any administrative officer thereof shall not discriminate against academic employees or

applicants for such positions because of their membership or nonmembership in employee organizations or their exercise of other rights under this chapter.

Sec. 152. RCW 28B.52.078 and 1987 c 314 s 13 are each amended to read as follows:

The right of ((community)) college faculty to engage in any strike is prohibited. The right of a board of trustees to engage in any lockout is prohibited. Should either a strike or lockout occur, the representative of the faculty or board of trustees may invoke the jurisdiction of the superior court in the county in which the labor dispute exists and such court shall have jurisdiction to issue an appropriate order against either or both parties. In fashioning an order, the court shall take into consideration not only the elements necessary for injunctive relief but also the purpose and goals of this chapter and any mitigating factors such as the commission of an unfair labor practice by either party.

Sec. 153. RCW 28B.52.090 and 1971 ex.s. c 196 s 8 are each amended to read as follows:

Nothing in this chapter shall be construed to annul or modify, or to preclude the renewal or continuation of, any lawful agreement heretofore entered into between any ((community)) college district and any representative of its employees.

Sec. 154. RCW 28B.52.200 and 1987 c 314 s 12 are each amended to read as follows:

Nothing in chapter 28B.52 RCW as now or hereafter amended shall compel either party to agree to a proposal or to make a concession, nor shall any provision in chapter 28B.52 RCW as now or hereafter amended be construed as limiting or precluding the exercise by each ((community)) college board of trustees of any powers or duties authorized or provided to it by law unless such exercise is contrary to the terms and conditions of any lawful negotiated agreement, except that other than to extend the terms of a previous contract, a board of trustees shall not take unilateral action on any unresolved issue under negotiation, unless the parties have first participated in good faith mediation or some other procedure as authorized by RCW 28B.52.060 to seek resolution of the issue.

Sec. 155. RCW 28B.52.210 and 1990 c 29 s 6 are each amended to read as follows:

With respect to the community and technical colleges faculty awards trust program, the permissible scope of collective bargaining under this chapter shall be governed by RCW 28B.50.843.

NEW SECTION. Sec. 156. The following acts or parts of acts are each repealed:

- (1) RCW 28B.50.055 and 1982 1st ex.s. c 30 s 10;
- (2) RCW 28C.15.010 and 1987 c 492 s 1;

- (3) RCW 28C.15.020 and 1987 c 492 s 2;
- (4) RCW 28C.15.030 and 1987 c 492 s 3; and
- (5) RCW 28C.15.900 and 1987 c 492 s 4.

NEW SECTION. Sec. 157. The following acts or parts of acts as now existing or hereafter amended are each repealed effective October 1, 1991:

- (1) RCW 28C.04.015 and 1990 c 188 s 1;
- (2) RCW 28C.04.024 and 1990 c 188 s 2;
- (3) RCW 28C.04.035 and 1990 c 188 s 3; and
- (4) RCW 28C.04.045 and 1990 c 188 s 4.

NEW SECTION. Sec. 158. Each technical college shall have written procedures which include provisions for the vocational education of individuals with disabilities. These written procedures shall include a plan to provide services to individuals with disabilities, a written plan of how the technical college will comply with relevant state and federal requirements for providing vocational education to individuals with disabilities, a written plan of how the technical college will provide on-site appropriate instructional support staff in compliance with P.L. 94-142, and as since amended, and section 504 of the rehabilitation act of 1973, and as thereafter amended.

NEW SECTION. Sec. 159. Sections 140 and 141 of this act shall constitute a new chapter in Title 28A RCW.

NEW SECTION. Sec. 160. Sections 14 and 15 of this act shall constitute a new chapter in Title 50 RCW.

NEW SECTION. Sec. 161. Sections 2 through 7 of this act shall constitute a new chapter in Title 28C RCW.

NEW SECTION. Sec. 162. Sections 16 through 18 of this act shall constitute a new chapter in Title 28C RCW.

NEW SECTION. Sec. 163. Sections 19, 24 through 29, 77, 79, 82 through 84, 92 through 94, 100 through 103, 111, 134, 139, 143, 144, and 158 of this act are each added to chapter 28B.50 RCW.

NEW SECTION. Sec. 164. RCW 28B.50.300 is decodified.

NEW SECTION. Sec. 165. If specific funding for the purposes of this act, referencing this act by bill number, is not provided for sections 93 through 101 and 156 of this act by June 30, 1993, in the omnibus appropriations act, sections 93 through 101 and 156 of this act shall be null and void.

NEW SECTION. Sec. 166. Sections 1 through 7, 14 through 19, 24 through 28, 33, 76 through 81, 85 through 111, 114, 140 through 144, and 164 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions.

Sections 33, 114, and 142 through 144 of this act shall take effect immediately.

Sections 1 through 8, 14 through 19, 24 through 28, 76 through 81, 85 through 111, 140, 141, and 164 of this act shall take effect July 1, 1991.

Sections 20 through 23, 29 through 32, 34 through 75, 82 through 84, 112, 113, 115 through 139, and 145 through 158 of this act shall take effect September 1, 1991.

Sections 8 through 13 of this act shall take effect October 1, 1991.

NEW SECTION. Sec. 167. 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.

Passed the Senate April 27, 1991.

Passed the House April 26, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 239

[Engrossed Senate Bill 5476]

MILK MARKETING—PRICING AND POOLING ARRANGEMENTS

Effective Date: 5/17/91

AN ACT Relating to the marketing of milk; amending RCW 15.35.030, 15.35.060, 15.35.070, 15.35.080, 15.35.090, 15.35.100, 15.35.110, 15.35.120, 15.35.140, 15.35.150, 15.35.170, 15.35.180, 15.35.230, 15.35.250, and 15.35.310; adding a new section to chapter 15.35 RCW; repealing RCW 15.35.020, 15.35.040, and 15.35.050; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.35.030 and 1971 ex.s. c 230 s 3 are each amended to read as follows:

It is hereby declared that:

- (1) Milk is a necessary article of food for human consumption; ~~((that))~~
- (2) The production, distribution, and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;
- (3) It is the policy of the state to promote, foster, and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including milk, and to eliminate economic waste, destructive trade practices, and improper accounting for milk purchased from producers;
- (4) Economic factors concerning the production, marketing, and sale of milk in the state may not be accurately reflected in federal programs;
- (5) Conditions within the milk industry of this state are such that it may be necessary to establish marketing areas wherein pricing and pooling arrangements between producers are necessary, and for that purpose the director shall have the administrative authority, with such additional duties as

are herein prescribed, after investigations and public hearings, to prescribe such marketing areas and modify the same when advisable or necessary.

Sec. 2. RCW 15.35.060 and 1971 ex.s. c 230 s 6 are each amended to read as follows:

The purposes of this chapter are to:

(1) Authorize and enable the director to prescribe marketing areas and to establish pricing and pooling arrangements which are necessary due to varying factors of costs of production, health regulations, transportation, and other factors in said marketing areas of this state;

(2) Authorize and enable the director to formulate marketing plans subject to the provisions of this chapter (~~((with respect to the contents of such)),~~ in accordance with chapter 34.05 RCW, which provide for pricing and pooling arrangements and declare such plans in effect for any marketing area;

(3) Provide funds for administration and enforcement of this chapter by assessments to be paid by producers.

Sec. 3. RCW 15.35.070 and 1971 ex.s. c 230 s 7 are each amended to read as follows:

It is the intent of the legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of milk, nor shall this chapter give the director authority to establish retail prices for milk or milk products.

Sec. 4. RCW 15.35.080 and 1971 ex.s. c 230 s 8 are each amended to read as follows:

For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means ~~the~~ director of the department or ~~((his))~~ the director's duly appointed representative;

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural as the case may be;

(4) "Market" or "marketing area" means any geographical area within the state comprising one or more counties or parts thereof, or one or more cities or towns or parts thereof where marketing conditions are substantially similar and which may be designated by the director as one marketing area;

(5) "Milk" means all fluid milk as defined in chapters 15.32 and 15.36 RCW as enacted or hereafter amended and rules adopted thereunder;

(6) "Milk products" includes any product manufactured from milk or any derivative or product of milk;

(7) "Milk dealer" means any person engaged in the handling of milk in his or her capacity as the operator of a milk plant(~~(, a country plant))~~ within the state or of any other plant from which milk or milk products that are produced at least in part from milk from producers are disposed of to any place or establishment within a marketing area ((other than to a plant in such marketing area)));

(8) "Producer" means a person producing milk within this state for sale under a grade A milk permit issued by the department under the provisions of chapter 15.36 RCW as enacted or hereafter amended;

(9) "Classification" means the classification of milk into classes according to its utilization by the department;

(10) "Producer-dealer" means a producer who engages in the production (~~as well as the distribution of milk products~~) of milk and also operates a plant from which an average of more than three hundred pounds daily of milk products, except filled milk, is sold within the marketing area and who has been so designated by the director. A state institution which processes and distributes milk of its own production shall be considered a producer-dealer for purposes of this chapter, but the director may by rule exempt such state institutions from any of the requirements otherwise applicable to producer-dealers.

Sec. 5. RCW 15.35.090 and 1971 ex.s. c 230 s 9 are each amended to read as follows:

(1) The director shall in carrying out the provisions of this chapter and any marketing plan thereunder confer with the legally constituted authorities of other states of the United States, and the United States department of agriculture, for the purpose of seeking uniformity of milk control with respect to milk coming in to the state and going out of the state in interstate commerce with a view to accomplishing the purposes of this chapter, and may enter into a compact or compacts which will insure a uniform system of milk control between this state and other states.

(2) In order to facilitate carrying out the provisions and purposes of this chapter, the department may hold joint hearings with authorized officers or agencies of other states who have duties and powers similar to those of the department or with any authorized person designated by the United States department of agriculture, and may enter into joint agreements with such authorized state or federal agencies for exchange of information with regard to prices paid to producers for milk moving from one state to the other or any purpose to carry out and enforce this chapter.

Sec. 6. RCW 15.35.100 and 1971 ex.s. c 230 s 10 are each amended to read as follows:

Subject to the provisions of this chapter and the specific provisions of any marketing plan established thereunder, the director is hereby vested with the authority:

(1) To investigate all matters pertaining to the production, processing, storage, transportation, and distribution of milk and milk products in the state, and ~~((including but not limited to))~~ shall have the authority to:

(a) Establish classifications of processed milk and milk products, and a minimum price or a formula to determine a minimum price to be paid by milk dealers for milk used to produce each such class of products;

~~(b)~~ Require that payment be made by dealers to producers of fluid milk or their cooperative associations and prescribe the method and time of ((payment to be made to producers)) such payments by dealers to producers or their cooperative associations in accordance with a marketing plan for milk;

~~((b))~~ (c) Determine what constitutes a natural milk market area;

~~((c))~~ (d) Determine by using uniform rules, what portion of the milk produced by each producer subject to the provisions of a marketing plan shall be marketable in fluid form and what proportion so produced shall be considered as surplus; such determination shall also apply to milk dealers who purchase or receive milk, for sale or distribution in such marketing area, from plants whose producers are not subject to such pooling arrangements;

~~((d))~~ (e) Provide for the pooling ((and averaging of all returns)) of minimum class values from the sales of each class of milk ((in a designated market area)) to milk dealers, and the ((payment to all producers of a uniform pool price for all milk so sold)) equalization of returns to producers;

~~((e))~~ (f) Provide and establish ((distributor pools or)) market pools for a designated market area with such rules and regulations as the director may adopt;

~~((f))~~ (g) Employ an executive officer, who shall be known as the milk pooling administrator;

~~((g))~~ (h) Employ such persons as may be necessary and incur all expenses necessary to carry out the purposes of this chapter;

~~((h))~~ (i) Determine by rule, what portion of any increase in the demand for fluid milk subject to a pooling arrangement and marketing plan providing for quotas shall be assigned new producers or existing producers.

(2) To issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records anywhere in the state in any hearing affecting the authority of privileges granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW as enacted or hereafter amended~~((;))~~.

(3) To make, adopt, and enforce all rules necessary to carry out the purposes of this chapter subject to the provisions of chapter 34.05 RCW concerning the adoption of rules, as enacted or hereafter amended: PROVIDED, That nothing contained in this chapter shall be construed to abrogate or affect the status, force, or operation of any provision of the public

health laws enacted by the state or any municipal corporation or the public service laws of this state.

NEW SECTION. Sec. 7. A new section is added to chapter 15.35 RCW to read as follows:

In establishing a minimum milk price or a formula to determine a minimum milk price, as provided under RCW 15.35.060 and 15.35.100, the director shall, in addition to other appropriate criteria, consider the:

- (1) Cost of producing fluid milk for human consumption;
- (2) Transportation costs;
- (3) Milk prices in states or regions outside of the state that influence prices within the marketing areas;
- (4) Demand for fluid milk for human consumption; and
- (5) Alternative enterprises available to producers.

Sec. 8. RCW 15.35.110 and 1971 ex.s. c 230 s 11 are each amended to read as follows:

(1) The director, either upon his or her own motion or upon petition by ten percent of the producers in any proposed area, shall conduct a hearing to determine whether to establish or discontinue a market area pooling arrangement. Upon determination by the director that in order to satisfy the purposes of this chapter a pooling arrangement should ~~((either))~~ be established ~~((or terminated))~~, a referendum of affected individual producers and milk dealers shall be conducted by the department.

(2) In order for the director to establish a market area and pooling plan:

(a) Sixty-six and two-thirds percent of the producers that vote must be in favor of establishing a market area and pooling plan ~~((before it can be put into effect by the director))~~; and

(b) Sixty-six and two-thirds percent of the milk dealers that vote must be in favor of establishing a market area and pooling plan.

The director, within ~~((one hundred twenty))~~ sixty days from the date the results of the referendum are filed with the secretary of state, shall establish a market pool in the market area, as provided for in this chapter.

~~((b))~~ (3) If fifty-one percent of ~~((those))~~ the producers voting representing fifty-one percent of the milk produced in the market area vote to terminate a pooling plan, the director, within one hundred twenty days, shall terminate all the provisions of said market area and pooling arrangement.

(4) A referendum of affected producers and milk dealers shall be conducted only when a market area pooling arrangement is to be established or terminated.

Sec. 9. RCW 15.35.120 and 1971 ex.s. c 230 s 12 are each amended to read as follows:

(1) The producers qualified to sign a petition, or to vote in any referendum concerning a market pool, shall be all those producers shipping milk to the market area on a regular supply basis and who would or do receive or pay equalization in an existing market pool in a market area, or in a market pool if established in such market area.

(2) The milk dealers qualified to vote in any referendum establishing a market pool shall be all those milk dealers who operate a plant which is located within the state and who would receive milk priced under a market pool if established in such market area.

(3) The director is authorized during business hours to review the books and records of (~~handlers~~) milk dealers to obtain a list of the producers qualified to sign petitions or to vote in referendums and to verify that such milk dealers are qualified to vote in a referendum.

Sec. 10. RCW 15.35.140 and 1971 ex.s. c 230 s 14 are each amended to read as follows:

(1) The director shall establish a system of classifying, pricing, and pooling of all milk used in each market area established under RCW 15.35.110.

(2) Thereafter the director (~~shall~~) may establish a system in each market area for the equalization of returns for all quota milk and all surplus over quota milk whereby all producers selling milk to milk dealers or delivering milk in such market area, or their cooperative associations, will receive the same prices for all quota milk and all surplus over quota milk, except that any premium paid to a producer by a dealer above established prices shall not be considered in determining average pool prices. Such prices may reflect adjustments based on the value of component parts of each producer's milk.

Sec. 11. RCW 15.35.150 and 1971 ex.s. c 230 s 15 are each amended to read as follows:

(1) Under a market pool and as used in this section, "quota" means a producer's portion of the total sales of (~~class-f~~) milk in fluid form in a market area plus a reserve determined by the director.

(2) The director (~~shall~~) may in each market area subject to a market plan establish each producer's initial quota in the market area. Such initial quota shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. In making this determination, consideration shall be given to a history of the producer's production record.

In any system of establishing quotas, provision shall be made for new producers to qualify for allocation of quota in a reasonable proportion and for old and new producers to participate in any new (~~class-f~~) increase in fluid milk sales in a reasonable proportion. The director may establish a method to proportionately decrease quota allocations in the event decreases in fluid milk consumption occur.

All subsequent changes or new quota issued shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW.

Sec. 12. RCW 15.35.170 and 1971 ex.s. c 230 s 17 are each amended to read as follows:

Quotas provided for in this chapter may not in any way be transferred without the consent of the director. Regulations regarding transfer of quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. Any contract for the transfer of quotas, unless the transfer has previously been approved by the director, shall be null and void. The director shall make rules and regulations to preclude any person from using a corporation as a device to evade the provisions of this section. The quotas assigned to any ~~((corporation))~~ producer shall become null and void as of any time the ~~((corporation))~~ producer does not own the means of production to which the quotas pertain. Quotas shall in no event be considered as property ~~((not to))~~ and may be taken or abolished by the state without compensation.

Sec. 13. RCW 15.35.180 and 1971 ex.s. c 230 s 18 are each amended to read as follows:

The director shall examine and audit not less than one time each year or at any other such time ~~((he))~~ the director considers necessary, the books and records, and may photostat such books, records, and accounts of milk dealers and cooperatives licensed or believed subject to license under this chapter for the purpose of determining:

(1) How payments to producers for the milk handled are computed and whether the amount of such payments are in accordance with the applicable marketing plan;

(2) If any provisions of this chapter affecting such payments directly or indirectly have been or are being violated.

No person shall in any way hinder or delay the director in conducting such examination.

The director may accept and use for the purposes of this section any audit made for or by a federal milk market order administrator which provides the information necessary for such purposes.

Sec. 14. RCW 15.35.230 and 1971 ex.s. c 230 s 23 are each amended to read as follows:

(1) Application for each milk dealer's license shall be accompanied by an annual license fee ~~((of five dollars))~~ to be established by the director by rule.

(2) If an application for the renewal of a milk dealer's license is not filed on or before the first day of an annual licensing period a late fee of ~~((three dollars))~~ up to one-half of the license fee shall be assessed and added to the original fee and shall be paid by the applicant before the renewal

license shall be issued: PROVIDED, That such additional assessment shall not apply if the applicant furnishes an affidavit that ~~((he))~~ the applicant has not acted as a milk dealer subsequent to the expiration of his or her prior license.

Sec. 15. RCW 15.35.250 and 1971 ex.s. c 230 s 25 are each amended to read as follows:

There is hereby levied upon all milk sold or received in any marketing area subject to a marketing plan established under the provisions of this chapter an assessment, not to exceed five cents per one hundred pounds of all such milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or his agent subject to such marketing plan and shall be paid to the director for deposit into the agricultural local fund.

The amount to be assessed and paid to the director under any marketing plan shall be determined by the director within the limits prescribed by this section and shall be determined according to the necessities required to carry out the purpose and provisions of this chapter under any such marketing plan.

Upon the failure of any dealer to withhold out of amounts due to or to become due to a producer at the time a dealer is notified by the director of the amounts to be withheld and upon failure of such dealer to pay such amounts, the director subject to the provisions of RCW 15.35.260, may revoke the license of the dealer required by RCW 15.35.230. The director may commence an action against the dealer in a court of competent jurisdiction in the county in which the dealer resides or has his principal place of business to collect such amounts. If it is determined upon such action that the dealer has wrongfully refused to pay the amounts the dealer shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the director as determined by the court. If the director's contention in such action is not sustained, the director shall pay to the dealer all costs and disbursements of the action as determined by the court.

Sec. 16. RCW 15.35.310 and 1971 ex.s. c 230 s 31 are each amended to read as follows:

~~(1) The provisions of this chapter shall not apply to ((a producer who acts as a milk dealer only for milk he produces on his own dairy farm from cows which he owns or is purchasing. PROVIDED, That such producer shall lease or own his processing facilities, or that he shall not have more than seventy-five percent of the milk he produces processed, bottled, or packaged by another milk dealer or producer who acts as a dealer. PROVIDED FURTHER, That such milk producer shall remain exempt from the provisions of this chapter if he purchases not more than ten percent of the milk he handled from another producer or milk dealer and if he sells~~

any excess production from his farm or farms to the pool at the lowest use classification price)) persons designated as producer-dealers, except that:

(a) The director may require pursuant to RCW 15.35.100 any information deemed necessary to verify a producer-dealer's status as a producer-dealer; and

(b) A producer-dealer shall comply with all requirements of this chapter applicable to milk dealers, except those which the director may deem unnecessary.

(2) The director shall upon request designate producer-dealers and adopt rules governing eligibility for designation of a producer-dealer and cancellation of such designation. To receive such designation, a producer-dealer shall, at a minimum:

(a) In its capacity as a handler, have and exercise complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its own milk production resources and facilities as designated in subsection (4)(a) of this section, the operation and management of which are under the complete and exclusive control of the producer-dealer in its capacity as a dairy farmer;

(b) Neither receive at its designated milk production resources and facilities nor receive, handle, process, or distribute at or through any of its milk handling, processing, or distributing resources and facilities, as designated in subsection (4)(b) of this section, milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) other milk dealers within the limitation specified in subsection (2)(e) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products;

(c) Neither be directly nor indirectly associated with the business control or management of, nor have a financial interest in, another dealer's operation; nor shall any other dealer be so associated with the producer-dealer's operation;

(d) Not allow milk from the designated milk production resources and facilities of the producer-dealer to be delivered in the name of another person as producer milk to another handler; and

(e) Not handle fluid milk products derived from sources other than the designated milk production facilities and resources, except for fluid milk product purchased from pool plants which do not exceed in the aggregate a daily average during the month of one hundred pounds.

(3) Designation of any person as a producer-dealer following a cancellation of its prior designation shall be preceded by performance in accordance with subsection (2) of this section for a period of one month.

(4) Designation of a person as a producer-dealer shall include the determination and designation of the milk production, handling, processing,

and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(a) As milk production resources and facilities: All resources and facilities, milking herd, buildings housing such herd, and the land on which such buildings are located, used for the production of milk:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer;

(ii) In which the producer-dealer in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-dealer. However, for purposes of this item (4)(a)(iii) any such milk production resources and facilities which the producer-dealer proves to the satisfaction of the director do not constitute an actual or potential source of milk supply for the producer-dealer's operation as such shall not be considered a part of the producer-dealer's milk production resources and facilities; and

(b) As milk handling, processing, and distributing resources and facilities: All resources and facilities including store outlets used for handling, processing, and distributing any fluid milk product:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer; or

(ii) In which the producer-dealer in any way has an interest, including any contractual arrangement, or with respect to which the producer-dealer directly or indirectly exercises any degree of management or control.

(5) Designation as a producer-dealer shall be canceled automatically upon determination by the director that any of the requirements of subsection (2) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred.

NEW SECTION. Sec. 17. The following acts or parts of acts are each repealed:

- (1) RCW 15.35.020 and 1971 ex.s. c 230 s 2;
- (2) RCW 15.35.040 and 1971 ex.s. c 230 s 4; and
- (3) RCW 15.35.050 and 1971 ex.s. c 230 s 5.

NEW SECTION. Sec. 18. 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 shall take effect immediately.

Passed the Senate March 7, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 240

[Senate Bill 5477]

"VETERAN" REDEFINED

Effective Date: 7/28/91

AN ACT Relating to veterans; and amending RCW 41.04.005, 72.36.035, and 73.04.090. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.04.005 and 1984 c 36 s 1 are each amended to read as follows:

As used in RCW 41.04.005, 41.04.010, 41.16.220, and 41.20.050 "veteran" includes every person, who at the time he or she seeks the benefits of RCW 28B.40.361, 41.04.005, 41.04.010, 41.16.220, 41.20.050, 41.40.170, 73.04.110, or 73.08.080 has received an honorable discharge or received a discharge for physical reasons with an honorable record and ~~((1) Has served in any branch of the armed forces of the United States between World War I and World War II or during any period of war; or (2) has served in any branch of the armed forces of the United States and has received the armed forces expeditionary medal, or Marine Corps and Navy expeditionary medal, for opposed action on foreign soil))~~ who meets at least one of the following two criteria:

(1) The person has served between World War I and World War II or during any period of war as either (a) a member in any branch of the armed forces of the United States, (b) a member of the women's air forces service pilots, or (c) a U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the war shipping administration, the office of defense transportation, or their agents, during the period of armed conflict, December 7, 1941, to August 15, 1945, or a civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service during the period of armed conflict December 7, 1941, to August 15, 1945; or

(2) The person has received the armed forces expeditionary medal, or marine corps and navy expeditionary medal, for opposed action on foreign soil, for service (a) in any branch of the armed forces of the United States; or (b) as a member of the women's air forces service pilots.

A "period of war" includes World War I, World War II, the Korean conflict, the Vietnam era, and the period beginning on the date of any future declaration of war by the congress and ending on the date prescribed by presidential proclamation or concurrent resolution of the congress. The "Vietnam era" means the period beginning August 5, 1964, and ending on May 7, 1975.

Sec. 2. RCW 72.36.035 and 1977 ex.s. c 186 s 11 are each amended to read as follows:

For purposes of this chapter, unless the context clearly indicates otherwise, "actual bona fide residents of this state" shall mean persons who have a domicile in the state of Washington immediately prior to application for membership in the soldiers' home or colony or veterans' home. The term "domicile" shall mean a person's true, fixed, and permanent home and place of habitation, and shall be the place where the person intends to remain, and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere. "Veteran" has the same meaning established in RCW 41.04.005.

Sec. 3. RCW 73.04.090 and 1974 ex.s. c 171 s 45 are each amended to read as follows:

All benefits, advantages or emoluments, not available upon equal terms to all citizens, including but not being limited to preferred rights to public employment, civil service preference, exemption from license fees or other impositions, preference in purchasing state property and special pension or retirement rights, which by any law of this state have been made specially available to war veterans or to persons who have served in the armed forces or defense forces of the United States, shall be available only to persons who have been subject to full and continuous military control and discipline as actual members of the federal armed forces or to persons defined as "veterans" in RCW 41.04.005. Service with such forces in a civilian capacity, or in any capacity wherein a person retained the right to terminate his or her service or to refuse full obedience to military superiors, shall not be the basis for eligibility for such benefits. Service in any of the following shall not for purposes of this section be considered as military service: The office of emergency services or any component thereof; the American Red Cross; the United States Coast Guard Auxiliary; United States Coast Guard Reserve Temporary; United States Coast and Geodetic Survey; American Field Service; Civil Air Patrol; Cadet Nurse Corps, and any other similar organization.

Passed the Senate April 28, 1991.

Passed the House April 27, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 241

[Substitute Senate Bill 5295]

TRUCK IDENTIFICATION—REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to identification of trucks; amending RCW 81.80.300; and adding a new section to chapter 81.80 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 81.80 RCW to read as follows:

(1) All motor vehicles, other than those exempt under subsection (2) of this section, must display a permanent marking identifying the name or number, or both, on each side of the power units. For a motor vehicle that is a common or contract carrier under permit by the commission as described in subsection (3)(a), a private carrier under subsection (4), or a leased carrier as described in subsection (5) of this section, any required identification that is added, modified, or renewed after September 1, 1991, must be displayed on the driver and passenger doors of the power unit. The identification must be in a clearly legible style with letters no less than three inches high and in a color contrasting with the surrounding body panel.

(2) This section does not apply to (a) vehicles exempt under RCW 81.80.040, and (b) vehicles operated by private carriers that singly or in combination are less than thirty-six thousand pounds gross vehicle weight.

(3) If the motor vehicle is operated as (a) a common or contract carrier under a permit by the commission, the identification must contain the name of the permittee, or business name, and the permit number, or (b) a common or contract carrier holding both intrastate and interstate authority, the identification may be either the ICC certificate number or commission permit number.

(4) If the motor vehicle is a private carrier, the identification must contain the name and address of either the business operating the vehicle or the registered owner.

(5) If the motor vehicle is operated under lease, the vehicle must display either permanent markings or placards on the driver and passenger doors of the power unit. A motor vehicle under lease (a) that is operated as a common or contract carrier under permit by the commission must display identification as provided in subsection (3)(a) of this section, and (b) that is operated as a private carrier must display identification as provided in subsection (4) of this section.

Sec. 2. RCW 81.80.300 and 1985 c 7 s 152 are each amended to read as follows:

The commission shall prescribe an identification cab card and identification decal or stamp or number which must be carried within the cab of each motive power vehicle of each motor carrier required to have a permit under this chapter.

The identification cab card and the decal or stamp or number provided for herein may be in such form and contain such information as required by the commission.

It shall be unlawful for any "common carrier" or "contract carrier" to operate any motor vehicle within this state unless there is carried within the cab of the motive power vehicle, either operating as a solo vehicle or in combination with trailers, the identification cab card and decal or stamp or

number required by this section and the payment by such carrier of a total fee of ~~((three))~~ up to ten dollars for each such decal or stamp or number plus the applicable gross weight fee prescribed by RCW 81.80.320: PROVIDED, That as to equipment operated between points in this state and points outside the state exclusively in interstate commerce, and as to equipment operated between points in this state and points outside the state in interstate commerce as well as points within this state in intrastate commerce, the commission may adopt rules and regulations specifying an alternative schedule of fees to that specified in RCW 81.80.320 as it may find to be reasonable and specifying the method of evidencing payment of such fees.

The commission may adopt rules and regulations imposing a reduced schedule of fees for short term operations, requiring reports of carriers, and imposing such conditions as the public interest may require with respect to the operation of such vehicles.

The commission shall not be required to collect the excise tax prescribed by RCW 82.44.020 for any fees collected under this chapter.

The decal or stamp or number required herein shall be issued annually under the rules and regulations of the commission, and shall be affixed to the identification cab card required by this section not later than February 1st of each year: PROVIDED, That such decal or stamp or number may be issued for the ensuing calendar year on and after the first day of November preceding and may be used from the date of issue until February 1st of the succeeding calendar year for which the same was issued.

It shall be unlawful for the owner of said permit, his agent, servant or employee, or any other person to use or display any identification cab card and decal or stamp or number, the permit number or other insignia of authority from the commission after said permit has expired, been canceled or disposed of, or to operate any vehicle under permit without such identification cab card and decal or stamp or number.

The commission shall collect all fees provided in this section, and all such fees shall be deposited in the state treasury to the credit of the public service revolving fund.

Passed the Senate April 22, 1991.

Passed the House April 9, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 242

[Engrossed Substitute House Bill 1729]

EXPANDED JURY SOURCE LIST

Effective Date: 7/28/91

AN ACT Relating to the jury source list; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The office of the administrator for the courts, the Washington state superior court judges association, the district and municipal court judges association, the Washington state association of county clerks, the office of financial management, the secretary of state, the Washington state association of county auditors, the department of licensing, the Washington state bar association, the association of Washington superior court administrators, and the Washington state association for court administration shall prepare a plan to implement a merging of the list of those persons who have been issued a driver's license in the state of Washington and whose names are in the records maintained by the department of licensing, persons issued identicards under RCW 46.20.117, and the lists of registered voters in each county to form an expanded jury source list. Other associations or individuals interested in an expanded jury source list may be consulted when developing this plan.

(2) The plan shall include: (a) A fiscal analysis of the costs; (b) a recommendation of which costs are to be paid by the state and by local governments; (c) a recommendation of which functions and duties are to be performed by state agencies and local governments; (d) a report on the potential effects of a merged source list; (e) a recommendation of the format the lists from the department of licensing and the lists of registered voters are to be provided for merging; (f) a recommendation of a methodology for merging the lists to form an expanded jury source list; and (g) a recommendation of how the effective use of the expanded jury source list can be implemented by January 1, 1993.

(3) This plan together with proposed legislation shall be submitted to the legislature by January 1, 1992.

Passed the House March 19, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 243

[House Bill 1024]

LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS—INFORMATION
EXCLUDED FROM DRIVING RECORD

Effective Date: 7/28/91

AN ACT Relating to law enforcement and fire fighters; and amending RCW 46.52.130.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.52.130 and 1989 c 178 s 24 are each amended to read as follows:

A certified abstract of the driving record shall be furnished only to the individual named in the abstract, an employer, the insurance carrier that has insurance in effect covering the employer or a prospective employer, the insurance carrier that has insurance in effect covering the named individual, the insurance carrier to which the named individual has applied, or an alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment. City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment. The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies, and covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies. A certified abstract of the full driving record maintained by the department shall be furnished to individuals and employers or prospective employers. The abstract, whenever possible, shall include an enumeration of motor vehicle accidents in which the person was driving; the total number of vehicles involved; whether the vehicles were legally parked or moving; whether the vehicles were occupied at the time of the accident; any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law; and the status of the person's driving privilege in this state. The enumeration shall include any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

The abstract provided to the insurance company shall exclude any information except that related to the commission of misdemeanors or felonies by the individual pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any ~~((member))~~ officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty ~~((during an emergency situation if the chief of the officer's or fire fighter's department certifies on the accident report that the actions of the officer or fire fighter were reasonable under the circumstances as they existed at the time of the accident))~~.

The director shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund.

Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes

relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

Any employer or prospective employer receiving the certified abstract shall use it exclusively for his own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus upon the public highways of this state and shall not divulge any information contained in it to a third party.

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

Any violation of this section is a gross misdemeanor.

Passed the House February 13, 1991.

Passed the Senate April 8, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 244

[Substitute Senate Bill 5611]

FLEET RENTAL VEHICLES—ANALYSIS OF TAXES ON

Effective Date: 7/28/91

AN ACT Relating to a tax on the rental of fleet vehicles; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislative transportation committee, in cooperation with the state department of licensing, car rental industry, the state department of transportation, the state department of revenue, and other interested parties shall conduct a study for the purpose of analyzing motor vehicle excise, sales and business and occupation taxes imposed upon fleet rental vehicles in the state of Washington. The study shall include but not be limited to the following components:

(a) Whether the motor vehicle excise tax as now imposed upon the car rental industry is fair and equitable;

(b) Whether there are alternative taxes that may be more equitably applied to the car rental industry, and how such taxes would impact the state, local governments including transit agencies, and the consumer;

(c) Whether alternative taxes will return to the state and local governments including transit agencies an amount approximately equal to that of the motor vehicle excise tax;

(d) The impacts of business and occupation taxes for in-state and out-of-state fleet purchases by rental companies;

(e) Whether or not more rental vehicles would be purchased and registered in-state as a result of proposed tax alternatives; and

(f) What, if any, additional costs or administrative difficulties would result from alternative methods of taxation.

(2) The study participants shall agree upon the type and extent of data required to analyze current and potential taxation alternatives. At a minimum, total motor vehicle excise tax collections attributable to rental car companies and total gross revenues as recorded on rental car agreements shall be obtained. Other data elements that may be considered include (a) usage of rental vehicles that have in-state versus out-of-state plates and the associated revenue with such usage, and (b) rental vehicles used in Washington and the associated revenue generated from such vehicles that are registered under the international registration plan.

(3) If the required data is not currently available, new methods for obtaining the agreed upon data shall be developed by the appropriate state agency or agencies to fulfill the purpose of this study.

(4) The study shall include findings and recommendations and shall be submitted to the legislative transportation committee no later than January 1, 1993. An interim report shall be submitted by January 1, 1992.

Passed the Senate April 22, 1991.

Passed the House April 15, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 245

[Substitute House Bill 1316]

COUNTY TREASURERS—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to county treasurers; amending RCW 17.04.180, 28A.510.270, 36.16-.140, 36.29.010, 36.29.020, 36.29.060, 36.29.110, 36.29.180, 36.33.160, 36.34.080, 36.48.070, 43.09.240, 58.08.040, 82.45.180, 84.56.020, 84.56.050, 84.56.060, 84.56.070, 84.56.120, 84.56-.220, 84.56.230, 84.56.260, 84.56.280, 84.64.050, 84.64.070, 84.64.080, 84.64.120, 84.64.215, 84.64.270, 84.69.020, 84.69.030, 84.69.040, 84.69.060, 85.05.280, 85.05.360, 84.56.290, 84.69-.070, 84.69.110, and 84.69.120; adding a new section to chapter 36.88 RCW; decodifying RCW 84.28.005, 84.28.006, 84.28.010, 84.28.020, 84.28.050, 84.28.060, 84.28.063, 84.28.065, 84.28.080, 84.28.090, 84.28.095, 84.28.100, 84.28.110, 84.28.140, 84.28.150, 84.28.160, 84.28-.170, 84.28.200, 84.28.205, 84.28.210, and 84.28.215; and repealing RCW 36.29.030, 36.29-.080, 36.29.140, 36.32.180, 84.64.010, 84.64.020, 84.64.030, 84.64.140, 84.64.145, 84.64.150, 84.64.160, 84.64.170, 84.64.210, 84.64.240, 84.04.043, 84.08.110, 84.40.100, 84.40.250, 84.40-.330, 84.40A.020, 84.40A.030, 84.40A.040, 84.40A.050, 84.44.040, 84.44.060, and 84.44.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 17.04.180 and 1984 c 7 s 18 are each amended to read as follows:

Whenever any lands belonging to the county are included within a weed district, the county legislative authority shall determine the amount of the taxes for which the lands would be liable if they were in private ownership, and the county legislative authority shall appropriate from the current expense fund of the county sufficient money to pay such amounts. Whenever any state lands are within any weed district, the county treasurer shall certify annually and forward to the ~~((commissioner of public lands, or, if the lands are occupied by or used in connection with any state institution, to the secretary of social and health services, or if the land is under use as state highway right of way, to the secretary of transportation;))~~ appropriate state agency for payment a statement showing the amount of the tax to which the lands would be liable if they were in private ownership, separately describing each lot or parcel ~~((The commissioner of public lands or the secretary of social and health services or the secretary of transportation, as the case may be, shall cause a proper record to be made in their respective offices of the charges against the lands and shall certify the record to the state auditor thirty days before the convening of a session of the legislature in an odd-numbered year, and the state auditor shall at the next session of the legislature convened in an odd-numbered year, certify to the legislature the amount of the charges against the lands. The legislature shall provide for payment of the charges to the weed district by an appropriation from the general fund of the state treasury or in the case of state highway right of way, the motor vehicle fund of the state treasury;))~~ and, if delinquent, with interest ~~((at six percent per annum on the amount of the charges, and without penalties))~~ and penalties consistent with RCW 84.56.020.

Sec. 2. RCW 28A.510.270 and 1990 c 33 s 428 are each amended to read as follows:

The county treasurer of each county of this state shall be ex officio treasurer of the several school districts of their respective counties, and, except as otherwise provided by law, it shall be the duty of each county treasurer:

(1) To receive and hold all moneys belonging to such school districts, and to pay them ~~((out only on warrants legally issued))~~ only for legally authorized obligations of the district.

(2) ~~((To certify to the educational service district superintendent and the auditor of his or her county, at least quarterly each year, the amount of all school funds in his or her possession subject to apportionment on the last day of the preceding month, which certificate shall specify the source or sources from which said moneys were derived:~~

~~(3) To make annually, on or before the twenty-fifth day of September, a report to the educational service district superintendent and auditor of the county, which report shall show the amount of school funds on hand at the~~

~~beginning of the school year last past belonging to each school district; the amount of funds placed to the credit of each school district during the school year ending August thirty-first, last past, and the sources from which said funds were derived; the amount of warrants registered during the year; the amount of funds disbursed upon warrants of each school district during the year; the amount of funds remaining in the treasurer's possession at the close of the school year subject to be paid out upon warrants, and the fund to which said moneys belong, also the amount of all unpaid warrants or bonds appearing upon his or her register at the close of the school year.~~

~~(4) To register all school warrants presented to him or her by the county auditor in a book to be known as the "Treasurer's School District Warrant Register," which register shall show the date issued, number of warrant, to whom issued, amount and purpose, date registered, date advertised, interest if any accruing on said warrant, total as redeemed, date redeemed and to whom paid. If the district has money in the fund on which the warrant is drawn no endorsement on the warrant is necessary, but if there be no money to the credit of the fund on which the warrant is registered the treasurer shall endorse on said warrant the following: "This warrant bears interest at percent per annum from until called for payment. County Treasurer, By Deputy." All warrants shall be paid in the order of their presentation to the county treasurer, and it is hereby made the duty of the county treasurer to advertise, at least quarterly, all warrants which he or she is prepared to pay, in the same manner in which he or she is required to advertise county warrants, and after the date fixed in said notice, warrants shall cease to draw interest.~~

~~(5)) To prepare and submit to each school district superintendent in the county a written report of the state of the finances of such district on the first day of each month, which report shall be submitted not later than the seventh business day of ((said)) the month, ((certified to by the county auditor,)) which report shall contain the balance on hand the first of the preceding month, the funds paid in, warrants paid with interest thereon, if any, the number of warrants issued and not paid, and the balance on hand.~~

~~((6) After each monthly settlement with the county commissioners))~~
 (3) The treasurer of each county shall submit a statement of all canceled warrants of districts to the respective school district superintendents((; which statement shall be verified to by the county auditor)). The canceled warrants of each district shall be preserved separately and shall at all times be open to inspection by the school district superintendent or by any authorized accountant of such district.

Sec. 3. RCW 36.16.140 and 1965 ex.s. c 23 s 6 are each amended to read as follows:

Public auction sales of property conducted by or for the county (~~or an officer thereof~~) shall be held at such places (~~on county property~~) as the (~~board of~~) county (~~commissioners~~) legislative authority may direct.

Sec. 4. RCW 36.29.010 and 1963 c 4 s 36.29.010 are each amended to read as follows:

The county treasurer:

(1) Shall receive all money due the county and disburse it on warrants issued and attested by the county auditor;

(2) Shall issue a receipt in duplicate for all money received other than taxes; (~~he~~) the treasurer shall deliver immediately to the person making the payment the original receipt and the duplicate (~~he shall file immediately in the office of the county auditor~~) shall be retained by the treasurer;

(3) Shall (~~write~~) affix on the face of all paid warrants (~~when paid~~;) the date of redemption (~~and his signature~~) or, in the case of proper contract between the treasurer and a qualified public depository, the treasurer may consider the date affixed by the financial institution as the date of redemption;

(4) Shall indorse on the face of all warrants (~~presented~~) for which there are not sufficient funds for payment, (~~"not paid for want of funds" and the date of such indorsement over his signature;~~

~~(5))~~ "interest bearing warrant" and when there are funds to redeem outstanding warrants shall give notice;

(a) By publication in a legal newspaper published or circulated in the county (~~when there are funds to redeem outstanding warrants~~); or

(b) By posting at three public places in the county if there is no such newspaper; or

~~((6))~~ (c) By notification to the financial institution holding the warrant;

~~(5)~~ Shall pay interest (~~at the legal rate upon all~~) on all interest-bearing warrants from the date of (~~the indorsement "not paid for want of funds"~~) issue to the date of (~~publishing or posting the notice of redemption~~) notification;

~~((7))~~ (6) Shall (~~arrange and keep his books so that the amount received and paid out on account of separate funds or specific appropriations shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account~~) maintain financial records reflecting receipts and disbursement by fund in accordance with generally accepted accounting principles;

~~((8))~~ Shall keep his books, accounts, and vouchers open at all times to the inspection and examination of the board of county commissioners and the grand jury;

(9) Shall make a verified statement to the board of county commissioners at its July session showing the whole amount of his collections during the preceding year (stating particularly the source of each portion of

~~revenue) from all sources paid into the county treasury, the funds among which the same was distributed, together with the amount of each fund, the total amount of warrants certified to him by the county auditor, the total amount of warrants paid by him during the same time, the total amount of warrants remaining unpaid on the thirtieth day of June immediately preceding, the funds on which the same are drawn, and generally make a full and specific showing of the financial condition of the county;~~

~~(+0)) (7) The treasurer, at the expiration of the term of office, shall make a complete settlement with the ((board of)) county ((commissioners, as required by law and shall, at the expiration of his term of office;)) legislative authority, and shall deliver to ((his)) the successor all public money, books, and papers in ((his)) the treasurer's possession. ((In the event of his death before the expiration of his term, his legal representatives must deliver up all official money, books, accounts, papers, and documents which come into their possession:))~~

Sec. 5. RCW 36.29.020 and 1984 c 177 s 7 are each amended to read as follows:

The county treasurer shall keep all moneys belonging to the state, or to any county, in his or her own possession until disbursed according to law. The county treasurer shall not place the same in the possession of any person to be used for any purpose; nor shall he or she loan or in any manner use or permit any person to use the same; but it shall be lawful for a county treasurer to deposit any such moneys in any regularly designated qualified public depository. Any municipal corporation may by action of its governing body authorize any of its funds which are not required for immediate expenditure, and which are in the custody of the county treasurer or other municipal corporation treasurer, to be invested by such treasurer. The county treasurer may invest in savings or time accounts in designated qualified public depositories or in certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States; in bankers' acceptances purchased on the secondary market, in federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system or deposit such funds or any portion thereof in investment deposits as defined in RCW 39.58.010 secured by collateral in accordance with the provisions of chapters 39.58 and 39.59 RCW: PROVIDED, Five percent of the ~~((interest or))~~ earnings, with an annual maximum of fifty dollars, on ~~((any))~~ each transaction~~((s))~~ authorized by ~~((each resolution of))~~ the governing body shall be paid as an investment service fee to the office of the county treasurer or other municipal corporation treasurer when

the ~~((interest or))~~ earnings become available to the governing body: **PROVIDED FURTHER**, That if such investment service fee amounts to five dollars or less the county treasurer or other municipal corporation treasurer may waive such fee.

Whenever the funds of any municipal corporation which are not required for immediate expenditure are in the custody or control of the county treasurer, and the governing body of such municipal corporation has not taken any action pertaining to the investment of any such funds, the county finance committee shall direct the county treasurer to invest, to the maximum prudent extent, such funds or any portion thereof in savings or time accounts in designated qualified public depositories or in certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States, in bankers' acceptances purchased on the secondary market, in federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system or deposit such funds or any portion thereof in investment deposits as defined in RCW 39.58.010 secured by collateral in accordance with the provisions of chapters 39.58 and 39.59 RCW: **PROVIDED**, That the county treasurer shall have the power to select the specific qualified financial institution in which ~~((said))~~ the funds may be invested. The interest or other earnings from such investments or deposits shall be deposited in the current expense fund of the county and may be used for general county purposes. The investment or deposit and disposition of the interest or other earnings therefrom authorized by this paragraph shall not apply to such funds as may be prohibited by the state Constitution from being so invested or deposited.

Sec. 6. RCW 36.29.060 and 1985 c 469 s 44 are each amended to read as follows:

Whenever the county treasurer has ~~((in his hands the sum of five hundred dollars))~~ funds belonging to any fund upon which "interest-bearing" warrants are outstanding, ~~((he shall make a))~~ the treasurer shall have the discretion to call ~~((for the))~~ warrants ~~((to that amount in the order of their issue. The county treasurer shall either notify all holders of warrants covered by the call or cause the call to be published in some newspaper of general circulation in the county in the first issue of the newspaper after such sum has been accumulated. The call shall describe by number the warrants called, and specify the funds upon which they were drawn. PRO-~~ **VIDED**, That the county legislative authority may prescribe a less sum than five hundred dollars, upon the accumulation of which the call shall be made as to any particular fund: **PROVIDED FURTHER**, That if the warrant

~~longest outstanding on any fund exceeds the sum of five hundred dollars, or exceeds the sum fixed by the county legislative authority, no call need be made for warrants on the fund until the amount due on the warrant has accumulated. No more than two calls for the redemption of warrants shall be made by the treasurer in any month)).~~ The county treasurer shall give notice as provided for in RCW 36.29.010(4). The treasurer shall pay on demand, in the order of their issue, any warrants when there shall be in the treasury sufficient funds applicable to such payment.

Sec. 7. RCW 36.29.110 and 1963 c 4 s 36.29.110 are each amended to read as follows:

All city taxes and earnings on such taxes, as provided for in RCW 36.29.020, collected during the month shall ((belong)) be remitted to the city ((and)) by the county treasurer ((shalt;)) on or before the tenth day of ((each, turn over all such taxes so collected for the previous month to the city treasurer, and take a receipt therefor in duplicate, and at the same time he shall certify to the city comptroller the amounts of taxes so collected and turn over and deliver with such certificate one copy of the receipt of the city treasurer therefor. The county treasurer shall also render to the city comptroller, on or before the tenth day of each month, between the first day of January and the first day of May a statement of all taxes collected for such city during the preceding month)) the following month. The county treasurer shall submit a statement of taxes collected with such remittance. To facilitate the investment of collected taxes, the treasurer may invest as provided for in RCW 36.29.020 without the necessity of the cities specifically requesting combining funds for the purposes of investment.

Sec. 8. RCW 36.29.180 and 1963 c 4 s 36.29.180 are each amended to read as follows:

The county treasurer, in all instances where required by law to handle, collect, disburse, and account for ~~((the funds collected pursuant to the assessment roll of any political subdivision))~~ special assessments, fees, rates, or charges within the county, may charge and collect a fee for ~~((his))~~ services ~~((according to but not to exceed the following schedule:~~

~~For up to a five year term assessment roll, a fee of two dollars per account;~~

~~For a six to ten year term assessment roll, a fee of three dollars per account;~~

~~For an eleven to fifteen year term assessment roll, a fee of four dollars per account;~~

~~For an assessment roll of over fifteen years, a fee of five dollars per account))~~ not to exceed four dollars per parcel for each year in which the funds are collected. Such charges for services shall be based upon costs incurred by the treasurer in handling, collecting, disbursing, and accounting for the funds.

Such fees shall be a charge against the district (~~((shall be included as a part of the cost of the improvement;))~~) and shall be credited to the county current expense fund by the county treasurer (~~((from moneys received following publication of the assessment roll. The provisions of this section shall not apply to irrigation district assessments))~~).

Sec. 9. RCW 36.33.160 and 1963 c 4 s 36.33.160 are each amended to read as follows:

Upon request the county treasurer shall furnish to the ~~((board of))~~ county ~~((commissioners on or before the first day of May of each year, or at any other date that may be found advisable;))~~ legislative authority a list of all lands owned by the county, together with the amounts levied as assessments and the district in or by which such assessments are levied, against each description of ~~((said))~~ the lands, as it appears on the assessment roll of the district. On or before the first day of August of each year ~~((he)),~~ upon request, the treasurer shall furnish to the county ~~((commissioners))~~ legislative authority a similar list of all land owned by the county and subject to any such assessments, together with the amounts of any installment of assessments falling due against any of such lands in the ensuing year and an estimate of any maintenance or other assessments to be made against same to fall due in the ensuing year ~~((; also an estimate of the amount of assessments to fall due in the ensuing year against lands that will be acquired by the county in such year))~~.

Sec. 10. RCW 36.34.080 and 1965 ex.s. c 23 s 1 are each amended to read as follows:

All sales of county property ordered after a public hearing upon the proposal to dispose thereof must be made by the county treasurer ~~((at such place on county property as the board of county commissioners may direct))~~ or treasurer's designee to the highest and best bidder at public auction.

Sec. 11. RCW 36.48.070 and 1963 c 4 s 36.48.070 are each amended to read as follows:

The county treasurer, the county auditor, and the ~~((chairman))~~ chair of the ~~((board of))~~ county ~~((commissioners))~~ legislative authority, ex officio, shall constitute the county finance committee. The county treasurer shall act as ~~((chairman))~~ chair of the committee and the county auditor as secretary thereof ~~((; and the office of the committee shall be in the office of the county auditor))~~. The committee shall keep a full and complete record of all its proceedings in appropriate books of record and all such records and all correspondence relating to the committee shall be kept in the office of the county auditor and shall be open to public inspection. The committee shall approve county investment policy and shall make appropriate rules and regulations for the carrying out of the provisions of RCW 36.48.010 through 36.48.060, not inconsistent with law.

NEW SECTION. Sec. 12. A new section is added to chapter 36.88 RCW to read as follows:

(1) Any county maintaining a local improvement guaranty fund under this chapter, upon certification by the county treasurer that the local improvement guaranty fund has sufficient funds currently on hand to meet all valid outstanding obligations of the fund and all other obligations of the fund reasonably expected to be incurred in the near future, may by ordinance transfer assets from such fund to its general fund. The net cash of the local improvement guaranty fund may be reduced by such transfer to an amount not less than five percent of the net outstanding obligations guaranteed by such fund.

(2) If, at any time within five years of any transfer of assets from the local improvement guaranty fund to the general fund of the county, the net cash of the local improvement guaranty fund is reduced below the minimum amount specified in subsection (1) of this section, the county shall, to the extent of the amount transferred, pay valid claims against the local improvement guaranty fund as a general obligation of the county. In addition, such county shall pay all reasonable costs of collection necessarily incurred by the holders of valid claims against the local improvement guaranty fund.

Sec. 13. RCW 43.09.240 and 1965 c 8 s 43.09.240 are each amended to read as follows:

Every public officer and employee shall keep all accounts of his office in the form prescribed and make all reports required by the state auditor. Any public officer or employee who refuses or wilfully neglects to perform such duties shall be subject to removal from office in an appropriate proceeding for that purpose brought by the attorney general or by any prosecuting attorney.

Every public officer and employee, whose duty it is to collect or receive payments due or for the use of the public shall deposit such moneys collected or received by him or her with the treasurer of the taxing district once every twenty-four consecutive hours. The treasurer may in his or her discretion grant an exception where such daily transfers would not be administratively practical or feasible.

In case a public officer or employee collects or receives funds for the account of a taxing district of which he or she is an officer or employee, ~~((he))~~ the treasurer shall, ((on Saturday)) by Friday of each week, pay to the proper officer of the taxing district for the account of which the collection was made or payment received, the full amount collected or received during the current week for the account of the district.

Sec. 14. RCW 58.08.040 and 1989 c 378 s 2 are each amended to read as follows:

Any person filing a plat, replat, altered plat, or binding site plan ~~((, or condominium plan))~~ subsequent to May 31st in any year and prior to the date of the collection of taxes, shall deposit with the county treasurer a sum

equal to the product of the county assessor's latest valuation on the unimproved property in such subdivision multiplied by the current year's dollar rate increased by twenty-five percent on the property platted. The treasurer's receipt ~~((for said amount))~~ shall be ~~((taken by the auditor as))~~ evidence of the payment ~~((of the tax))~~. The treasurer shall appropriate so much of ~~((said))~~ the deposit as will pay the taxes on the ~~((said))~~ property when the tax rolls are ~~((placed in his hands))~~ certified by the assessor for collection, and in case the sum deposited is in excess of the amount necessary for the payment of the ~~((said))~~ taxes, the treasurer shall return, to the party depositing, the amount of ~~((said))~~ excess ~~((, taking his receipt therefor, which receipt shall be accepted for its face value on the treasurer's quarterly settlement with the county auditor))~~.

Sec. 15. RCW 82.45.180 and 1982 c 176 s 2 are each amended to read as follows:

The county treasurer shall collect a two-dollar fee on all transactions required by this chapter where the transaction does not require the payment of tax. The county treasurer shall place one percent of the proceeds of the tax imposed by this chapter and the treasurer's fee in the county current expense fund to defray costs of collection and shall pay over to the state treasurer and account to the department of revenue for the remainder of the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. The proceeds of the tax on any sale occurring prior to September 1, 1981, when the proceeds have not been certified by an educational service district superintendent for school districts prior to September 1, 1981, shall be included in the amount remitted to the state treasurer. The state treasurer shall deposit the proceeds in the general fund for the support of the common schools.

Sec. 16. RCW 84.56.020 and 1988 c 222 s 30 are each amended to read as follows:

The county treasurer shall be the receiver and collector of all taxes extended upon the tax rolls of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his or her county. All taxes upon real and personal property made payable by the provisions of this title shall be due and payable to the treasurer ~~((as aforesaid))~~ on or before the thirtieth day of April and shall be delinquent after that date: PROVIDED, That each tax statement shall include a notice that checks for payment of taxes may be made payable to "Treasurer of County" or other appropriate office, but tax statements shall not include any suggestion that checks may be made payable to the name of the individual holding the office of treasurer nor any other individual: PROVIDED FURTHER, That when the total amount of tax or special assessments on personal property or on any lot, block or tract of real property payable by one person is thirty dollars or more, and if one-half of such tax

be paid on or before the ~~((said))~~ thirtieth day of April, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date; PROVIDED FURTHER, That when the total amount of tax or special assessments on any lot, block or tract of real property payable by one person is thirty dollars or more, and if one-half of such tax be paid after the thirtieth day of April but before the thirty-first day of October, together with the applicable interest and penalty on the full amount of such tax, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

Delinquent taxes under this section are subject to interest at the rate of twelve percent per annum computed on a monthly basis from the date of delinquency until paid. Interest shall be calculated at the rate in effect at the time of payment of the tax, regardless of when the taxes were first delinquent. In addition, delinquent taxes under this section are subject to penalties as follows:

(1) A penalty of three percent shall be assessed on the amount of tax delinquent on ~~((May 31st))~~ June 1st of the year in which the tax is due.

(2) An additional penalty of eight percent shall be assessed on the total amount of tax delinquent on ~~((November 30th))~~ December 1st of the year in which the tax is due.

~~((3) Penalties under this section shall not be assessed on taxes that were first delinquent prior to 1982:))~~

For purposes of this chapter, "interest" means both interest and penalties.

All collections of interest on delinquent taxes shall be credited to the county current expense fund; but the cost of foreclosure and sale of real property, and the fees and costs of distraint and sale of personal property, for delinquent taxes, shall, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and shall be used by the county treasurer as a revolving fund to defray the cost of further foreclosure, distraint and sale for delinquent taxes without regard to budget limitations.

Sec. 17. RCW 84.56.050 and 1963 c 94 s 1 are each amended to read as follows:

On receiving the tax rolls the treasurer shall post all real and personal property taxes from ~~((said))~~ the rolls to the treasurer's tax ~~((segregation register))~~ roll, and shall carry forward to the current tax rolls ~~((; or if he so elects to a separate card or other record of delinquencies;))~~ a memorandum of all delinquent taxes on each and every description of property, and enter the same ~~((opposite or under))~~ on the property upon which the ~~((said))~~ taxes are delinquent ~~((; in a space provided for that purpose;))~~ showing the amounts for each year. The treasurer shall notify each taxpayer in ~~((his))~~ the county, at the expense of the county, of the amount of ~~((his))~~ the real

and personal property, and the ~~((total))~~ current and delinquent amount of tax due on the same; and the treasurer shall ~~((either))~~ have printed on ~~((said))~~ the notice the name of each tax and the levy made on the same~~((; or shall during the month of February publish once in a newspaper having general circulation in the county a listing of the levies made in the respective taxing districts and shall upon request furnish such a listing to any one requesting the same, and))~~. The county treasurer shall be the sole collector of all delinquent taxes and all other taxes due and collectible on the tax rolls of the county; PROVIDED, That the term "taxpayer" as used in this section shall mean any person charged, or whose property is charged, with property tax; and the person to be notified is that person whose name appears on the tax roll herein mentioned; PROVIDED, FURTHER, That if no name so appears the person to be notified is that person shown by the treasurer's tax rolls or duplicate tax receipts of any preceding year as the payer of the tax last paid on the property in question.

Sec. 18. RCW 84.56.060 and 1971 ex.s. c 35 s 1 are each amended to read as follows:

The county treasurer upon receiving any tax paid in cash, shall give to the person paying the same a receipt ~~((therefor, specifying therein the land, city or town lot, or other real and personal property on which the tax so paid was levied according to its description on the treasurer's tax roll and the year for which the tax was levied))~~. The treasurer shall record the payment of all taxes in the treasurer's records by parcel. The owner or owners of property against which there are delinquent taxes, shall have the right to pay the current tax without paying any delinquent taxes there may be against ~~((said))~~ the property~~((; PROVIDED, HOWEVER, That in issuing a receipt for such current tax the county treasurer shall endorse upon the face of such receipt a memorandum of all delinquent taxes against the property therein described, showing the year for which said tax is delinquent and the amount of delinquent tax for each and every year. Such receipts shall be numbered consecutively for such year and such numbers and amount of taxes paid shall be immediately entered upon the treasurer's tax roll opposite or under each and every piece of property therein for which such receipt was given; it shall contain the name of the party paying, with the amount and date of payment and the description of the property upon which the tax is paid. Such receipt shall be made out with a stub, which shall be a summary of the receipt. He shall post such collections into his cash or collection register, provided for that purpose, to thus keep an accurate account not only of the gross amount of collections, but also the amount collected upon the consolidated fund and upon each and every separate fund. The treasurer shall also keep a separate register for the purpose of entering therein all collections made on account of delinquent taxes:~~

~~PROVIDED FURTHER, That the treasurer shall be deemed to have complied with the receipt requirement of this section if he shall establish a procedure whereby notice to any person charged with tax is given by mail and which provides each taxpayer with a copy or stub of the tax statement containing all of the information as required on a receipt for payment of the taxes due).~~

Sec. 19. RC\ 84.56.070 and 1975-'76 2nd ex.s. c 10 s 2 are each amended to read as follows:

On the fifteenth day of February succeeding the levy of taxes, the county treasurer shall proceed to collect all personal property taxes. ~~((He))~~ The treasurer shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid before they become delinquent, ~~((he))~~ the treasurer shall forthwith proceed to collect the same. In the event that he or she is unable to collect the same when due, ~~((he))~~ the treasurer shall prepare papers in distraint, which shall contain a description of the personal property, the amount of taxes, the amount of the accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner~~((, and he))~~. The treasurer shall without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same, with interest at the rate provided by law from the date of delinquency, together with all accruing costs, and shall proceed to advertise the same by posting written notices in three public places in the county in which such property has been distrained, one of which places shall be at the county court house, such notice to state the time when and place where such property will be sold. The county treasurer, or ~~((his))~~ the treasurer's deputy, shall tax the same fees for making the distraint and sale of goods and chattels for the payment of taxes as are allowed by law to sheriffs for making levy and sale of property on execution; traveling fees to be computed from the county seat of the county to the place of making distraint. If the taxes for which such property is distrained, and the interest and costs accruing thereon, are not paid before the date appointed for such sale, which shall be not less than ten days after the taking of such property, such treasurer or treasurer's designee shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes, with interest and costs, and if there be any ~~((overplus))~~ excess of money arising from the sale of any personal property, the treasurer shall pay such ~~((overplus))~~ excess less any cost of the auction to the owner of the property so sold or to his or her legal representative: **PROVIDED**, That whenever it shall become necessary to distraint any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish trap, pound net, reef net, set net or drag seine fishing location, or any other personal property as the treasurer shall determine to be incapable or reasonably impracticable of manual delivery, it shall be deemed to have been distrained and taken into possession

when the ~~((said))~~ treasurer shall have, at least thirty days before the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located a notice in writing reciting that ~~((he))~~ the treasurer has distrained such property, describing it, giving the name of the owner or reputed owner, the amount of the tax due, with interest, and the time and place of sale; a copy of ~~((said))~~ the notice shall also be sent to the owner or reputed owner at his last known address, by registered letter at least thirty days prior to the date of sale: AND PROVIDED FURTHER, That if the county treasurer has reasonable grounds to believe that any personal property upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, or is about to be destroyed, sold or disposed of, the county treasurer may demand such taxes, without the notice provided for in this section, and if necessary may forthwith distrain sufficient goods and chattels to pay the same.

Sec. 20. RCW 84.56.120 and 1961 c 15 s 84.56.120 are each amended to read as follows:

After personal property has been assessed, it shall be unlawful for any person to remove the same from the county in which the property was assessed and from the state until taxes and interest are paid, or until notice has been given to the county treasurer describing the property to be removed and in case of public sales of personal property, a list of the property desired to be sold shall be sent to the treasurer, and no property shall be sold at such sale until the tax has been paid, the tax to be computed upon the consolidated tax levy for the previous year. Any person violating the provisions of this section shall be guilty of a misdemeanor.

Sec. 21. RCW 84.56.220 and 1961 c 15 s 84.56.220 are each amended to read as follows:

In the event of the destruction of personal property ~~((by fire after the date of delinquency of any year))~~, the lien of the personal property tax shall attach to and follow any insurance that may be upon ~~((said))~~ the property and the insurer shall pay to the county treasurer from the ~~((said))~~ insurance money all taxes, interest and costs that may be due~~((, and or are a lien against the identical property so destroyed))~~.

Sec. 22. RCW 84.56.230 and 1973 1st ex.s. c 43 s 1 are each amended to read as follows:

On the first day of each month the county treasurer shall distribute pro rata, according to the rate of levy for each fund, the amount collected as consolidated tax during the preceding month~~((, and shall certify the same to the county auditor))~~: PROVIDED, HOWEVER, That the county treasurer, at his or her option, may distribute the total amount of such taxes collected according to the ratio that the levy of taxes made for each taxing district in the county bears to such total amount collected. On or before the tenth day

of each month the county treasurer shall ~~((turn-over))~~ remit to the respective city treasurers the cities' pro rata share of all taxes collected for the previous month ~~((and take receipts therefor in duplicate, and shall certify to the city comptroller or other accounting officer of each such city the amount of such taxes so collected and turned over, and shall deliver with such certificate one copy of the receipt of the city treasurer therefor))~~ as provided for in RCW 36.29.110.

Sec. 23. RCW 84.56.260 and 1984 c 250 s 7 are each amended to read as follows:

The power and duty to levy on property and collect any tax due and unpaid shall ~~((continue in and devolve upon))~~ be the responsibility of the county treasurer ~~((and his successors in office after his return to the county auditor, and))~~ until the tax is paid; and the ~~((warrant attached to))~~ certification of the assessment roll shall continue in force and confer authority upon the treasurer to whom the same was issued ~~((; and upon his successors in office;))~~ to collect any tax due and uncollected thereon. This section shall apply to all assessment rolls ~~((and the warrants thereto attached. PROVIDED, That taxes imposed but not collected on boats for the years 1980 through 1982 may not be collected)),~~ special assessments, fees, rates, or other charges for which the treasurer has the responsibility for collection.

Sec. 24. RCW 84.56.280 and 1979 ex.s. c 86 s 7 are each amended to read as follows:

Immediately after the last day of each month, the county treasurer shall pay over to the state treasurer the amount collected by ~~((him))~~ the county treasurer and credited to the various state funds, but every such payment shall be subject to correction for error discovered ~~((upon the quarterly settlement next following. The county auditor shall at the same time ascertain and report to the department of revenue in writing the amounts due to the various state funds)).~~ If they are not paid to the state treasurer before the twentieth day of the month ~~((he))~~ the state treasurer shall make a sight draft on the county treasurer for such amount. ~~((On the first Mondays of January, April, July, and October, respectively, of each year, the county treasurer shall make full settlement with the county auditor of his receipts and collections for all purposes from the date of the last settlement up to and including the last day of the preceding month. The county auditor shall, on or before the fifteenth day of the month in which such settlement is made, notify the department of revenue of the result of the quarterly settlement with the county treasurer;))~~ Should any county treasurer fail or refuse to honor the draft or make payment of the amount thereon, except for manifest error or other good and sufficient cause, ~~((he))~~ the county treasurer shall be guilty of nonfeasance in office and upon conviction thereof shall be punished according to law.

Sec. 25. RCW 84.64.050 and 1989 c 378 s 37 are each amended to read as follows:

After the expiration of three years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on ~~((said))~~ the property to the county for all years' taxes, interest, and costs: PROVIDED, That the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs to a minimum of the taxes, interest, and costs for the earliest year.

Certificates of delinquency shall be prima facie evidence that:

(1) The property described was subject to taxation at the time the same was assessed;

(2) The property was assessed as required by law;

(3) The taxes or assessments were not paid at any time before the issuance of the certificate;

(4) Such certificate shall have the same force and effect as a lis pendens required under chapter 4.28 RCW.

The county treasurer may include in the certificate of delinquency any assessments which are due on the property and are the responsibility of the county treasurer to collect. For purposes of this chapter, "taxes, interest, and costs" include any assessments which are so included by the county treasurer.

~~((The change to a three-year grace period shall first be effective on May 1, 1983. Prior to that date, the county treasurer shall send a notice to all taxpayers with taxes delinquent for two years or more, notifying them of the change in the grace period:))~~ The treasurer shall file ~~((said))~~ the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer shall thereupon, with ~~((such))~~ legal assistance ~~((as the county legislative authority shall provide in counties having a population of thirty thousand or more, and with the assistance of))~~ from the county prosecuting attorney ~~((in counties having a population of less than thirty thousand)),~~ proceed to foreclose in the name of the county, the tax liens embraced in such certificates~~((, and the same proceedings shall be had as when held by an individual: PROVIDED, That)),~~ Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either ~~((+))~~ (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or ~~((+))~~ (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien

of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. ~~((In addition to))~~ If such notice is returned as unclaimed, the treasurer shall send notice by regular first class mail. The notice shall include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only. ~~((It shall be the duty of the county treasurer to mail a copy of the published summons, within fifteen days after the first publication thereof, to the treasurer of each city or town within which any property involved in a tax foreclosure is situated, but the treasurer's failure to do so shall not affect the jurisdiction of the court nor the priority of any tax sought to be foreclosed. Said))~~ The certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against ((said)) the property may be brought in one action and all persons interested in any of the property involved in ((said)) the proceedings may be made codefendants in ((said)) the action, and if unknown may be therein named as unknown owners, and the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of ((said)) the property shall be considered and treated as the owner or owners of ((said)) the property for the purpose of this section, and if upon ((said)) the treasurer's rolls it appears that the owner or owners of ((said)) the property are unknown, then ((said)) the property shall be proceeded against, as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of ((said)) the proceedings and of any and all steps thereunder: PROVIDED, That prior to the sale of the property, ((if such property is shown on the tax rolls under unknown owners or as having an assessed value of three thousand dollars or more;)) the treasurer shall order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the treasurer's rolls as the owner or owners, the record title holder or holders shall be considered and treated as the owner or owners of ((said)) the property for the purpose of this section, and shall be entitled to the notice provided for in this section. Such title search shall be included in the costs of foreclosure.

The county treasurer shall not ~~((issue certificates of delinquency upon))~~ sell property which is eligible for deferral of taxes under chapter 84.38 RCW but shall require the owner of the property to file a declaration to defer taxes under chapter 84.38 RCW.

Sec. 26. RCW 84.64.070 and 1963 c 88 s 2 are each amended to read as follows:

Real property upon which certificates of delinquency have been issued under the provisions of this chapter, may be redeemed at any time before the close of business the day before the day of the sale, by payment, ~~((in legal money of the United States))~~ as prescribed by the county treasurer, to the county treasurer of the proper county, ~~((for the benefit of the owner of the certificate of delinquency against said property,))~~ of the amount for which the certificate of delinquency was ~~((sold))~~ issued, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes from date of issuance of ~~((said))~~ the certificate of delinquency until paid. The person redeeming such property shall also pay the amount of all taxes, interest and costs accruing after the issuance of such certificate of delinquency, ~~((and paid by the holder of said certificate of delinquency or his assignee,))~~ together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes on such payment from the day the same was made. No fee shall be charged for any redemption. Tenants in common or joint tenants shall be allowed to redeem their individual interest in real property for which certificates of delinquency have been issued under the provisions of this chapter, in the manner and under the terms specified in this section for the redemption of real property other than that of ~~((insane))~~ persons ~~((and))~~ adjudicated to be legally incompetent or minors ~~((heirs. Any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject, however, to the right of the person making the same to be reimbursed by the person benefited)).~~ If the real property of any minor, or any ~~((insane))~~ person adjudicated to be legally incompetent, be sold for nonpayment of taxes, the same may be redeemed at any time within three years after the ~~((issuance of the tax deed))~~ date of sale upon the terms specified in this section, on the payment of interest at the statutory rate per annum charged on delinquent general real and personal property taxes on the amount for which the same was sold, from and after the date of sale, and in addition the redemptioner shall pay the reasonable value of all improvements made in good faith on the property, less the value of the use thereof, which redemption may be made by themselves or by any person in their behalf.

Sec. 27. RCW 84.64.080 and 1981 c 322 s 5 are each amended to read as follows:

The court shall examine each application for judgment foreclosing tax lien, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of ~~((said))~~ the lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or ~~((said))~~ the court may, in its

discretion, continue such individual cases, wherein defense is offered, to such time as may be necessary, in order to secure substantial justice to the contestants therein; but in all other cases ((said)) the court shall proceed to determine the matter in a summary manner as above specified. In all judicial proceedings of any kind for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action pending in such court shall be allowed, and no assessments of property or charge for any of ((said)) the taxes shall be considered illegal on account of any irregularity in the tax list or assessment rolls or on account of the assessment rolls or tax list not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court. The court shall give judgment for such taxes, interest and costs as shall appear to be due upon the several lots or tracts described in ((said)) the notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs, and the court shall order and direct the clerk to make and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in the law or equity may be just. ((Said)) The order shall be signed by the judge of the superior court ((and attested by the clerk thereof, and a certified copy of said order, together with the list of the property therein ordered sold)), shall be delivered to the county treasurer, and shall be full and sufficient authority for him or her to proceed to sell ((said)) the property for ((said)) the sum as set forth in ((said)) the order and to take such further steps in the matter as are provided by law. The county treasurer shall immediately after receiving the order and judgment of the court proceed to sell the property as provided in this chapter to the highest and best bidder for cash. The acceptable minimum bid shall be the total amount of taxes, interest, penalties, and costs. All sales shall be made at ((such place on)) a location in the county ((property as the county legislative authority may direct on Friday between the hours of 9 o'clock in the morning and 9 o'clock in the evening, as the county legislative authority)) on a date and time (except Saturdays, Sundays, or legal holidays) as the county treasurer may direct, and shall continue from day to day (Saturdays ((and)),

Sundays, and legal holidays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time, and place where such sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which shall be in the office of ((said)) the treasurer. The notice shall be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of in the state of Washington, and an order of sale duly issued by ((said)) the court, entered the day of,, in proceedings for foreclosure of tax liens upon real property, as per provisions of law, I shall on the day of,, at o'clock a.m., at in the city of, and county of, state of Washington, sell the ((following described lands or lots;)) real property to the highest and best bidder for cash, to satisfy the full amount of taxes, interest and costs adjudged to be due ((thereon as follows, to wit: (Description of property:))).

In witness whereof, I have hereunto affixed my hand and seal this day of,

.....
Treasurer of county.

No county officer or employee shall directly or indirectly be a purchaser of such property at such sale.

~~((The treasurer may include in one notice any number of separate tracts or lots;))~~

If any buildings or improvements are upon an area encompassing more than one tract or lot, the same must be advertised and sold as a single unit.

If the highest amount bid for any such separate unit tract or lot is in excess of the ((entire amount of the taxes and interest)) minimum bid due upon the whole property included in the certificate of delinquency, the excess shall be refunded following payment of all water and sewer district liens, on application therefor, to the record owner of the property. The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency. In the event no claim for the ((said)) excess is received by the county treasurer within three years after the date of the sale he or she shall at expiration of the three year period deposit such excess in the current expense fund of the county. The county treasurer shall execute to the purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, under the official seal of his or her office, shall be recorded in the same manner as other conveyances of real property, and shall vest in the grantee, his or her heirs and assigns the title to the property therein described, without further acknowledgment

or evidence of such conveyance, and shall be substantially in the following form:

State of Washington }
County of } ss.

This indenture, made this day of,, between, as treasurer of county, state of Washington, party of the first part, and, party of the second part:

Witnesseth, that, whereas, at a public sale of real property held on the day of,, pursuant to a real property tax judgment entered in the superior court in the county of on the day of,, in proceedings to foreclose tax liens upon real property and an order of sale duly issued by ((said)) the court, duly purchased in compliance with the laws of the state of Washington, the following described real property, to wit: (Here place description of real property conveyed) and that ((said)) the has complied with the laws of the state of Washington necessary to entitle (him, or her or them) to a deed for ((said)) the real property.

Now, therefore, know ye, that, I, county treasurer of ((said)) the county of, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto, his or her heirs and assigns, forever, the ((said)) real property hereinbefore described.

Given under my hand and seal of office this day of, A.D.

.....
County Treasurer.

Sec. 28. RCW 84.64.120 and 1988 c 202 s 70 are each amended to read as follows:

Appellate review of the judgment of the superior court may be sought as in other civil cases. However, review must be sought within thirty days after the entry of the judgment and the party taking such appeal shall ~~((execute, serve and file a bond payable to the state of Washington, with two or more sureties, to be approved by the court, in an amount to be fixed by the court))~~ deposit a sum equal to all taxes, interest, penalties, and costs with the clerk of the court, conditioned that the appellant shall prosecute ((his said)) the appeal with effect, and will pay the amount of any taxes, interest and costs which may be finally adjudged against the real property involved in the appeal by any court having jurisdiction of the cause((which bond shall be so served and filed at the time of the service of said notice of appeal, and the respondent may, within five days after the service of such bond, object to the sureties thereon, or to the form and substance of such

~~bond, in the court in which the action is pending, and if, upon hearing of such objections to said bond, it is determined by the court that the sureties thereon are insufficient for any reason, or that the bond is defective for any other reason, the court shall direct a new bond to be executed with sureties thereon, to be justified as provided by law, but)).~~ No appeal shall be allowed from any judgment for the sale of land or lot for taxes ~~((, and no bond given on appeal as herein provided shall operate as a supersedeas,))~~ unless the party taking such appeal shall before the time of giving notice of such appeal, and within thirty days herein allowed within which to appeal, deposit with the ~~((county treasurer))~~ clerk of the court of the county in which the land or lots are situated, an amount of money equal to the amount of the judgment and costs rendered in such cause by the trial court. If, in case of an appeal, the judgment of the lower court shall be affirmed, in whole or in part, the supreme court or the court of appeals shall enter judgment for the amount of taxes, interest and costs, with damages not to exceed twenty percent, and shall order that the amount deposited with the ~~((treasurer as aforesaid))~~ clerk of the court, or so much thereof as may be necessary, be credited upon the judgment so rendered, and execution shall issue for the balance of ~~((said))~~ the judgment, damages and costs. The clerk of the supreme court or the clerk of the division of the court of appeals in which the appeal is pending shall transmit to the county treasurer of the county in which the land or lots are situated a certified copy of the order of affirmance, and it shall be the duty of such county treasurer upon receiving the same to apply so much of the amount deposited with ~~((him, as aforesaid))~~ the clerk of the court, as shall be necessary to satisfy the amount of the judgment of the supreme court, and to account for the same as collected taxes. If the judgment of the superior court shall be reversed and the cause remanded for a rehearing, and if, upon a rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, as herein provided, the clerk of such superior court shall certify to the county treasurer the amount of such judgment, and thereupon it shall be the duty of the county treasurer to certify to the county clerk the amount deposited with ~~((him, as aforesaid))~~ the clerk of the court, and the county clerk shall credit such judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county treasurer shall be chargeable and accountable for the amount so credited as collected taxes. Nothing herein shall be construed as requiring an additional deposit in case of more than one appeal being prosecuted in ~~((said))~~ proceeding. If, upon a final hearing, judgment shall be refused for the sale of the land or lots for the taxes, penalties, interest and costs, or any part thereof, in ~~((said))~~ the proceedings, the county treasurer shall pay over to the party who shall have made such deposit, or his or her legally authorized agent or representative, the amount of the deposit, or so much thereof

as shall remain after the satisfaction of the judgment against the land or lots in respect to which such deposit shall have been made.

Sec. 29. RCW 84.64.215 and 1961 c 15 s 84.64.215 are each amended to read as follows:

In addition to ~~((the fees required to be collected by the county treasurer for the issuance of a deed upon the sale of general tax title property))~~ a five-dollar fee for preparing the deed, the treasurer shall collect the proper recording fee. This recording fee together with the deed shall then be transmitted by the treasurer to the county auditor who will record the same and mail the deed to the purchaser.

Sec. 30. RCW 84.64.270 and 1981 c 322 s 7 are each amended to read as follows:

Real property heretofore or hereafter acquired by any county of this state by foreclosure of delinquent taxes may be sold by order of the county legislative authority of the county when in the judgment of the members of the legislative authority they deem it for the best interests of the county to sell the same. When the legislative authority desires to sell any such property it may, if deemed advantageous to the county, combine any or all of the several lots and tracts of such property in one or more units, and may reserve from sale coal, oil, gas, gravel, minerals, ores, fossils, timber, or other resources on or in ~~((said))~~ the lands, and the right to mine for and remove the same, and it shall then enter an order on its records fixing the unit or units in which the property shall be sold and the minimum price for each of such units, and whether the sale will be for cash or whether a contract will be offered, and reserving from sale such of ~~((said))~~ the resources as it may determine and from which units such reservations shall apply, and directing the county treasurer to sell such property in the unit or units and at not less than the price or prices and subject to such reservations so fixed by the county legislative authority: PROVIDED, That the ~~((said))~~ order shall be subject to the approval of the county treasurer if several lots or tracts of land are combined in one unit. It shall be the duty of the county treasurer upon receipt of such order to publish once a week for three consecutive weeks a notice of the sale of such property in a newspaper ~~((printed and published))~~ of general circulation in the county where the land is situated ~~((: PROVIDED, That in counties where there is no newspaper published, the treasurer of such county shall cause such notice to be published in some newspaper in the state of general circulation in such county having no resident newspaper, said))~~. The notice shall describe the property to be sold, the unit or units, the reservations, and the minimum price fixed in ~~((said))~~ the order, together with the time and place and terms of sale, ~~((which said sale shall be made at such place on county property as the county legislative authority may direct in the county in which the land is situated and at such time between the hours of 9 o'clock a.m. and 9 o'clock p.m. as the county legislative authority may direct, and all sales so made~~

~~shall be to the highest and best bidder at such sale, and sales to be made under the provisions of this chapter may be adjourned from day to day by the county treasurer by public announcement made by the treasurer at the time and place designated in the notice of such sale, or at the time and place to which said sale may be adjourned))~~ in the same manner as foreclosure sales as provided by RCW 84.64.080. The person making the bid shall state whether he or she will pay cash for the amount of his or her bid or accept a real estate contract of purchase in accordance with the provisions hereinafter contained. The person making the highest bid shall become the purchaser of ~~((said))~~ the property. If the highest bidder is a contract bidder the purchaser shall be required to pay thirty percent of the total purchase price at the time of ~~((said))~~ the sale and shall enter into a contract with the county as vendor and the purchaser as vendee which shall obligate and require the purchaser to pay the balance of ~~((said))~~ the purchase price in ten equal annual installments commencing November 1st and each year following the date of ~~((said))~~ the sale, and shall require ~~((said))~~ the purchaser to pay twelve percent interest on all deferred payments, interest to be paid at the time the annual installment is due; and may contain a provision authorizing the purchaser to make payment in full at any time of any balance due on the total purchase price plus accrued interest on such balance. ~~((Said))~~ The contract shall contain a provision requiring the purchaser to pay before delinquency all subsequent taxes and assessments that may be levied or assessed against ~~((said))~~ the property subsequent to the date of ~~((said))~~ the contract, and shall contain a provision that time is of the essence of the contract and that in event of a failure of the vendee to make payments at the time and in the manner required and to keep and perform the covenants and conditions therein required of him or her that the ~~((said))~~ contract may be forfeited and terminated at the election of the vendor, and that in event of ~~((said))~~ the election all sums theretofore paid by the vendee shall be forfeited as liquidated damages for failure to comply with the provisions of ~~((said))~~ the contract; and shall require the vendor to execute and deliver to the vendee a deed of conveyance covering ~~((said))~~ the property upon the payment in full of the purchase price, plus accrued interest: PROVIDED FURTHER, That the county legislative authority may, by order entered in its records, direct ~~((said))~~ the coal, oil, gas, gravel, minerals, ores, timber, or other resources sold apart from the land, such sale to be conducted in the manner hereinabove prescribed for the sale of the land: PROVIDED FURTHER, That any such reserved minerals or resources not exceeding two hundred dollars in value may be sold, when the county legislative authority deems it advisable, either with or without such publication of the notice of sale, and in such manner as the county legislative authority may determine will be most beneficial to the county.

Sec. 31. RCW 84.69.020 and 1989 c 378 s 17 are each amended to read as follows:

On the order of the county treasurer, ad valorem taxes paid before or after delinquency shall be refunded if they were:

- (1) Paid more than once; or
- (2) Paid as a result of manifest error in description; or
- (3) Paid as a result of a clerical error in extending the tax rolls; or
- (4) Paid as a result of other clerical errors in listing property; or
- (5) Paid with respect to improvements which did not exist on assessment date; or
- (6) Paid under levies or statutes adjudicated to be illegal or unconstitutional; or
- (7) Paid as a result of mistake, inadvertence, or lack of knowledge by any person exempted from paying real property taxes or a portion thereof pursuant to RCW 84.36.381 through 84.36.389, as now or hereafter amended; or
- (8) Paid or overpaid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person paying the same or paid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person paying the same with respect to real property in which the person paying the same has no legal interest; or
- (9) Paid on the basis of an assessed valuation which was appealed to the county board of equalization and ordered reduced by the board; or
- (10) Paid on the basis of an assessed valuation which was appealed to the state board of tax appeals and ordered reduced by the board: **PROVIDED**, That the amount refunded under subsections (9) and (10) of this section shall only be for the difference between the tax paid on the basis of the appealed valuation and the tax payable on the valuation adjusted in accordance with the board's order; or
- (11) Paid as a state property tax levied upon property, the assessed value of which has been established by the state board of tax appeals for the year of such levy: **PROVIDED, HOWEVER**, That the amount refunded shall only be for the difference between the state property tax paid and the amount of state property tax which would, when added to all other property taxes within the one percent limitation of Article VII, section 2 (Amendment 59) of the state Constitution equal one percent of the assessed value established by the board;
- (12) Paid on the basis of an assessed valuation which was adjudicated to be unlawful or excessive: **PROVIDED**, That the amount refunded shall be for the difference between the amount of tax which was paid on the basis of the valuation adjudged unlawful or excessive and the amount of tax payable on the basis of the assessed valuation determined as a result of the proceeding; or
- (13) Paid on property acquired under RCW 84.60.050, and canceled under RCW 84.60.050(2).

No refunds under the provisions of this section shall be made because of any error in determining the valuation of property, except as authorized in subsections (9), (10), (11), and (12) of this section nor may any refunds be made if a bona fide purchaser has acquired rights that would preclude the assessment and collection of the refunded tax from the property that should properly have been charged with the tax. Any refunds made on delinquent taxes shall include the proportionate amount of interest and penalties paid.

The county treasurer of each county shall make all refunds determined to be authorized by this section, and by the first Monday in January of each year, report to the county legislative authority a list of all refunds made under this section during the previous year. The list is to include the name of the person receiving the refund, the amount of the refund, and the reason for the refund.

Sec. 32. RCW 84.69.030 and 1989 c 378 s 32 are each amended to read as follows:

Except in cases wherein the county legislative authority acts upon its own motion, no orders for a refund under this chapter shall be made except on a claim:

- (1) Verified by the person who paid the tax, the person's guardian, executor or administrator; and
- (2) Filed with the county ~~((legislative authority))~~ treasurer within three years after making of the payment sought to be refunded; and
- (3) Stating the statutory ground upon which the refund is claimed.

Sec. 33. RCW 84.69.040 and 1961 c 15 s 84.69.040 are each amended to read as follows:

Refunds ordered by the ~~((board of))~~ county ~~((commissioners))~~ legislative authority may include:

- (1) A portion of amounts paid to the state treasurer by the county treasurer as money belonging to the state; and also
- (2) County taxes and taxes collected by county officers for taxing districts.

Sec. 34. RCW 84.69.060 and 1989 c 378 s 18 are each amended to read as follows:

Refunds ordered under this chapter with respect to county, state, and taxing district taxes shall be paid by checks drawn upon the appropriate fund by the county treasurer: PROVIDED, That in making refunds on a levy code or tax code bases, the county treasurer may make an adjustment on the ~~((next))~~ subsequent year's property tax payment due for the amount of the refund ~~((unless the taxpayer requests immediate refund)).~~

Sec. 35. RCW 85.05.280 and 1985 c 396 s 38 are each amended to read as follows:

The board of commissioners of such district shall elect one of their number (~~((chairman))~~ chair and shall either elect one of their number, or appoint a voter of the district, as secretary, who shall keep minutes of all the district's proceedings. The board of commissioners may issue warrants of such district in payment of all claims of indebtedness against such district. Such warrants shall be in form and substance the same as county warrants(~~((, or as near the same as may be practicable;))~~) and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the ~~((chairman))~~ chair and attested by the secretary of ~~((said))~~ the board: PROVIDED, That no warrants shall be issued by ~~((said))~~ the board of commissioners in payment of any indebtedness of such district for less than the face or par value.

Sec. 36. RCW 85.05.360 and 1986 c 278 s 29 are each amended to read as follows:

All warrants issued under the provisions of this ~~((act))~~ chapter shall be presented by the owners thereof to the county treasurer(~~((, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this act until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the outstanding warrants as he may be able to pay. PROVIDED, That thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two weeks, consecutively, and said warrants shall be called in and paid in the order of their indorsement))~~) in accordance with chapter 36.29 RCW.

Sec. 37. RCW 84.56.290 and 1987 c 168 s 3 are each amended to read as follows:

Whenever any tax shall have been heretofore, or shall be hereafter, canceled, reduced or modified in any final judicial, county board of equalization, state board of tax appeals, or administrative proceeding; or whenever any tax shall have been heretofore, or shall be hereafter canceled by sale of property to any irrigation district under foreclosure proceedings for delinquent irrigation district assessments; or whenever any contracts or leases on public lands shall have been heretofore, or shall be hereafter, canceled and the tax thereon remains unpaid for a period of two years, the director of revenue shall, upon receipt from the county treasurer of a certified copy of the final judgment, order, or decree canceling, reducing, or modifying taxes, or of a certificate from the county treasurer of the cancellation by sale to an irrigation district, or of a certificate from the commissioner of public lands and the county treasurer of the cancellation of public land

contracts or leases and nonpayment of taxes thereon, as the case may be, make corresponding entries and corrections on ~~((his))~~ the director's records of the state's portion of reduced or canceled tax.

Upon canceling taxes deemed uncollectible, the county commissioners shall notify the county treasurer of such action, whereupon the county treasurer shall deduct on ~~((his))~~ the treasurer's records the amount of such uncollectible taxes due the various state funds and shall immediately notify the department of revenue of ~~((his))~~ the treasurer's action and of the reason therefor; which uncollectible tax shall not then nor thereafter be due or owing the various state funds and the necessary corrections shall be made by the county treasurer upon the quarterly settlement next following.

When any assessment of property is made which does not appear on the assessment list certified by the county board of equalization to the ~~((state board))~~ department of ~~((equalization))~~ revenue the county assessor shall indicate to the county treasurer the assessments and the taxes due therefrom when the list is delivered to the county treasurer on December 15th. The county treasurer shall then notify the department of revenue of the taxes due the state from the assessments which did not appear on the assessment list certified by the county board of equalization to the ~~((state board))~~ department of ~~((equalization))~~ revenue. The county treasurer shall make proper accounting of all sums collected as either advance tax, compensating or additional tax, or supplemental or omitted tax and shall notify the department of revenue of the amounts due the various state funds according to the levy used in extending such tax, and those amounts shall immediately become due and owing to the various state funds, to be paid to the state treasurer in the same manner as taxes extended on the regular tax roll.

Sec. 38. RCW 84.69.070 and 1973 2nd ex.s. c 5 s 3 are each amended to read as follows:

Refunds ordered with respect to taxing districts shall be paid by checks drawn by the county treasurer upon such available funds, if any, as the taxing districts may have on deposit in the county treasury, or in the event such funds are insufficient, then out of funds subsequently accruing to such taxing district and on deposit in the county treasury. When such refunds are made as a result of taxes paid under levies or statutes adjudicated to be illegal or unconstitutional all administrative costs including interest paid on the refunds incurred by the county treasurer in making such refunds shall be a charge against the funds of such districts and/or the state on a pro rata basis until the county current expense fund is fully reimbursed for the administrative expenses incurred in making such refund: PROVIDED, That whenever orders for refunds of ad valorem taxes promulgated by ~~((boards of county commissioners))~~ the county treasurer or county legislative authority and unpaid checks shall expire and become void as provided in RCW 84.69.110, then any moneys remaining in a refund account established by the

county treasurer for any taxing district may be transferred by the county treasurer from such refund account to the county current expense fund to reimburse the county for the administrative expense incurred in making refunds as prescribed herein. Any excess then remaining in the taxing district refund account may then be transferred by the county treasurer to the current expense fund of the taxing district for which the tax was originally levied and collected.

Sec. 39. RCW 84.69.110 and 1961 c 15 s 84.69.110 are each amended to read as follows:

Every order for refund of ad valorem taxes promulgated by the (~~board of county commissioners~~) county treasurer or county legislative authority under authority of this chapter as hereafter amended shall expire and be void three years from the date of the order and all unpaid checks shall become void.

Sec. 40. RCW 84.69.120 and 1989 c 378 s 33 are each amended to read as follows:

If the county (~~legislative authority~~) treasurer rejects a claim or fails to act within six months from the date of filing of a claim for refund in whole or in part, the person who paid the taxes, the person's guardian, executor, or administrator may within one year after the date of the filing of the claim commence an action in the superior court against the county to recover the taxes which the county (~~legislative authority~~) treasurer has refused to refund.

NEW SECTION. Sec. 41. The following sections are decodified:

- (1) RCW 84.28.005;
- (2) RCW 84.28.006;
- (3) RCW 84.28.010;
- (4) RCW 84.28.020;
- (5) RCW 84.28.050;
- (6) RCW 84.28.060;
- (7) RCW 84.28.063;
- (8) RCW 84.28.065;
- (9) RCW 84.28.080;
- (10) RCW 84.28.090;
- (11) RCW 84.28.095;
- (12) RCW 84.28.100;
- (13) RCW 84.28.110;
- (14) RCW 84.28.140;
- (15) RCW 84.28.150;
- (16) RCW 84.28.160;
- (17) RCW 84.28.170;
- (18) RCW 84.28.200;
- (19) RCW 84.28.205;

- (20) RCW 84.28.210; and
- (21) RCW 84.28.215.

NEW SECTION. Sec. 42. The following acts or parts of acts are each repealed:

- (1) RCW 36.29.030 and 1963 c 4 s 36.29.030;
- (2) RCW 36.29.080 and 1963 c 4 s 36.29.080;
- (3) RCW 36.29.140 and 1963 c 4 s 36.29.140;
- (4) RCW 36.32.180 and 1984 c 128 s 1 & 1963 c 4 s 36.32.180;
- (5) RCW 84.64.010 and 1961 c 15 s 84.64.010;
- (6) RCW 84.64.020 and 1961 c 15 s 84.64.020;
- (7) RCW 84.64.030 and 1984 c 220 s 18, 1984 c 179 s 1, 1981 c 322 s 3, 1972 ex.s. c 84 s 1, & 1961 c 15 s 84.64.030;
- (8) RCW 84.64.140 and 1961 c 15 s 84.64.140;
- (9) RCW 84.64.145 and 1972 ex.s. c 84 s 4;
- (10) RCW 84.64.150 and 1961 c 15 s 84.64.150;
- (11) RCW 84.64.160 and 1961 c 15 s 84.64.160;
- (12) RCW 84.64.170 and 1961 c 15 s 84.64.170;
- (13) RCW 84.64.210 and 1961 c 15 s 84.64.210; and
- (14) RCW 84.64.240 and 1961 c 15 s 84.64.240.

NEW SECTION. Sec. 43. The following acts or parts of acts are each repealed:

- (1) RCW 84.04.043 and 1979 c 107 s 26;
- (2) RCW 84.08.110 and 1975 1st ex.s. c 278 s 154 & 1961 c 15 s 84.08.110;
- (3) RCW 84.40.100 and 1961 c 15 s 84.40.100;
- (4) RCW 84.40.250 and 1961 c 15 s 84.40.250;
- (5) RCW 84.40.330 and 1975 1st ex.s. c 278 s 196 & 1961 c 15 s 84.40.330;
- (6) RCW 84.40A.020 and 1971 ex.s. c 43 s 2;
- (7) RCW 84.40A.030 and 1971 ex.s. c 43 s 3;
- (8) RCW 84.40A.040 and 1971 ex.s. c 43 s 4;
- (9) RCW 84.40A.050 and 1971 ex.s. c 43 s 5;
- (10) RCW 84.44.040 and 1961 c 15 s 84.44.040;
- (11) RCW 84.44.060 and 1961 c 15 s 84.44.060; and
- (12) RCW 84.44.070 and 1961 c 15 s 84.44.070.

Passed the House March 14, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 246

[Engrossed Substitute Senate Bill 5837]

UNEMPLOYMENT COMPENSATION—COVERED EMPLOYMENT—REVISED
PROVISIONS

Effective Date: 1/1/92

AN ACT Relating to employment; amending RCW 51.08.070, 51.08.180, 51.12.020, 51.12.110, 50.04.140, and 50.04.230; adding a new section to chapter 51.08 RCW; repealing RCW 51.12.115; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 51.08 RCW to read as follows:

As a separate alternative to the definition of "employer" under section 2 of this act and the definition of "worker" under section 3 of this act, services performed by an individual for remuneration shall not constitute employment subject to this title if it is shown that:

(1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact; and

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting.

Sec. 2. RCW 51.08.070 and 1981 c 128 s 1 are each amended to read as follows:

"Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers. Or as a separate alternative, persons or entities are not employers when they contract or agree to remunerate the services performed by an individual who meets the tests set forth in subsections (1) through (6) of section 1 of this act.

For the purposes of this title, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an employer when:

(1) Contracting with any other person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(3) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(4) The work which the person, firm, or corporation has contracted to perform is:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW.

Sec. 3. RCW 51.08.180 and 1987 c 175 s 3 are each amended to read as follows:

(1) "Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as a separate alternative, a person is not a worker if he or she meets the tests set forth in subsections (1) through (6) of section 1 of this act: PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

(2) For the purposes of this title, any person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not a worker when:

(a) Contracting to perform work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(b) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(c) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(d) The work which the person, firm, or corporation has contracted to perform is:

(i) The work of a contractor as defined in RCW 18.27.010; or

(ii) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW.

(3) Any person, firm, or corporation registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW including those performing work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is a worker when the contractor supervises or controls the means by which the result is accomplished or the manner in which the work is performed.

(4) For the purposes of this title, any person participating as a driver or back-up driver in commuter ride sharing, as defined in RCW 46.74.010(1), is not a worker while driving a ride-sharing vehicle on behalf of the owner or lessee of the vehicle.

Sec. 4. RCW 51.12.020 and 1987 c 316 s 2 are each amended to read as follows:

The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, repair, remodeling, or similar work in or about the private home of the employer.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners (~~PROVIDED, That after July 26, 1981, sole proprietors or partners who for the first time register under~~

~~chapter 18.27 RCW or become licensed for the first time under chapter 19.28 RCW shall be included under the mandatory coverage provisions of this title subject to the provisions of RCW 51.32.030. These persons may elect to withdraw from coverage under RCW 51.12.115).~~

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected ((and empowered)) or voluntarily appointed in accordance with the articles of incorporation or bylaws of ((a)) the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in RCW 23B.01.400(19) may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

((However, any)) (d) A corporation may elect to cover ((such)) officers who are ((in fact employees of the corporation)) exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A

purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper carrier selling or distributing newspapers on the street or from house to house.

(11) Services performed by an insurance agent, insurance broker, or insurance solicitor, as defined in RCW 48.17.010, 48.17.020, and 48.17.030, respectively.

Sec. 5. RCW 51.12.110 and 1982 c 63 s 17 are each amended to read as follows:

Any employer who has in his or her employment any person or persons excluded from mandatory coverage pursuant to RCW 51.12.020 (~~((1), (2), (3), (4), (6), (7), (8), or (9))~~) may file notice in writing with the director, on such forms as the department may provide, of his or her election to make such persons otherwise excluded subject to this title. The employer shall forthwith display in a conspicuous manner about his or her works, and in a sufficient number of places to reasonably inform his or her workers of the fact, printed notices furnished by the department stating that he or she has so elected. Said election shall become effective upon the filing of said notice in writing. The employer and his or her workers shall be subject to all the provisions of this title and entitled to all of the benefits thereof: PROVIDED, That those who have heretofore complied with the foregoing conditions and are carried and considered by the department as within the purview of this title shall be deemed and considered as having fully complied with its terms and shall be continued by the department as entitled to all of the benefits and subject to all of the liabilities without other or further action. Any employer who has complied with this section may withdraw his or her acceptance of liability under this title by filing written notice with the director of the withdrawal of his or her acceptance. Such withdrawal shall become effective thirty days after the filing of such notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The employer shall, at least thirty days before the effective date of the withdrawal, post reasonable notice of such withdrawal where the affected worker or workers work and shall otherwise notify personally the affected workers. Withdrawal of acceptance of this title shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period of acceptance.

The department shall have the power to cancel the elective adoption coverage if any required payments or reports have not been made. Cancellation by the department shall be no later than thirty days from the date of notice in writing by the department advising of cancellation being made.

Sec. 6. RCW 50.04.140 and 1945 c 35 s 15 are each amended to read as follows:

Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless and until it is shown to the satisfaction of the commissioner that:

(1)(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

((2)) (b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

((3)) (c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

(2) Or as a separate alternative, it shall not constitute employment subject to this title if it is shown that:

(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(d) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(e) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(f) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting.

Sec. 7. RCW 50.04.230 and 1947 c 5 s 24 are each amended to read as follows:

The term "employment" shall not include service performed by an insurance agent, insurance broker, or insurance solicitor or a real estate broker or a real estate salesman to the extent he or she is compensated by commission and service performed by an investment company agent or solicitor to the extent he or she is compensated by commission(~~(, the [The])~~). The term "investment company", as used in this (~~(subsection [section])~~) section is to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940."

NEW SECTION. Sec. 8. RCW 51.12.115 and 1981 c 128 s 5 are each repealed.

NEW SECTION. Sec. 9. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. Sec. 10. This act shall take effect January 1, 1992.

Passed the Senate April 23, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 247

[Substitute House Bill 1189]

MISDEMEANORS—PAYMENT OF COSTS AS CONDITION OF DEFERRED PROSECUTION OR FOR EVALUATION OR SUPERVISION SERVICES

Effective Date: 7/28/91

AN ACT Relating to misdemeanors; amending RCW 10.05.140, 10.05.170, 10.64.120, and 10.01.160; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 10.05.140 and 1985 c 352 s 16 are each amended to read as follows:

As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of

granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. The court may terminate the deferred prosecution program upon violation of this section.

Sec. 2. RCW 10.05.170 and 1985 c 352 s 19 are each amended to read as follows:

As a condition of granting deferred prosecution, the court may order supervision of the petitioner during the period of deferral and may levy a monthly assessment upon the petitioner as provided in RCW 10.64.120. In a jurisdiction with a probation department, the court may appoint the probation department to supervise the petitioner. In a jurisdiction without a probation department, the court may appoint an appropriate person or agency to supervise the petitioner. A supervisor appointed under this section shall be required to do at least the following:

(1) If the charge for which deferral is granted relates to operation of a motor vehicle, at least once every six months request from the department of licensing an abstract of the petitioner's driving record; and

(2) At least once every month make contact with the petitioner or with any agency to which the petitioner has been directed for treatment as a part of the deferral.

Sec. 3. RCW 10.64.120 and 1982 c 207 s 4 are each amended to read as follows:

(1) Every judge of a court of limited jurisdiction shall have the authority to levy (~~upon each misdemeanor~~) a monthly assessment not to exceed fifty dollars for services provided whenever (~~such~~) a person is referred by the court to the (~~misdemeanant~~) probation department for evaluation or supervision services. The assessment may also be made by a sentencing judge in superior court when such misdemeanor or gross misdemeanor cases are heard in the superior court.

(2) It shall be the responsibility of the (~~misdemeanant~~) probation services office to implement local procedures approved by the court of limited jurisdiction to ensure collection and payment of such fees into the general fund of the city or county treasury.

(3) Revenues raised under this section shall be used to fund programs for (~~misdemeanant~~) probation services and shall be in addition to those funds provided in RCW 3.62.050.

Sec. 4. RCW 10.01.160 and 1987 c 363 s 1 are each amended to read as follows:

(1) The court may require a convicted defendant, or defendant granted a deferred prosecution under chapter 10.05 RCW, to pay costs.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW. They cannot include expenses inherent in

providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a convicted defendant to pay. Costs for administering a deferred prosecution may not exceed one hundred fifty dollars.

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

Passed the House March 6, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 248

[Substitute Senate Bill 5583]

CHILD CARE FACILITY FUND

Effective Date: 7/28/91

AN ACT Relating to the child care facility fund; and amending RCW 43.31.502 and 43.31.506.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.31.502 and 1989 c 430 s 3 are each amended to read as follows:

(1) A child care facility revolving fund is created. Money in the fund shall be used solely for the purpose of starting or improving a child care facility pursuant to RCW 43.31.085 and 43.31.502 through 43.31.514. Only moneys from private or federal sources may be deposited into this fund.

(2) Funds provided under this section shall not be subject to reappropriation. The child care facility fund committee may use loan and grant repayments and income for the revolving fund program.

Sec. 2. RCW 43.31.506 and 1989 c 430 s 5 are each amended to read as follows:

The child care facility fund committee is authorized to solicit applications for and award grants and loans from the child care facility fund to assist persons, businesses, or organizations to start a licensed child care facility, or to make capital improvements in an existing licensed child care facility. Grants and loans shall be awarded on a one-time only basis, and shall not be awarded to cover operating expenses beyond the first three months of business ~~((, and))~~. No grant ((or loan)) shall exceed twenty-five thousand dollars. No loan shall exceed one hundred thousand dollars.

Passed the Senate March 15, 1991.

Passed the House April 10, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 249

[Engrossed Substitute House Bill 1214]

ATTENDANCE INCENTIVE PROGRAM—REIMBURSEMENT FOR UNUSED SICK LEAVE

Effective Date: 7/28/91

AN ACT Relating to state employees; and amending RCW 41.04.340 and 41.04.255.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.04.340 and 1990 c 162 s 1 are each amended to read as follows:

(1) An attendance incentive program is established for all eligible employees. As used in this section the term "eligible employee" means any employee of the state, other than teaching and research faculty at the state and regional universities and The Evergreen State College, entitled to accumulate sick leave and for whom accurate sick leave records have been maintained. No employee may receive compensation under this section for any portion of sick leave accumulated at a rate in excess of one day per month. The state and regional universities and The Evergreen State College shall maintain complete and accurate sick leave records for all teaching and research faculty.

~~((An attendance incentive program is established for all eligible employees.))~~ (2) In January of the year following any year in which a minimum of sixty days of sick leave is accrued, and each January thereafter, any eligible employee may receive remuneration for unused sick leave accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued sick leave in excess of sixty days. Sick leave for which compensation has been received shall be deducted from accrued sick leave at the rate of four days for every one day's monetary compensation.

(3) At the time of separation from state service due to retirement or death, an eligible employee or the employee's estate ((shall)) may elect to

receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days of accrued sick leave(~~(: PROVIDED, That community college districts may delay until July 1, 1981, payment due any eligible employee or employee's estate. PROVIDED FURTHER, That there shall be added to any such delayed payment interest at the rate of eight percent per year))~~).

(4) Pursuant to this subsection, in lieu of cash remuneration the state may, with equivalent funds, provide eligible employees with a benefit plan providing for reimbursement of medical expenses. The committee for deferred compensation shall develop any benefit plan established under this subsection, but may offer and administer the plan only if (a) each eligible employee has the option of whether to receive cash remuneration or to have his or her employer transfer equivalent funds to the plan; and (b) the committee has received an opinion from the United States internal revenue service stating that participating employees, prior to the time of receiving reimbursement for expenses, will incur no United States income tax liability on the amount of the equivalent funds transferred to the plan.

~~(Moneys)~~ (5) Remuneration or benefits received under this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

(6) With the exception of subsection (3) of this section, this section shall be administered, and rules shall be promulgated to carry out its purposes, by the state personnel board and the higher education personnel board for persons subject to chapters 41.06 and 28B.16 RCW, respectively, and by their respective personnel authorities for other eligible employees: PROVIDED, That determination of classes of eligible employees shall be subject to approval by the office of financial management.

(7) Should the legislature revoke any remuneration or benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

Sec. 2. RCW 41.04.255 and 1982 c 107 s 2 are each amended to read as follows:

In addition to its other powers prescribed under this chapter, the committee for deferred compensation is authorized to offer to state employees one or more individual retirement account plans established under applicable state or federal law. The committee for deferred compensation is also authorized to administer the medical benefits plan identified in RCW 41.04.340.

Passed the House March 18, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 250

[Substitute House Bill 1317]

OXYGEN—SALES AND USE TAX EXEMPTION

Effective Date: 7/28/91

AN ACT Relating to tax exemptions for oxygen; amending RCW 82.08.0283 and 82.12.0277; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

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

(a) The existing state policy is to exempt medical oxygen from sales and use tax.

(b) The technology for supplying medical oxygen has changed substantially in recent years. Many consumers of medical oxygen purchase or rent equipment that supplies oxygen rather than purchasing oxygen in gaseous form.

(2) The intent of this act is to bring sales and rental of individual oxygen systems within the existing exemption for medical oxygen, without expanding the essence of the original policy decision that medical oxygen should be exempt from sales and use tax.

Sec. 2. RCW 82.08.0283 and 1986 c 255 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of insulin; prosthetic and orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW or dispensed or fitted by a person licensed under chapter 18.35 RCW; ostomic items; and medically prescribed oxygen. For the purposes of this section, "medically prescribed oxygen" includes, but is not limited to, sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems to an individual under a prescription issued by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

Sec. 3. RCW 82.12.0277 and 1986 c 255 s 2 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of insulin; prosthetic and orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW or dispensed or fitted by a person licensed under chapter 18.35 RCW; ostomic items; and medically prescribed oxygen. For the purposes of this section, "medically prescribed oxygen" includes, but is not limited to, sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems to an individual under a prescription issued

by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

Passed the House March 11, 1991.

Passed the Senate April 16, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 251

[Substitute Senate Bill 5008]

PACIFIC NORTHWEST ECONOMIC REGION

Effective Date: 7/28/91

AN ACT Relating to the establishment of The Pacific Northwest Economic Region; adding a new chapter to Title 43 RCW; creating a new section; and making an appropriation.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that there is a new emerging global economy in which countries and regions located in specific areas of the world are forging new cooperative arrangements.

The legislature finds that these new cooperative arrangements are increasing the competitiveness of the participating countries and regions, thus increasing the economic benefits and the overall quality of life for the citizens of the individual countries and regions.

The legislature also finds that the Pacific Northwest states of Alaska, Idaho, Montana, Oregon, and Washington and the Canadian provinces of Alberta and British Columbia are in a strategic position to act together, as a region, thus increasing the overall competitiveness of the individual states and provinces that will provide substantial economic benefits for all of their citizens.

NEW SECTION. Sec. 2. The Pacific Northwest Economic Region is hereby enacted into law and entered into by the state of Washington as a party, and is in full force and effect in accordance with the terms of this agreement.

THE PACIFIC NORTHWEST ECONOMIC REGION

ARTICLE I—Policy and Purpose

States and provinces participating in the Pacific Northwest Economic Region shall seek to develop and establish policies that: Promote greater regional collaboration among the seven entities; enhance the overall competitiveness of the region in international and domestic markets; increase the economic well-being of all citizens in the region; and improve the quality of life of the citizens of the Pacific Northwest.

States and provinces recognize that there are many public policy areas in which cooperation and joint efforts would be mutually beneficial. These

areas include, but are not limited to: International trade; economic development; human resources; the environment and natural resources; energy; and education. Parties to this agreement shall work diligently to establish collaborative activity in these and other appropriate policy areas where such cooperation is deemed worthwhile and of benefit to the participating entities. Participating states and provinces also agree that there are areas in which cooperation may not be feasible.

The substantive actions of the Pacific Northwest Economic Region may take the form of uniform legislation enacted by two or more states and/or provinces or policy initiatives endorsed as appropriate by participating entities. It shall not be necessary for all states and provinces to participate in each initiative.

ARTICLE II—Eligible Parties and Effective Date

Each of the following states and provinces is eligible to become a party to this agreement: Alaska, Alberta, British Columbia, Idaho, Montana, Oregon, and Washington. This agreement establishing the Pacific Northwest Economic Region shall become effective when it is executed by one state, one province, and one additional state and/or province in a form deemed appropriate by each entity. This agreement shall continue in force and remain binding upon each state and province until renounced by it. Renunciation of this agreement must be preceded by sending one year's notice in writing of intention to withdraw from the agreement to the other parties to the agreement.

ARTICLE III—Organizational Structure

Each state and province participating in this agreement shall appoint representatives to the Pacific Northwest Economic Region. The organizational structure of the Pacific Northwest Economic Region shall consist of the following: A delegate council consisting of four legislators from each participating state and four representatives from each participating province and an executive committee consisting of one legislator from each participating state and/or province who is a member of the delegate council. Policy committees may be established to carry out further duties and responsibilities of the Pacific Northwest Economic Region.

ARTICLE IV—Duties and Responsibilities

The delegate council shall have the following duties and responsibilities: Facilitate the involvement of other government officials in the development and implementation of specific collaborative initiatives; work with policy-making committees in the development and implementation of specific initiatives; approve general organizational policies developed by the executive committee; provide final approval of the annual budget and staffing

structure for the Pacific Northwest Economic Region developed by the executive committee; and other duties and responsibilities as may be established in the rules and regulations of the Pacific Northwest Economic Region. The executive committee shall perform the following duties and responsibilities: Elect the president and vice-president of the Pacific Northwest Economic Region; approve and implement general organizational policies; develop the annual budget; devise the annual action plan; act as liaison with other public and private sector entities; and other duties and responsibilities established in the rules and regulations of the Pacific Northwest Economic Region. The rules and regulations of the Pacific Northwest Economic Region shall establish the procedure for voting.

ARTICLE V—Membership of Policy Committees

Policy committees dealing with specific subject matter may be established by the executive committee.

Each participating state and province shall appoint legislators to sit on these committees in accordance with its own rules and regulations concerning such appointments.

ARTICLE VI—General Provisions

This agreement shall not be construed to limit the powers of any state or province or to amend or repeal or prevent the enactment of any legislation.

NEW SECTION. Sec. 3. It is the intent of this act to direct and encourage the establishment of cooperative activities between the seven legislative bodies of the region. The state representatives to the Pacific Northwest Economic Region shall work through appropriate channels to advance consideration of proposals developed by this body.

NEW SECTION. Sec. 4. Sections 1 and 2 of this act shall constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 5. The sum of forty-nine thousand nine hundred dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1993, from the general fund to the Northwest Policy Center for the purposes of funding the activities of the Pacific Northwest Economic Region.

Passed the Senate February 11, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 252

[Substitute House Bill 1885]

TEACHERS RECRUITING FUTURE TEACHERS

Effective Date: 7/28/91

AN ACT Relating to teachers recruiting future teachers; adding a new section to chapter 28A.300 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28A.300 RCW to read as follows:

(1) The teachers recruiting future teachers program is created within the office of the superintendent of public instruction to help enlarge the pool of qualified high school students who are motivated to become teachers.

(2) Subject to funds being appropriated, the superintendent of public instruction shall:

(a) Promote and replicate the teachers recruiting future teachers model program; and

(b) Promote and expand the annual education week program on the campus of Central Washington University or on the campuses of other interested state institutions of higher education.

(3) The superintendent of public instruction, working with the executive director of the teachers recruiting future teachers program and the director of the education week program at Central Washington University, shall adopt rules as necessary under chapter 34.05 RCW to implement the provisions of this section.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the House April 28, 1991.

Passed the Senate April 28, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 253

[Substitute House Bill 1416]

GAME FISH MITIGATION—PURCHASE OF FISH FROM AQUATIC FARMERS

Effective Date: 7/28/91

AN ACT Relating to game fish mitigation; adding new sections to chapter 43.131 RCW; and adding a new chapter to Title 77 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature declares that the public and private propagation, production, protection, and enhancement of fish is in the public interest.

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

(1) "Department" means the Washington department of wildlife.

(2) "Contract" means an agreement setting at a minimum, price, quantity of fish to be delivered, time of delivery, and fish health requirements.

(3) "Fish health requirements" means those site specific fish health and genetic requirements actually used by the department of wildlife in fish stocking.

(4) "Aquatic farmer" means a private sector person who commercially farms and manages private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(5) "Person" means a natural person, corporation, trust, or other legal entity.

NEW SECTION. Sec. 3. If the department requires, pursuant to its authority relative to environmental permits or licenses, that resident hatchery game fish be stocked by the permittee or licensee for mitigation of environmental damage, the department shall specify the pounds or numbers, species, stock, and/or race of resident game fish that are to be provided. The department shall offer the permittee or licensee the option of purchasing under contract from aquatic farmers in Washington, those game fish, unless the fish specified by the department are not available from Washington growers.

NEW SECTION. Sec. 4. Any agency of state or federal government, political subdivision of the state, private or public utility company, corporation, or sports group, or any purchaser of fish under section 3 of this act may purchase resident game fish from an aquatic farmer for stocking purposes if permit requirements of this title and the department have been met.

NEW SECTION. Sec. 5. A new section is added to chapter 43.131 RCW to read as follows:

The game fish mitigation program created in sections 1 through 4 of this act shall be terminated on June 30, 1994, as provided in section 6 of this act.

NEW SECTION. Sec. 6. A new section is added to chapter 43.131 RCW to read as follows:

The following acts, or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1995:

(1) RCW 77.—.— and 1991 c s (section 1 of this act);

(2) RCW 77.—.— and 1991 c s (section 2 of this act);

(3) RCW 77.—.— and 1991 c s (section 3 of this act);
and

(4) RCW 77.—.— and 1991 c s (section 4 of this act).

NEW SECTION. Sec. 7. Sections 1 through 4 of this act shall constitute a new chapter in Title 77 RCW.

Passed the House March 8, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 254

[Substitute Senate Bill 5873]

SCHOOL DISTRICT EMPLOYEES—INSURANCE COVERAGE FOR RETIRED AND
DISABLED EMPLOYEES

Effective Date: 7/28/91

AN ACT Relating to insurance coverage for retired and disabled school district employees; adding a new section to chapter 28A.400 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28A.400 RCW to read as follows:

(1) Retired and disabled school district employees shall be entitled to continue their participation in any insurance plans and contracts after their retirement or disablement for a period of at least thirty months. These retired or disabled employees shall bear the full cost of premiums required to provide the coverage.

(2) This section applies to:

(a) School district employees who retire or are disabled after the effective date of this act; and

(b) School district employees who retired within the eighteen-month period ending on the effective date of this act.

(3) School district employees who retired more than eighteen months before the effective date of this act and who were covered by a school district's insurance plan on January 1, 1991, may continue their coverage for a period of at least one year from the effective date of this act.

***NEW SECTION.** Sec. 2. (1) *The Washington state health care authority shall study and develop recommendations regarding health care coverage for retired and disabled public school employees. The study shall include, but not be limited to, the following:*

(a) *Collection of information regarding the cost to both the school district and the retired or disabled employee of coverage, the prevalence of use of available coverage by retirees, and the types of coverage made available through school districts;*

(b) Evaluation of the feasibility and cost implications to retired or disabled employees, the state, school districts, and active employees of: (i) Requiring school districts to allow retired employees to continue their employer-sponsored health care coverage at a reasonable cost to the employee; or (ii) Allowing retired or disabled school district employees to participate in insurance plans offered by the state employees' benefits board even if the retired or disabled employees did not participate in such plans as active employees;

(c) Development of mechanisms to pre-fund health care coverage for retired and disabled employees, through means such as contributions by active employees to a fund established to finance future retired and disabled employees' health care benefits, and voluntary contributions by active employees to individual medical accounts from which funds can be drawn upon retirement or becoming disabled to pay premiums and costs for health care coverage;

(d) Establishment of variable health care coverage premium rates for retired or disabled employees based upon the individual retired or disabled individual's income; and

(e) Evaluation of any other areas deemed necessary by the health care authority.

(2) The health care authority may form technical advisory committees to assist with the study. The health care authority shall submit its findings and recommendations to the legislature by December 1, 1991.

*Sec. 2 was vetoed, see message at end of chapter.

Passed the Senate April 23, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 17, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 17, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 2, Substitute Senate Bill No. 5873 entitled:

"AN ACT Relating to insurance coverage for retired and disabled school district employees."

Section 2 of this bill requires the Health Care Authority to conduct a study of considerable importance to retirees of the public school system and public policy makers. However, the bill does not provide that agency with either additional staff or adequate funds to support such an effort. The Fiscal Note reveals estimated costs of at least \$140,000.00 for the study. Funds for the agency to do the study do not appear in the operating budgets proposed by either the House or the Senate during the Regular Session and I cannot sign into law a requirement that would put the Health Care Authority at such risk.

I believe that a study of this nature should be undertaken, but not in the manner proposed. At the very least it should address the question of costs and access to health care benefits by the retirees of all public agencies, not just those in the public school system. The costs and needs of the respective public agencies must also be considered. It is unlikely that the comprehensive study that I believe to be necessary

could be completed in only a four- to six-month time frame. The public policy issues are too important and the welfare of far too many individuals is at risk for this task to be addressed too hurriedly or on a piecemeal basis.

For the reasons stated, I have vetoed section 2 of Substitute Senate Bill No. 5873.

With the exception of section 2, Substitute Senate Bill No. 5873 is approved.*

CHAPTER 255

[Second Substitute Senate Bill 5022]

AWARD FOR EXCELLENCE IN EDUCATION

Effective Date: 5/17/91

AN ACT Relating to the Washington award for excellence in education program; amending RCW 28A.625.030, 28A.625.050, and 28A.625.060; reenacting and amending RCW 28A.625.020; adding new sections to chapter 28A.625 RCW; adding new sections to chapter 28B.80 RCW; creating new sections; repealing RCW 28A.625.040, 28A.625.070, and 28B.15.547; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.625.020 and 1990 c 77 s 1 and 1990 c 33 s 514 are each reenacted and amended to read as follows:

((†)) The superintendent of public instruction shall establish an annual award program for excellence in education to recognize teachers, principals, administrators, classified staff, school district superintendents, and school boards for their leadership, contributions, and commitment to education. The program shall recognize annually:

((a)) (1) Five teachers from each congressional district of the state. One individual must be an elementary level teacher, one must be a junior high or middle school level teacher, and one must be a secondary level teacher. Teachers shall include educational staff associates;

((b)) (2) Five principals or administrators from the state;

((c)) (3) One school district superintendent from the state;

((d)) (4) One school district board of directors from the state; and

((e)) (5) Three classified staff from each congressional district of the state.

~~((Not more than three teachers, three classified staff, and three principals or administrators from each congressional district and one superintendent and one school board from the state may be recognized and receive awards in any school year.~~

~~(2) The awards for teachers, classified staff, and principals or administrators shall include certificates presented by the governor and the superintendent of public instruction at a public ceremony or ceremonies in appropriate locations;~~

~~(3) In addition to certificates under subsection (2) of this section, awards for teachers and principals or administrators shall include:~~

~~(a) A waiver of tuition and fees under RCW 28B.15.547 and a stipend not to exceed one thousand dollars to cover costs incurred in taking courses for which the tuition and fees have been waived under this subsection and RCW 28B.15.547. The stipend shall not be considered compensation for the purposes of RCW 28A.400.200; or~~

~~(b) Teachers and principals or administrators, at their discretion, may elect to forego the waiver of tuition and fees and the stipend under subsection (3) of this section and apply for a grant not to exceed one thousand dollars, which grant shall be awarded under the provisions of RCW 28A.625.060. Within one year of receiving the award for excellence in education, teachers and principals or administrators shall notify the superintendent of public instruction in writing of their decision to apply for a grant or to receive the waiver of tuition and fees and the stipend under subsection (3) of this section.)~~

Sec. 2. RCW 28A.625.030 and 1986 c 147 s 3 are each amended to read as follows:

The award for teachers under the Washington award for excellence in education program shall be named the "Washington State Christa McAuliffe Award, in honor and memory of Sharon Christa Corrigan McAuliffe." As the first teacher and private citizen selected nationally to voyage into space, Christa McAuliffe exemplified what is exciting and positive about the teaching profession. Her contributions within the scope of the nation's education system helped to show that education can and should be a vital and dynamic experience for all participants. Christa McAuliffe's chosen profession encompasses learning by discovery and her desire to make new discoveries was reflected by her participation in the nation's space program.

The selection of Christa McAuliffe as the first teacher in space was directly linked to Washington state in that then superintendent of public instruction Dr. Frank Brouillet both appointed and served as a member of the national panel which selected Christa McAuliffe.

The tragic loss of the life of Christa McAuliffe on the flight of the space shuttle Challenger on January 28, 1986, will be remembered through the legacy she gave to her family, friends, relatives, students, colleagues, the education profession, and the nation: a model example of striving toward excellence.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.625 RCW to read as follows:

(1) All recipients of the Washington award for excellence in education shall receive a certificate presented by the governor and the superintendent of public instruction, or their designated representatives, at a public ceremony or ceremonies in appropriate locations.

(2) In addition to certificates under subsection (1) of this section, awards for teachers and principals or administrators shall include one of the following:

(a) Except as provided under section 6 of this act, an academic grant which shall be used to take courses at a state institution of higher education. The academic grant shall not exceed the current academic year full-time resident graduate tuition for courses taken at one of the state's research universities and shall not exceed the current academic year full-time resident graduate tuition for courses taken at one of the state's regional universities or The Evergreen State College. The academic grant shall not be considered compensation for the purposes of RCW 28A.400.200; or

(b) A recognition stipend not to exceed one thousand dollars. The stipend shall not be considered compensation for the purposes of RCW 28A.400.200; or

(c) An educational grant not to exceed one thousand dollars. The educational grant shall be awarded under RCW 28A.625.060 and shall not be considered compensation for the purposes of RCW 28A.400.200.

(3) In addition to certificates under subsection (1) of this section, the award for the superintendent shall include one of the following:

(a) A recognition stipend not to exceed one thousand dollars. The stipend shall not be considered compensation for the purposes of RCW 28A.400.200; or

(b) An educational grant not to exceed one thousand dollars. The educational grant shall be awarded under RCW 28A.625.060 and shall not be considered compensation for the purposes of RCW 28A.400.200.

(4) In addition to certificates under subsection (1) of this section, the award for the school board shall include an educational grant not to exceed two thousand five hundred dollars. The educational grant shall be awarded under RCW 28A.625.060.

(5) Within one year of receiving the Washington award for excellence in education, teachers, principals or administrators, and the school district superintendent shall notify the superintendent of public instruction in writing of their decision to apply for an academic grant, a recognition stipend, or an educational grant as provided under subsections (2) and (3) of this section. The superintendent shall notify the higher education coordinating board of those recipients who select the academic grant.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.625 RCW to read as follows:

(1) The dollar value of the academic grant under section 3(2)(a) of this act shall be the amount as provided under section 3(2)(a) of this act at the time the grant is awarded by the higher education coordinating board.

(2) Courses paid for in full by the academic grant under section 3(2)(a) of this act shall be completed within four years after the academic grant is received.

NEW SECTION. Sec. 5. A new section is added to chapter 28A.625 RCW to read as follows:

Teachers and principals or administrators who receive a Washington award for excellence in education and who select the academic grant under section 3(2)(a) of this act shall receive thirty clock hours toward the one hundred fifty clock hours of continuing education required every five years by the state board of education: PROVIDED, That the thirty clock hours shall be granted only if the courses are related to the recipient's responsibilities or assignments.

NEW SECTION. Sec. 6. A new section is added to chapter 28B.80 RCW to read as follows:

(1) Teachers and principals or administrators who select an academic grant under section 3(2)(a) of this act shall use the grant to attend a state public institution of higher education located in the state of Washington, except that the academic grant may be used for courses at a private institution of higher education in the state of Washington if the conditions in subsection (3) of this section are met, and the academic grant may be used for courses at a public or a private institution of higher education in another state or country if the conditions in subsection (4) of this section are met.

(2) "Institution of higher education" means:

(a) Any public university, college, community college, or vocational-technical institute operated by the state of Washington or any political subdivision thereof; or

(b) Any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an accrediting association recognized by rule of the board. Any institution, branch, extension, or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of an accrediting association recognized by the board.

(3) Teachers and principals or administrators who select an academic grant under section 3(2)(a) of this act may use the grant for courses at any private institution as defined in subsection (2)(b) of this section subject to the following conditions:

(a) The academic grant shall not exceed the current academic year full-time resident graduate tuition and the services and activities fees in effect at the state-funded research universities;

(b) The academic grant shall be contingent on the private institution matching on at least a dollar-for-dollar basis, either with actual money or by waiver of fees, the amount of the academic grant received by the recipient from the state; and

(c) The academic grant may not be used for any courses that include any religious worship or exercise, or apply to any degree in religious, seminarian, or theological academic studies.

(4) Teachers and principals or administrators who select an academic grant under section 3(2)(a) of this act may use the grant for courses at a public or private higher education institution in another state or country subject to the following conditions:

(a) The institution has an exchange program with a public or private higher education institution in Washington and the exchange program is approved or recognized by the higher education coordinating board; or

(b) The institution is approved or recognized by the higher education coordinating board; and

(c) The recipient of the Washington award for excellence in education has submitted in writing to the higher education coordinating board an explanation of why the preferred course or courses are not available at a public or private institution in Washington; and

(d) The academic grant may not be used for any courses that include any religious worship or exercise, or apply to any degree in religious, seminarian, or theological academic studies.

NEW SECTION. Sec. 7. A new section is added to chapter 28B.80 RCW to read as follows:

(1) The higher education coordinating board shall adopt rules under chapter 34.05 RCW to administer the academic grants awarded under section 3(2)(a) of this act.

(2) The rules adopted by the board shall allow recipients who have begun to use the waiver of tuition and fees under RCW 28B.15.547 prior to the effective date of this section, to take the remaining value of the waiver of tuition and fees in the form of the academic grant under section 3(2)(a) of this act.

Sec. 8. RCW 28A.625.050 and 1990 c 33 s 516 are each amended to read as follows:

The superintendent of public instruction shall adopt rules under chapter 34.05 RCW to carry out the purposes of RCW 28A.625.010 through 28A.625.070. These rules shall include establishing the selection criteria for the Washington award for excellence in education program. The superintendent (~~(of public instruction)~~) is encouraged to consult with teachers, educational staff associates, principals, administrators, classified employees, superintendents, and school board members in developing the selection criteria. Notwithstanding the provisions of RCW 28A.625.020(1) (~~((a) and (b))~~) and (2), such rules may allow for the selection of individuals whose teaching or administrative duties, or both, may encompass multiple grade level or building assignments, or both.

Sec. 9. RCW 28A.625.060 and 1990 c 33 s 517 are each amended to read as follows:

Teachers (~~(and)~~), principals or administrators, and superintendents who have received an award for excellence in education (~~(under RCW~~

~~28A.625.020 shall be eligible)) and choose to apply for an educational grant ((in lieu of receiving a waiver of tuition and fees and a stipend as provided under RCW 28A.625.020(3). The superintendent of public instruction)) under section 3 of this act shall ((award)) be awarded the grant by the superintendent of public instruction as long as a written grant application is submitted to the superintendent ((of public instruction)) within one year after the award was received. The grant application shall identify the educational purpose toward which the grant shall be used.~~

NEW SECTION. Sec. 10. (1) The superintendent of public instruction shall conduct a survey to determine the interest of classified employees in being provided the option of selecting an award as provided under section 3(2) of this act.

(2) The superintendent shall report to the legislature and the governor by December 1, 1991, on the results of the survey. The report shall include recommendations and costs.

(3) This section shall expire December 31, 1991.

NEW SECTION. Sec. 11. The following acts or parts of acts are each repealed:

- (1) RCW 28A.625.040 and 1990 c 33 s 515 & 1986 c 147 s 4;
- (2) RCW 28A.625.070 and 1990 c 33 s 518 & 1986 c 147 s 8; and
- (3) RCW 28B.15.547 and 1986 c 147 s 6.

NEW SECTION. Sec. 12. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 13. 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 shall take effect immediately.

Passed the Senate April 22, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 256

[Engrossed Substitute House Bill 1686]

CORRECTIONAL INDUSTRIES—SITE-SPECIFIC PLANS

Effective Date: 5/17/91

AN ACT Relating to correctional industries; adding a new section to chapter 72.60 RCW; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the rehabilitation process may be enhanced by participation in training, education, and employment-related incentive programs and may be a consideration in reducing time in confinement.

NEW SECTION. Sec. 2. A new section is added to chapter 72.60 RCW to read as follows:

(1) The department of corrections shall develop, in accordance with RCW 72.09.010, a site-specific implementation plan for prison industries space at Clallam Bay corrections center, McNeil Island corrections center, and the one thousand twenty-four bed medium security prison as appropriated for and authorized by the legislature.

(2) Each implementation plan shall include, but not be limited to, sufficient space and design elements that try to achieve a target of twenty-five percent of the total inmates in class I employment programs and twenty-five percent of the total inmates in class II employment programs or as much of the target as possible without jeopardizing the efficient and necessary day-to-day operation of the prison. The implementation plan shall also include educational opportunities and employment, wage, and other incentives. The department shall include in the implementation plans an incentive program based on wages, and the opportunity to contribute all or a portion of their wages towards an array of incentives. The funds recovered from the sale, lease, or rental of incentives should be considered as a possible source of revenue to cover the capitalized cost of the additional space necessary to accommodate the increased class I and class II industries programs.

(3) The incentive program shall be developed so that inmates can earn higher wages based on performance and production. Only those inmates employed in class I and class II jobs may participate in the incentive program. The department shall develop special program criteria for inmates with physical or mental handicaps so that they can participate in the incentive program.

(4) The department shall propose rules specifying that inmate wages, other than the amount an inmate owes for taxes, legal financial obligations, and to the victim restitution fund, shall be returned to the department to pay for the cost of prison operations, including room and board.

(5) The plan shall identify actual or potential legal or operational obstacles, or both, in implementing the components of the plan as specified in this section, and recommend strategies to remove the obstacles.

(6) The department shall submit the plan to the appropriate committees of the legislature and to the governor by October 1, 1991.

NEW SECTION. Sec. 3. The overall prison design plans for new construction at Clallam Bay corrections center, McNeil Island corrections center, and the one thousand twenty-four bed medium security prison as appropriated for and authorized by the legislature shall not be inconsistent with the implementation plan outlined in this act. No provision under this

act shall require the department of corrections to redesign, postpone, or delay the construction of any of the facilities outlined in section 2 of this act.

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.

NEW SECTION. Sec. 5. 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 shall take effect immediately.

Passed the House March 19, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 257

[Substitute House Bill 1956]

HORTICULTURAL PEST AND DISEASE CONTROL

Effective Date: 5/17/91

AN ACT Relating to protection of the plant industry; amending RCW 15.09.080, 15.26-.155, and 43.06.010; adding new sections to chapter 17.24 RCW; creating a new section; repealing RCW 17.24.005, 17.24.030, 17.24.035, 17.24.060, 17.24.070, 17.24.080, 17.24.105, 17.24.110, 17.24.120, 17.24.130, 17.24.140, and 17.24.200; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.09.080 and 1982 c 153 s 4 are each amended to read as follows:

(1) Whenever the horticultural pest and disease control board finds that an owner of land has failed to control and prevent the spread of horticultural pests and diseases on his land, as is his duty under RCW 15.09.060, it shall provide such person with written notice, which notice shall identify the pests and diseases found to be present and shall order prompt control or disinfection action to be taken within a specified and reasonable time period.

(2) If the person to whom the notice is directed fails to take action in accordance with this notice, then the board shall perform or cause to be performed such measures as are necessary to control and prevent the spread of the pests and diseases on such property and the expense of this work shall be charged to such person. Any action that the board determines requires the destruction of infested plants, absent the consent of the owner, shall be subject to the provisions of subsection (3) of this section.

(3) In the event the owner of land fails to control and prevent the spread of horticultural pests and diseases as required by RCW 15.09.060, and the county horticultural pest and disease board determines that actions

it has taken to control and prevent the spread of such pests or diseases has not been effective or the county horticultural pest and disease board determines that no reasonable measures other than removal of the plants will control and prevent the spread of such pests or diseases, the county horticultural pest and disease board may petition the superior court of the county in which the property is situated for an order directing the owner to show cause why the plants should not be removed at the owner's expense and for an order authorizing removal of said infected plants. The petition shall state: (a) The legal description of the property on which the plants are located; (b) the name and place of residence, if known, of the owners of said property; (c) that the county horticultural pest and disease board has, through its officers or agents, inspected said property and that the plants thereon, or some of them, are infested with a horticultural pest or disease as defined by RCW 15.08.010; (d) the dates of all notices and orders delivered to the owners pursuant to this section; (e) that the owner has failed to control and prevent the spread of said horticultural pest or disease; and (f) that the county horticultural pest and disease board has determined that the measures taken by it have not controlled or prevented the spread of the pest or disease or that no reasonable measure can be taken that will control and prevent the spread of such pest or disease except removal of the plants. The petition shall request an order directing the owner to appear and show cause why the plants on said property shall not be removed at the expense of the owner, to be collected as provided in this chapter. The order to show cause shall direct the owner to appear on a date certain and show cause, if any, why the plants on the property described in the petition should not be removed at the owner's expense. The order to show cause and petition shall be served on the owner not less than five days before the hearing date specified in the order in the same manner as a summons and complaint. In the event the owner fails to appear or fails to show by competent evidence that the horticultural pest or disease has been controlled, then the court shall authorize the county horticultural pest and disease board to remove the plants at the owner's expense, to be collected as provided by this chapter. If the procedure provided herein is followed, no action for damages for removal of the plants shall lie against the county horticultural pest and disease board, its officers or agents, or the county in which it is situated.

Sec. 2. RCW 15.26.155 and 1983 c 281 s 3 are each amended to read as follows:

The producers of tree fruit subject to the provisions of this chapter may at any time, by referendum conducted by the department and approved by a majority of the producers voting, establish an additional assessment for programs including but not limited to sanitation programs and the reregistration of plant protection products for use on minor crops. ~~((The total amount assessed for any specific industry service program under this section shall not exceed one hundred thousand dollars in any single crop year.))~~

The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend all or part of the assessments on tree fruit under this section.

NEW SECTION. Sec. 3. **PURPOSE.** The purpose of this chapter is to provide a strong system for the exclusion of plant and bee pests and diseases through regulation of movement and quarantines of infested areas to protect the forest, agricultural, horticultural, floricultural, and apiary industries of the state; plants and shrubs within the state; and the environment of the state from the impact of insect pests, plant pathogens, noxious weeds, and bee pests and the public and private costs that result when these infestations become established.

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

(1) "Department" means the state department of agriculture.

(2) "Director" means the director of the state department of agriculture or the director's designee.

(3) "Quarantine" means a rule issued by the department that prohibits or regulates the movement of articles, bees, plants, or plant products from designated quarantine areas within or outside the state to prevent the spread of disease, plant pathogens, or pests to nonquarantine areas.

(4) "Plant pest" means a living stage of an insect, mite, nematode, slug, snail, or protozoa, or other invertebrate animal, bacteria, fungus, or parasitic plant, or their reproductive parts, or viruses, or an organism similar to or allied with any of the foregoing plant pests, including a genetically engineered organism, or an infectious substance that can directly or indirectly injure or cause disease or damage in plants or parts of plants or in processed, manufactured, or other products of plants.

(5) "Plants and plant products" means trees, shrubs, vines, forage, and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from the plants and plant products.

(6) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or a form of inspection and certification document that accompanies the movement of inspected and certified plant material and plant products, or bees, bee hives, or beekeeping equipment.

(7) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, plant products, or bees, bee hives, or beekeeping equipment regulated under this chapter, in which the person agrees to comply with stipulated requirements.

(8) "Distribution" means the movement of a regulated article from the property where it is grown or kept, to property that is not contiguous to the property, regardless of the ownership of the properties.

(9) "Genetically engineered organism" means an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant DNA techniques, excluding those organisms covered by the food, drug and cosmetic act (21 U.S.C. Secs. 301-392).

(10) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee of any of these entities.

(11) "Sell" means to sell, to hold for sale, offer for sale, handle, or to use as inducement for the sale of another article or product.

(12) "Noxious weed" means a living stage, including, but not limited to, seeds and reproductive parts, of a parasitic or other plant of a kind that presents a threat to Washington agriculture or environment.

(13) "Regulated article" means a plant or plant product, bees or bee-keeping equipment, noxious weed or other articles or equipment capable of harboring or transporting plant or bee pests or noxious weeds that is specifically addressed in rules or quarantines adopted under this chapter.

(14) "Owner" means the person having legal ownership, possession, or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, or their agent.

(15) "Nuisance" means a plant, or plant part, apiary, or property found in a commercial area on which is found a pest, pathogen, or disease that is a source of infestation to other properties.

(16) "Bees" means honey producing insects of the species *apis mellifera* and includes the adults, eggs, larvae, pupae, and other immature stages of *apis mellifera*.

(17) "Bee pests" means a mite, other parasite, or disease that causes injury to bees.

(18) "Biological control" means the use by humans of living organisms to control or suppress undesirable animals and plants; the action of parasites, predators, or pathogens on a host or prey population to produce a lower general equilibrium than would prevail in the absence of these agents.

(19) "Biological control agent" means a parasite, predator, or pathogen intentionally released, by humans, into a target host or prey population with the intent of causing population reduction of that host or prey.

(20) "Emergency" means a situation where there is an imminent danger of an infestation of plant pests or disease that seriously threatens the state's agricultural or horticultural industries or environment and that cannot be adequately addressed with normal procedures or existing resources.

NEW SECTION. Sec. 5. REGULATION OF PLANT, PLANT PRODUCT, AND BEE MOVEMENT. Notwithstanding the provisions of section 8 of this act, the director may:

(1) Make rules under which plants, plant products, bees, hives and beekeeping equipment, and noxious weeds may be brought into this state from other states, territories, or foreign countries; and

(2) Make rules with reference to plants, plant products, bees, bee hives and equipment, and genetically engineered organisms while in transit through this state as may be deemed necessary to prevent the introduction into and dissemination within this state of plant and bee pests and noxious weeds.

NEW SECTION. Sec. 6. INSPECTION AND INVESTIGATION.

(1) The director may intercept and hold or order held for inspection, or cause to be inspected while in transit or after arrival at their destination, all plants, plant products, bees, or other articles likely to carry plant pests, bee pests, or noxious weeds being moved into this state from another state, territory, or a foreign country or within or through this state for plant and bee pests and disease.

(2) The director may enter upon public and private premises at reasonable times for the purpose of carrying out this chapter. If the director be denied access, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises. The court may upon such application issue the search warrant for the purposes requested.

(3) The director may adopt rules in accordance with chapter 34.05 RCW as may be necessary to carry out the purposes and provisions of this chapter.

NEW SECTION. Sec. 7. DETERMINATION OF ORIGIN. The director may demand of a person who has in his or her possession or under his or her control, plants, bees, plant products, or other articles that may carry plant pests, bee pests, or noxious weeds, full information as to the origin and source of these items. Failure to provide that information, if known, may subject the person to a civil penalty.

NEW SECTION. Sec. 8. POWER TO ADOPT QUARANTINE MEASURES—RULES. If determined to be necessary to protect the forest, agricultural, horticultural, floricultural, beekeeping, or environmental interests of this state, the director may declare a quarantine against an area, place, nursery, orchard, vineyard, apiary, or other agricultural establishment, county or counties within the state, or against other states, territories, or foreign countries, or a portion of these areas, in reference to plant pests, or bee pests, or noxious weeds, or genetically engineered plant or plant pest organisms. The director may prohibit the movement of all regulated articles from such quarantined places or areas that are likely to contain such plant pests or noxious weeds or genetically engineered plant, plant pest, or bee pest organisms. The quarantine may be made absolute or rules may be adopted prescribing the conditions under which the regulated articles may be moved into, or sold, or otherwise disposed of in the state.

NEW SECTION. Sec. 9. INTRODUCTION OF PLANT PESTS, NOXIOUS WEEDS, OR ORGANISMS AFFECTING PLANT LIFE. The introduction into or release within the state of a plant pest, noxious weeds, bee pest, or any other organism that may directly or indirectly affect the plant life of the state as an injurious pest, parasite, predator, or other organism is prohibited, except under special permit issued by the department under rules adopted by the director. A special permit is not required for the introduction or release within the state of a genetically engineered plant or plant pest organism if the introduction or release has been approved under provisions of federal law and the department has been notified of the planned introduction or release. The department shall be the sole issuing agency for the permits. Except for research projects approved by the department, no permit for a biological control agent shall be issued unless the department has determined that the parasite, predator, or plant pathogen is target organism or plant specific and not likely to become a pest of nontarget plants or other beneficial organisms. The director may also exclude biological control agents that are infested with parasites determined to be detrimental to the biological control efforts of the state. The department may rely upon findings of the United States department of agriculture or any experts that the director may deem appropriate in making a determination about the threat posed by such organisms. In addition, the director may request confidential business information subject to the conditions in section 10 of this act.

Plant pests, noxious weeds, or other organisms introduced into or released within this state in violation of this section shall be subject to detention and disposition as otherwise provided in this chapter.

NEW SECTION. Sec. 10. PROTECTION OF PRIVILEGED OR CONFIDENTIAL INFORMATION—PROCEDURE—NOTICE—DECLARATORY JUDGMENT. (1) In submitting data required by this chapter, the applicant may: (a) Mark clearly portions of data which in his or her opinion are trade secrets or commercial or financial information; and (b) submit the marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make information submitted by an applicant or registrant under this chapter available to the public if, in the judgment of the director, the information is privileged or confidential because it contains or relates to trade secrets or commercial or financial information. Where necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director.

(3) If the director proposes to release for inspection or to reveal at a public hearing or in findings of fact issued by the director, information that

the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, he or she shall notify the applicant or registrant in writing, by certified mail. The director may not make this data available for inspection nor reveal the information at a public hearing or in findings of fact issued by the director until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may withdraw the application or may institute an action in the superior court of Thurston county for a declaratory judgment as to whether the information is subject to protection under subsection (2) of this section.

NEW SECTION. Sec. 11. COMPLIANCE AGREEMENTS. The director may enter into compliance agreements with a person engaged in growing, handling, or moving articles, bees, plants, or plant products regulated under this chapter.

NEW SECTION. Sec. 12. PROHIBITED ACTS. It shall be unlawful for a person to:

(1) Sell, offer for sale, or distribute a noxious weed or a plant or plant product or regulated article infested or infected with a plant pest declared by rule to be a threat to the state's forest, agricultural, horticultural, floricultural, or beekeeping industries or environment;

(2) Knowingly receive a noxious weed, or a plant, plant product, bees, bee hive or appliances, or regulated article sold, given away, carried, shipped, or delivered for carriage or shipment within this state, in violation of the provisions of this chapter or the rules adopted under this chapter;

(3) Fail to immediately notify the department and isolate and hold the noxious weed, bees, bee hives or appliances, plants or plant products, or other thing unopened or unused subject to inspection or other disposition as may be provided by the department, where the item has been received without knowledge of the violation and the receiver has become subsequently aware of the potential problem;

(4) Knowingly conceal or willfully withhold available information regarding an infected or infested plant, plant product, regulated article, or noxious weed;

(5) Introduce or move into this state, or to move or dispose of in this state, a plant, plant product, or other item included in a quarantine, except under rules as may be prescribed by the department, after a quarantine order has been adopted under this chapter against a place, nursery, orchard, vineyard, apiary, other agricultural establishment, county of this state, another state, territory, or a foreign country as to a plant pest, bee pest, or noxious weed or genetically engineered plant or plant pest organism, until such quarantine is removed.

NEW SECTION. Sec. 13. IMPOUND AND DISPOSITION. (1) If upon inspection, the director finds that an inspected plant or plant product or bees are infected or infested or that a regulated article is being held or

transported in violation of a rule or quarantine of the department, the director shall notify the owner that a violation of this chapter exists. The director may impound or order the impounding of the infected or infested or regulated article in such a manner as may be necessary to prevent the threat of infestation. The notice shall be in writing and sent by certified mail or personal service identifying the impounded article and giving notice that the articles will be treated, returned to the shipper or to a quarantined area, or destroyed in a manner as to prevent infestation. The impounded article shall not be destroyed unless the director determines that (a) no effective treatment can be carried out; and (b) the impounded article cannot be returned to the shipper or shipped back to a quarantine area without threat of infestation to this state; and (c) mere possession by the owner constitutes an emergency.

(2) Before taking action to treat, return, or destroy the impounded article, the director shall notify the owner of the owner's right to a hearing before the director under chapter 34.05 RCW. Within ten days after the notice has been given the owner may request a hearing. The request must be in writing.

(3) The cost to impound articles along with the cost, if any, to treat, return, or destroy the articles shall be at the owner's expense. The owner is not entitled to compensation for infested or infected articles destroyed by the department under this section.

NEW SECTION. Sec. 14. STATE-WIDE SURVEY AND CONTROL ACTIVITY. If there is reason to believe that a plant or bee pest may adversely impact the forestry, agricultural, horticultural, floricultural, or related industries of the state; or may cause harm to the environment of the state; or such information is needed to facilitate or allow the movement of forestry, agricultural, horticultural, or related products to out-of-state, foreign and domestic markets, the director may conduct, or cause to be conducted, surveys to determine the presence, absence, or distribution of a pest.

The director may take such measures as may be required to control or eradicate such pests where such measures are determined to be in the public interest, are technically feasible, and for which funds are appropriated or provided through cooperative agreements.

NEW SECTION. Sec. 15. DIRECTOR'S COOPERATION WITH OTHER AGENCIES. The director may enter into cooperative arrangements with a person, municipality, county, Washington State University or any of its experiment stations, or other agencies of this state, and with boards, officers, and authorities of other states and the United States, including the United States department of agriculture, for the inspection of bees, plants and plant parts and products and the control or eradication of plant pests, bee pests, or noxious weeds and to carry out other provisions of this chapter.

NEW SECTION. Sec. 16. **ACQUISITION OF LANDS, WATER SUPPLY, OR OTHER PROPERTIES FOR QUARANTINE LOCATIONS.** The director may acquire, in fee or in trust, by gift, or whenever funds are appropriated for such purposes, by purchase, easement, lease, or condemnation, lands or other property, water supplies, as may be deemed necessary for use by the department for establishing quarantine stations for the purpose of the isolation, prevention, eradication, elimination, and control of insect pests or plant pathogens that affect the agricultural or horticultural products of the state; for the propagation of biological control agents; or the isolation of genetically engineered plants or plant pests; or the isolation of bee pests.

NEW SECTION. Sec. 17. **REQUESTED INSPECTIONS—FEE FOR SERVICE.** To facilitate the movement or sale of forest, agricultural, floricultural, horticultural and related products, or bees and related products, the director may provide, if requested by farmers, growers, or other interested persons, special inspections, pest identifications, plant identifications, plant diagnostic services, other special certifications and activities not otherwise authorized by statute and to prescribe a fee for that service. The fee shall, as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved. Moneys collected shall be deposited in the plant pest account, which is hereby created within the agricultural local fund. No appropriation is required for disbursement from the plant pest account to provide the services authorized by this section.

NEW SECTION. Sec. 18. **PENALTIES—CRIMINAL AND CIVIL PENALTY.** Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to RCW 17.24.100, the director may impose upon and collect from the violator a civil penalty not exceeding five thousand dollars per violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of commission or omission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty.

NEW SECTION. Sec. 19. **VIOLATIONS—COSTS OF CONTROL.** A person who, through a knowing and willful violation of a quarantine established under this chapter, causes an infestation to become established, may be required to pay the costs of public control or eradication measures caused as a result of that violation.

NEW SECTION. Sec. 20. **FUNDS FOR TECHNICAL AND SCIENTIFIC SERVICES.** The director may, at the director's discretion, provide funds for technical or scientific services, labor, materials and supplies, and biological control agents for the control of plant pests, bee pests, and noxious weeds.

NEW SECTION. Sec. 21. DETERMINATION OF IMMINENT DANGER OF INFESTATION OF PLANT PESTS OR PLANT DISEASES—EMERGENCY MEASURES—CONDITIONS—PROCEDURES. (1) If the director determines that there exists an imminent danger of an infestation of plant pests or plant diseases that seriously endangers the agricultural or horticultural industries of the state, or that seriously threatens life, health, or economic well-being, the director shall request the governor to order emergency measures to control the pests or plant diseases under RCW 43.06.010(14). The director's findings shall contain an evaluation of the affect of the emergency measures on public health.

(2) If an emergency is declared pursuant to RCW 43.06.010(14), the director may appoint a committee to advise the governor through the director and to review emergency measures necessary under the authority of RCW 43.06.010(14) and this section and make subsequent recommendations to the governor. The committee shall include representatives of the agricultural industries, state and local government, public health interests, technical service providers, and environmental organizations.

(3) Upon the order of the governor of the use of emergency measures, the director is authorized to implement the emergency measures to prevent, control, or eradicate plant pests or plant diseases that are the subject of the emergency order. Such measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides.

(4) Upon the order of the governor of the use of emergency measures, the director is authorized to enter into agreements with individuals or companies, or both, to accomplish the prevention, control, or eradication of plant pests or plant diseases, notwithstanding the provisions of chapter 15.58 or 17.21 RCW, or any other statute.

(5) The director shall continually evaluate the emergency measures taken and report to the governor at intervals of not less than ten days. The director shall immediately advise the governor if he or she finds that the emergency no longer exists or if certain emergency measures should be discontinued.

Sec. 22. RCW 43.06.010 and 1982 c 153 s 1 are each amended to read as follows:

In addition to those prescribed by the Constitution, the governor may exercise the powers and perform the duties prescribed in this and the following sections:

(1) The governor shall supervise the conduct of all executive and ministerial offices;

(2) The governor shall see that all offices are filled, and the duties thereof performed, or in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session;

(3) The governor shall make the appointments and supply the vacancies mentioned in this title;

(4) The governor is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States;

(5) Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, the governor may direct the attorney general to appear on behalf of the state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;

(6) The governor may require the attorney general or any prosecuting attorney to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;

(7) The governor may require the attorney general to aid any prosecuting attorney in the discharge of his duties;

(8) The governor may offer rewards, not exceeding one thousand dollars in each case, payable out of the state treasury, for information leading to the apprehension of any person convicted of a felony who has escaped from a state correctional institution or for information leading to the arrest of any person who has committed or is charged with the commission of a felony;

(9) The governor shall perform such duties respecting fugitives from justice as are prescribed by law;

(10) The governor shall issue and transmit election proclamations as prescribed by law;

(11) The governor may require any officer or board to make, upon demand, special reports to the governor, in writing;

(12) The governor may, after finding that a public disorder, disaster, energy emergency, or riot exists within this state or any part thereof which affects life, health, property, or the public peace, proclaim a state of emergency in the area affected, and the powers granted the governor during a state of emergency shall be effective only within the area described in the proclamation;

(13) The governor shall, when appropriate, submit to the select joint committee created by RCW 43.131.120, lists of state agencies, as defined by RCW 43.131.030, which agencies might appropriately be scheduled for termination by a bill proposed by the select joint committee;

(14) The governor may, after finding that there exists within this state an imminent danger of infestation of plant pests as defined in (~~RCW 17-24.005~~) section 4 of this act or plant diseases which seriously endangers the agricultural or horticultural industries of the state of Washington, or

which seriously threatens life, health, or economic well-being, order emergency measures to prevent or abate the infestation or disease situation, which measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides.

NEW SECTION. Sec. 23. The following acts or parts of acts are each repealed:

- (1) RCW 17.24.005 and 1981 c 296 s 36;
- (2) RCW 17.24.030 and 1981 c 296 s 24 & 1927 c 292 s 2;
- (3) RCW 17.24.035 and 1981 c 296 s 25 & 1927 c 292 s 3;
- (4) RCW 17.24.060 and 1927 c 292 s 4;
- (5) RCW 17.24.070 and 1927 c 292 s 5;
- (6) RCW 17.24.080 and 1927 c 292 s 6;
- (7) RCW 17.24.105 and 1981 c 296 s 27 & 1947 c 156 s 1;
- (8) RCW 17.24.110 and 1981 c 296 s 28, 1977 ex.s. c 169 s 5, & 1947 c 156 s 2;
- (9) RCW 17.24.120 and 1947 c 156 s 3;
- (10) RCW 17.24.130 and 1947 c 156 s 4;
- (11) RCW 17.24.140 and 1981 c 296 s 29 & 1947 c 156 s 5; and
- (12) RCW 17.24.200 and 1982 c 153 s 2.

NEW SECTION. Sec. 24. Captions as used in sections 3 through 21 of this act constitute no part of the law.

NEW SECTION. Sec. 25. Sections 3 through 21 of this act are each added to chapter 17.24 RCW.

NEW SECTION. Sec. 26. 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 shall take effect immediately.

Passed the House April 28, 1991.

Passed the Senate April 27, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 258

[Substitute Senate Bill 5504]

STUDENT TEACHING CENTERS

Effective Date: 7/28/91

AN ACT Relating to student teaching centers; adding new sections to chapter 28A.415 RCW; creating a new section; and repealing RCW 28A.625.420.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature recognizes that:

(a) Strong teacher preparation programs are vital to the success of the state's entire education system;

(b) Clinical field experiences, particularly student teaching, are critical to the developmental preparation of teacher candidates and to the success of teacher preparation programs;

(c) Schools, school districts, educational service districts, and institutions of higher education benefit mutually from cooperative relationships that provide teacher candidates with appropriate, necessary, and successful student teaching experiences that establish continuity between the theory and practice of teaching;

(d) Positive student teaching experiences result from the careful match between cooperating teachers and student teachers;

(e) Teacher candidates should have student teaching opportunities and other field experiences that are reflective of the diversity existing among schools and school districts state-wide; and

(f) School districts state-wide should have access to student teachers.

(2) Therefore, in support of quality, professional, research-based training of prospective teachers, it is the intent of the legislature to continue its support of evolving partnerships among schools, school districts, educational service districts, community colleges, and colleges and universities, that are:

(a) Benefiting the teaching profession;

(b) Enhancing the ability of all new teachers to assume initial teaching responsibilities with greater confidence and a higher level of training;

(c) Providing important and positive mentoring opportunities for experienced teachers; and

(d) Strengthening cooperation and communication between the precollegiate and collegiate sectors of the state education system.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 3 through 9 of this act.

(1) "Cooperating organizations" means that at least one school district, one college or university, and one educational service district are involved jointly with the development of a student teaching center.

(2) "Cooperating teacher" means a teacher who holds a continuing certificate and supervises and coaches a student teacher.

(3) "Field experience" means opportunities for observation, tutoring, microteaching, extended practicums, and clinical and laboratory experiences which do not fall within the meaning of student teaching.

(4) "School setting" means a classroom in a public, common school in the state of Washington.

(5) "Student teacher" means a candidate for initial teacher certification who is in a state board of education-approved, or regionally or nationally accredited teacher preparation program in a school setting as part of the field-based component of their preparation program.

(6) "Student teaching" means the full quarter or semester in a school setting during which the student teacher observes the cooperating teacher, participates in instructional activities, and assumes both part-time and full-time teaching responsibilities under the supervision of the cooperating teacher.

(7) "Student teaching center" means the program established to provide student teachers in a geographic region of the state with special support and training as part of their teacher preparation program.

(8) "Supervisor or university supervisor" means the regular or adjunct faculty member, or college or university-approved designee, who assists and supervises the work of cooperating teachers and student teachers.

NEW SECTION. Sec. 3. (1) Cooperating teachers shall provide a source of continuing and sustained assistance, coaching, and support for student teachers, and may participate with supervisors in evaluating student teachers, and shall submit recommendations to the institutions of higher education respecting the competency of the student teacher. Cooperating teachers shall collaborate with their school principals respecting the support, training, and assistance they provide to student teachers.

(2) All student teachers from an institution of higher education whose preparation program has been approved by the state board of education, or has been regionally or nationally accredited, shall be provided a cooperating teacher.

(3) Cooperating teachers will be appointed by school districts in a joint selection process with the institutions of higher education.

NEW SECTION. Sec. 4. Salary stipends for cooperating teachers shall be paid through supplemental contracts under RCW 28A.400.200(4) and as provided in the state operating appropriations act.

NEW SECTION. Sec. 5. The provisions of sections 3 and 4 of this act shall apply to sections 6 through 9 of this act.

NEW SECTION. Sec. 6. The state board of education, from appropriated funds, shall establish a network of student teaching centers to support the continuing development of the field-based component of teacher preparation programs. The purpose of the training centers is to:

(1) Expand opportunities for student teacher placements in school districts state-wide, with an emphasis on those populations and locations that are unserved or underserved;

(2) Provide cooperating teachers for all student teachers during their student internship for up to two academic quarters;

(3) Enhance the student teaching component of teacher preparation programs, including a placement of student teachers in special education and multi-ethnic school settings; and

(4) Expand access to each other and opportunities for collaboration in teacher education between colleges and universities and school districts.

NEW SECTION. Sec. 7. Funds for the student teaching centers shall be allocated by the superintendent of public instruction among the educational service district regions on the basis of student teaching placements. The fiscal agent for each center shall be either an educational service district or a state institution of higher education. Prospective fiscal agents shall document to the state board of education the following information:

(1) The existing or proposed center was developed jointly through a process including participation by at least one school district, one college or university, and one educational service district;

(2) Primary administration for each center shall be the responsibility of one or more of the cooperating organizations;

(3) Assurance that the training center program provides appropriate and necessary training in observation, supervision, and assistance skills and techniques for:

(a) Cooperating teachers;

(b) Other school building personnel; and

(c) School district employees.

NEW SECTION. Sec. 8. The student teaching centers shall be an alternative means of placing teachers into school districts throughout the state. Nothing in sections 1 through 9 of this act or RCW 28A.405.450 precludes a higher education institution that is not a participant in a training center from placing student teachers into a district that may be participating formally with other institutions in a student teaching center program, or placing student teachers into districts pursuant to an agreement between the institution and district.

NEW SECTION. Sec. 9. Field experiences may be provided through a student teaching center. The cost of providing such experiences and opportunities shall be the sole responsibility of the participants cooperating in the operation of the center.

NEW SECTION. Sec. 10. The state board of education and the superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to carry out the purposes of sections 1 through 9 of this act.

NEW SECTION. Sec. 11. RCW 28A.625.420 and 1990 1st ex.s. c 10 s 7 are each repealed.

NEW SECTION. Sec. 12. Sections 1 through 10 of this act are each added to chapter 28A.415 RCW.

NEW SECTION. Sec. 13. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the Senate March 14, 1991.

Passed the House April 12, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 259

[Substitute House Bill 1243]

TEACHER PREPARATION PROGRAMS—FACULTY INSTRUCTION IN THE PUBLIC SCHOOLS

Effective Date: 7/28/91

AN ACT Relating to teacher preparation programs; adding a new section to chapter 28B.10 RCW; adding a new section to chapter 28A.305 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the demands on teachers in the K–12 schools are evolving as society changes. Factors such as the increase in the number of single–parent households, drug and alcohol abuse, high dropout rates, and increasing rates of crime, among other things, are changing the nature of the teaching enterprise. The legislature also finds that college and university faculty engaged in training prospective teachers need to have first–hand experience of the nature of this changing enterprise. The legislature finds that a recently certified teacher in the K–12 system is required to engage in continuing education in order to stay current in his or her field. The legislature intends to require higher education faculty whose primary responsibility is teaching prospective teachers to engage in a form of public service and continuing education by teaching in the public schools.

***NEW SECTION.** Sec. 2. A new section is added to chapter 28B.10 RCW to read as follows:

(1) Each teacher preparation program subject to RCW 28A.305.130(1) shall annually develop and implement a plan to increase the level of collaboration and interaction between the program's faculty and K–12 schools in the state. The plan shall require, to the maximum extent feasible, that each member of the faculty annually provide instruction in K–12 classrooms.

(2) The governing board of each state university, regional university, and state college shall adopt salary policies that ensure that faculty members fulfilling the responsibilities described in this section are appropriately rewarded for their public service and participation in continuing education.

(3) *Teacher preparation programs of each state university, regional university, and state college shall be subject to the approval of the state board of education as required under RCW 28A.305.130 and section 3 of this act.*

*Sec. 2 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.305 RCW to read as follows:

In addition to other approval requirements for teacher preparation programs under RCW 28A.305.130(1), the state board of education shall require that the program annually develop and implement a plan to increase the level of collaboration and interaction between the program's faculty and K-12 schools in the state. The plan shall require, to the maximum extent feasible, that each member of the faculty annually provide instruction in K-12 classrooms.

Passed the House March 12, 1991.

Passed the Senate April 16, 1991.

Approved by the Governor May 17, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 17, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 2, Substitute House Bill No. 1243 entitled:

"AN ACT Relating to teacher preparation programs."

This bill seeks to increase collaboration and interaction between teacher preparation programs in institutions of higher education and elementary and secondary schools. I heartily agree with this objective.

Section 2 of the bill, however, requires that governing boards of state universities and colleges with teacher preparation programs adopt salary policies to reward faculty that teach in elementary and secondary schools. While the provision of salary incentives is also a laudable objective, it is not appropriate for state government to dictate particular components of salary policy, nor should a particular method of ensuring increased faculty interaction with public schools be dictated.

For the reasons stated above, I have vetoed section 2 of Substitute House Bill No. 1243.

With the exception of section 2, Substitute House Bill No. 1243 is approved.*

CHAPTER 260

[Senate Bill 5053]

JUVENILE DRIVING PRIVILEGES—AUTHORITY TO REVOKE UNDER MUNICIPAL ORDINANCE

Effective Date: 7/28/91

AN ACT Relating to juvenile driving privileges; and amending RCW 46.20.265.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.20.265 and 1989 c 271 s 117 are each amended to read as follows:

(1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 13.40.265, 66.44.365, 69.41.065, 69.50.420, ((or)) 69.52.070, or a substantially similar municipal ordinance adopted by a local legislative authority, or from a diversion unit pursuant to RCW 13.40.265. The revocation shall be imposed without hearing.

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for two years or until the juvenile reaches eighteen years of age, whichever is longer.

(3) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section.

(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for which the juvenile's driving privileges were revoked, the department shall reinstate any driving privileges revoked under this section as provided in (b) of this subsection.

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement.

Passed the Senate February 22, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 261

[Senate Bill 5441]

BOOKMAKING—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to bookmaking; amending RCW 9.46.0213, 9.46.0265, 9.46.160, 9.46-.170, 9.46.180, 9.46.185, 9.46.190, 9.46.196, 9.46.240, and 9.46.220; adding new sections to chapter 9.46 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.46.0213 and 1987 c 4 s 5 are each amended to read as follows:

"Bookmaking," as used in this chapter, means accepting bets (~~as a business, rather than in a casual or personal fashion~~), upon the outcome of future contingent events, as a business or in which the bettor is charged a fee or "vigorish" for the opportunity to place a bet.

Sec. 2. RCW 9.46.0265 and 1987 c 4 s 17 are each amended to read as follows:

"Player," as used in this chapter, means a natural person who engages, on equal terms with the other participants, and solely as a contestant or bettor, in any form of gambling in which no person may receive or become entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of a particular gambling activity. A natural person who gambles at a social game of chance on equal terms with the other participants (~~(therein does not otherwise render)~~) shall not be considered as rendering material assistance to the establishment, conduct or operation ((thereof)) of the social game merely by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises ((therefor, and)) for the game, or supplying cards or other equipment to be used ((therein)) in the games. A person who engages in "bookmaking" as defined in this chapter is not a "player." A person who pays a fee or "vigorish" enabling him or her to place a wager with a bookmaker, or pays a fee to participate in a card game, contest of chance, lottery, or gambling activity, is not a player.

Sec. 3. RCW 9.46.160 and 1975 1st ex.s. c 166 s 9 are each amended to read as follows:

Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission shall be guilty of a (~~(felony and upon conviction shall be punished by imprisonment for not more than five years or by a fine of not more than one hundred thousand dollars, or both))~~ class B felony. If any corporation conducts any activity for which a license is required by this

chapter, or by rule of the commission, without the required license issued by the commission, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section.

Sec. 4. RCW 9.46.170 and 1973 1st ex.s. c 218 s 17 are each amended to read as follows:

Whoever, in any application for a license or in any book or record required to be maintained by the commission or in any report required to be submitted to the commission, shall make any false or misleading statement, or make any false or misleading entry or wilfully fail to maintain or make any entry required to be maintained or made, or who wilfully refuses to produce for inspection by the commission, or its designee, any book, record, or document required to be maintained or made by federal or state law, shall be guilty of a gross misdemeanor (~~((and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five thousand dollars, or both))~~) subject to the penalty set forth in RCW 9A.20.021.

Sec. 5. RCW 9.46.180 and 1977 ex.s. c 326 s 8 are each amended to read as follows:

Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any provision of this chapter shall be guilty of a class B felony (~~((and upon conviction shall be punished by imprisonment for not more than five years or a fine of not more than one hundred thousand dollars, or both))~~) subject to the penalty in RCW 9A.20.021.

Sec. 6. RCW 9.46.185 and 1977 ex.s. c 326 s 9 are each amended to read as follows:

Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule or regulation adopted pursuant to this chapter shall be guilty of a gross misdemeanor (~~((and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five thousand dollars, or both))~~) subject to the penalty set forth in RCW 9A.20.021.

Sec. 7. RCW 9.46.190 and 1977 ex.s. c 326 s 10 are each amended to read as follows:

Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation:

- (1) Employ any device, scheme, or artifice to defraud; or
- (2) Make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made not misleading, in the light of the circumstances under which said statement is made; or
- (3) Engage in any act, practice or course of operation as would operate as a fraud or deceit upon any person;

Shall be guilty of a gross misdemeanor (~~(and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five thousand dollars, or both)~~) subject to the penalty set forth in RCW 9A.20.021.

Sec. 8. RCW 9.46.196 and 1977 ex.s. c 326 s 13 are each amended to read as follows:

No person participating in a gambling activity shall in the course of such participation, directly or indirectly:

(1) Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;

(2) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;

(3) Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or

(4) Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section.

Any person violating this section shall be guilty of a gross misdemeanor (~~(and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five thousand dollars, or both)~~) subject to the penalty set forth in RCW 9A.20.021.

Sec. 9. RCW 9.46.240 and 1987 c 4 s 44 are each amended to read as follows:

Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore or similar means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021; PROVIDED, HOWEVER, That this section shall not apply to such information transmitted or received or equipment installed or maintained relating to activities authorized by this chapter or to any act or acts in furtherance thereof when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto.

Sec. 10. RCW 9.46.220 and 1987 c 4 s 42 are each amended to read as follows:

~~((Whoever engages in professional gambling, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling, shall be guilty of a felony and fined not more than one hundred thousand dollars or imprisoned not more than five years or both. PROVIDED, HOWEVER, That this section shall not apply to those activities authorized by this chapter or to any act or acts in furtherance thereof when conducted~~

~~in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto:))~~

(1) A person is guilty of professional gambling in the first degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) While engaging in professional gambling acts in concert with or conspires with five or more people;

(b) Accepts wagers exceeding five thousand dollars during any calendar month on future contingent events; or

(c) Operates, manages, or profits from the operation of a premises or location where persons are charged a fee to participate in card games, lotteries, or other gambling activities that are not authorized by this chapter or licensed by the commission.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the first degree is a class B felony subject to the penalty set forth in RCW 9A.20.021.

NEW SECTION. Sec. 11. A new section is added to chapter 9.46 RCW to read as follows:

(1) A person is guilty of professional gambling in the second degree if he or she engages in or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) While engaging in professional gambling acts in concert with or conspires with less than five people;

(b) Accepts wagers exceeding two thousand dollars during any calendar month on future contingent events;

(c) Maintains a "gambling premises" as defined in this chapter; or

(d) Maintains gambling records as defined in RCW 9.46.020.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the second degree is a class C felony subject to the penalty set forth in RCW 9A.20.021.

NEW SECTION. Sec. 12. A new section is added to chapter 9.46 RCW to read as follows:

(1) A person is guilty of professional gambling in the third degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter; and

(a) His or her conduct does not constitute first or second degree professional gambling;

(b) Operates any of the unlicensed gambling activities authorized by this chapter in a manner other than as prescribed by this chapter; or

(c) Is directly employed in but not managing or directing any gambling operation.

(2) This section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and the rules adopted pursuant to this chapter.

(3) Professional gambling in the third degree is a gross misdemeanor subject to the penalty established in RCW 9A.20.021.

Passed the Senate March 7, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 262

[Second Substitute Senate Bill 5667]

MENTAL HEALTH—LOCAL EVALUATION AND TREATMENT CENTERS

Effective Date: 5/17/91

AN ACT Relating to local evaluation and treatment services; amending RCW 71.24.035 and 71.24.300; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 71.24.035 and 1990 1st ex.s. c 8 s 1 are each amended to read as follows:

(1) The department is designated as the state mental health authority.

(2) The secretary may provide for public, client, and licensed service provider participation in developing the state mental health program.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates county biennial needs assessments and county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;

(b) Assure that any county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The acutely mentally ill; (ii) the chronically mentally ill; and (iii) the seriously disturbed. Such programs shall provide:

- (A) Outpatient services;
- (B) Emergency care services for twenty-four hours per day;
- (C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;
- (D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;
- (E) Consultation and education services; and
- (F) Community support services;
- (c) Develop and promulgate rules establishing state minimum standards for the delivery of mental health services including, but not limited to:
 - (i) Licensed service providers;
 - (ii) Regional support networks; and
 - (iii) Residential and inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;
- (d) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section;
- (e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used by the counties;
- (f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers;
- (g) Develop and maintain an information system to be used by the state, counties, and regional support networks when they are established which shall include a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.400, 71.05.410, 71.05.420, 71.05.430, and 71.05.440. The system shall be fully operational no later than January 1, 1993: PROVIDED, HOWEVER, That when a regional support network is established, the department shall have an operational interim tracking system for that network that will be adequate for the regional support network to perform its required duties under this chapter;
- (h) License service providers who meet state minimum standards;
- (i) Certify regional support networks that meet state minimum standards;

(j) Periodically inspect certified regional support networks and licensed service providers at reasonable times and in a reasonable manner; and

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Prior to September 1, 1989, adopt such rules as are necessary to implement the department's responsibilities under this chapter pursuant to chapter 34.05 RCW: PROVIDED, That such rules shall be submitted to the appropriate committees of the legislature for review and comment prior to adoption; and

(n) Beginning July 1, 1989, and continuing through July 1, 1993, track by region and county the use and cost of state hospital and local evaluation and treatment facilities for seventy-two hour detention, fourteen, ninety, and one hundred eighty day commitments pursuant to chapter 71.05 RCW, voluntary care in state hospitals, and voluntary community inpatient care covered by the medical assistance program. Service use and cost reports shall be provided to regions in a timely fashion at six-month intervals.

(6) The secretary shall use available resources appropriated specifically for community mental health programs only for programs under RCW 71.24.045. After July 1, 1995, or when regional support networks are established, available resources may be used only for regional support networks.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to the law, applicable rules and regulations, or applicable standards, or failure to meet the minimum standards established pursuant to this section.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional

support network or service provider refusing to consent to inspection or examination by the authority.

(11) The secretary shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to certification and licensing and other action relevant to certifying regional support networks and licensing service providers.

(12) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general who shall represent the secretary in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(13) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapter 71.05 RCW, and shall otherwise assure the effectuation of the purposes and intent of this chapter and chapter 71.05 RCW.

(14)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, and seriously disturbed as defined in chapter 71.24 RCW. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as defined in subsection (15) of this section. These factors shall include the population concentrations resulting from commitments under the involuntary treatment act, chapter 71.05 RCW, to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The department shall submit a proposed distribution formula in accordance with this section to the ways and means and health care and corrections committees of the senate and to the ways and means and human services committees of the house of representatives by October 1, 1989. The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

(15) To supersede duties assigned under subsection (5) (a) and (b) of this section, and to assure a county-based, integrated system of care for acutely mentally ill adults and children, chronically mentally ill adults and children, and seriously disturbed adults and children who are determined by regional support networks at their sole discretion to be at risk of becoming acutely or chronically mentally ill, the secretary shall encourage the development of regional support networks as follows:

By December 1, 1989, the secretary shall recognize regional support networks requested by counties or groups of counties.

All counties wishing to be recognized as a regional support network on December 1, 1989, shall submit their intentions regarding participation in the regional support networks by October 30, 1989, along with preliminary plans. Counties wishing to be recognized as a regional support network by January 1 of any year thereafter shall submit their intentions by October 30 of the previous year along with preliminary plans. The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05 and 71.24 RCW on July 1, 1995. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The implementation of regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05 and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medic-aid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(16) By January 1, 1992, the secretary shall provide available resources to regional support networks to operate freestanding evaluation and treatment facilities or for regional support networks to contract with local hospitals to assure access for regional support network patients.

(17) The secretary shall:

(a) Disburse the first funds for the regional support networks that are ready to begin implementation by January 1, 1990, or within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks to begin implementation between January 1, 1990, and March 1, 1990, and complete implementation by June 1995. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) By July 1, 1993, allocate one hundred percent of available resources to regional support networks created by January 1, 1990, in a single grant. Regional support networks created by January 1, 1991, shall receive a single block grant by July 1, 1993; regional support networks created by January 1, 1992, shall receive a single block grant by July 1, 1994; and regional support networks created by January 1, 1993, shall receive a single block grant by July 1, 1995. The grants shall include funds currently provided for all residential services, all services pursuant to chapter 71.05

RCW, and all community support services and shall be distributed in accordance with a formula submitted to the legislature by January 1, 1993, in accordance with subsection (14) of this section.

(d) By January 1, 1990, allocate available resources to regional support networks for community support services, resource management services, and residential services excluding evaluation and treatment facilities provided pursuant to chapter 71.05 RCW in a single grant using the distribution formula established in subsection (14) of this section.

(e) By March 1, 1990, or within sixty days of approval of the contract continuing through July 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. For regional support networks created by January 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW through July 1, 1995.

(f) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(g) Study and report to the legislature by December 1, 1989, on expanding the use of federal Title XIX funds and the definition of institutions for mental diseases to provide services to persons who are acutely mentally ill, chronically mentally ill, or at risk of becoming so. The study shall also include an assessment of the impact of Title XIX funds and the definition of institutions for mental diseases on the use of state funds to provide needed mental health services to the chronically mentally ill.

(h) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

(i) Identify in its departmental biennial operating and capital budget requests the funds requested by regional support networks to implement their responsibilities under this chapter.

(j) Contract to provide or, if requested, make grants to counties to provide technical assistance to county authorities or groups of county authorities to develop regional support networks.

~~((+7))~~ (18) The department of social and health services, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by

free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the health care and corrections committee of the senate and the human services committee of the house of representatives.

~~((+8))~~ (19) The secretary shall establish a task force to examine the recruitment, training, and compensation of qualified mental health professionals in the community, which shall include the advantages and disadvantages of establishing a training academy, loan forgiveness program, or educational stipends offered in exchange for commitments of employment in mental health. The task force shall report back to the appropriate committees of the legislature by January 1, 1990.

Sec. 2. RCW 71.24.300 and 1989 c 205 s 5 are each amended to read as follows:

A county authority or a group of county authorities whose combined population is no less than forty thousand may enter into a joint operating agreement to form a regional support network. The roles and responsibilities of county authorities shall be determined by the terms of that agreement and the provisions of law. The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(1) Regional support networks shall within three months of recognition submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties by July 1, 1995, instead of those presently assigned to counties under RCW 71.24.045(1):

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) By July 1, 1993, provide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks with populations of less than one hundred fifty thousand may contract to purchase evaluation and treatment services from other networks. For regional support networks that are created after June 30, 1991, the requirements of (c) of this subsection must be met by July 1, 1995.

(d) By July 1, 1993, administer a portion of funds appropriated by the legislature to house mentally ill persons in state institutions from counties

within the boundaries of any regional support network, with the exception of mentally ill offenders, and provide for the care of all persons needing evaluation and treatment services for periods up to seventeen days according to chapter 71.05 RCW in appropriate residential services, which may include state institutions. The regional support networks shall reimburse the state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium when reimbursement occurs. The duty of a state hospital to accept persons for evaluation and treatment under chapter 71.05 RCW is limited by the responsibilities assigned to regional support networks under this section. For regional support networks that are created after June 30, 1991, the requirements of (d) of this subsection must be met by July 1, 1995.

(e) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, and mental health services to children as provided in this chapter.

(f) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(2) Regional support networks shall assume all duties assigned to county authorities by this chapter and chapter 71.05 RCW.

(3) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the mentally ill and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(4) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter. The composition of the board shall be broadly representative of the demographic character of the region and the mentally ill persons served therein. Length of terms of board members shall be determined by the regional support network.

(5) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary. Such contracts may include agreements to provide periods of stable community living and work or other day activities for specific chronically mentally ill persons who have completed commitments at state hospitals on ninety-day or one hundred eighty-day civil commitments or who have been residents at state hospitals for no less than one hundred eighty days within the previous year. Periods of stable community living

may involve acute care in local evaluation and treatment facilities but may not involve use of state hospitals.

(6) Counties or groups of counties participating in a regional support network are not subject to RCW 71.24.045(7). The office of financial management shall consider information gathered in studies required in this chapter and information about the experience of other states to propose a mental health services administrative cost lid to the 1991 legislature which shall include administrative costs of licensed service providers, the state psychiatric hospitals and the department.

(7) The first regional support network contract may include a pilot project to: Establish standards and procedures for (a) making referrals for comprehensive medical examinations and treatment programs for those whose mental illness is caused or exacerbated by organic disease, and (b) training staff in recognizing the relationship between mental illness and organic disease.

(8) By November 1, 1991, and as part of each biennial plan thereafter, each regional support network shall establish and submit to the state, procedures and agreements to assure access to sufficient additional local evaluation and treatment facilities to meet the requirements of this chapter while reducing short-term admissions to state hospitals. These shall be commitments to construct and operate, or contract for the operation of, free standing evaluation and treatment facilities or agreements with local evaluation and treatment facilities which shall include (a) required admission and treatment for short-term inpatient care for any person enrolled in community support or residential services, (b) discharge planning procedures, (c) limitations on admissions or transfers to state hospitals, (d) adequate psychiatric supervision, (e) prospective payment methods, and (f) contractual assurances regarding referrals to local evaluation and treatment facilities from regional support networks.

NEW SECTION. Sec. 3. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 22, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 263

[Senate Bill 5778]

PESTICIDE DAMAGE REPORTING

Effective Date: 5/17/91

AN ACT Relating to the filing of a report of damage due to the use or application of a pesticide; amending RCW 17.21.190; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 17.21.190 and 1989 c 380 s 51 are each amended to read as follows:

Any person suffering property loss or damage resulting from the use or application by others of any pesticide shall file with the director a verified report of loss setting forth, so far as known to the claimant, the following:

- (1) The name and address of the claimant.
- (2) The type, kind, property alleged to be injured or damaged.
- (3) The name of the person applying the pesticide and allegedly responsible.
- (4) The name of the owner or occupant of the property for whom such application of the pesticide was made.

The report shall be filed within thirty days from the time that the property loss or damage becomes known to the claimant. If a growing crop is alleged to have been damaged, the report shall be filed prior to harvest of fifty percent of that crop, unless the loss or damage was not then known. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the damage.

Any person filing a report of loss under this section shall cooperate with the department in conducting an investigation of such a report and shall provide the department or authorized representatives of the department access to any affected property and any other necessary information relevant to the report. If a claimant refuses to cooperate with the department, the report shall not be acted on by the department.

The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action.

The failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one suffering loss from such use or application of a pesticide by a pesticide applicator or operator, the director may refuse to act upon the complaint.

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 shall take effect immediately.

Passed the Senate March 15, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 264

[Engrossed House Bill 1156]

STRUCTURAL PEST CONTROL INSPECTORS

Effective Date: 7/28/91

AN ACT Relating to structural pest control inspectors; and amending RCW 15.58.030, 15.58.040, 15.58.150, and 15.58.210.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.58.030 and 1989 c 380 s 1 are each amended to read as follows:

As used in this chapter the words and phrases defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(5) "Department" means the Washington state department of agriculture.

(6) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(7) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(8) "Director" means the director of the department or a duly authorized representative.

(9) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(10) "EPA" means the United States environmental protection agency.

(11) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(12) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(13) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living persons or other animals.

(14) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(15) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(16) "Inert ingredient" means an ingredient which is not an active ingredient.

(17) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. In the case of a spray adjuvant the ingredient statement need contain only the names of the principal functioning agents and the total percentage of the constituents ineffective as spray adjuvants. If more than three functioning agents are present, only the three principal ones need by [be] named.

(18) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(19) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(20) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

(21) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, device, or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(22) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(23) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(24) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(25) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(26) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(27) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(28) "Pest control consultant" means any individual who acts as a structural pest control inspector, who sells or offers for sale at other than a licensed pesticide dealer outlet or location, or who offers or supplies technical advice, supervision, or aid, or makes recommendations to the user of:

- (a) Highly toxic pesticides, as determined under RCW 15.58.040;
- (b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or
- (c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(29) "Pesticide" means, but is not limited to:

- (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(30) "Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act.

(31) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(32) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(33) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(34) "Registrant" means the person registering any pesticide under the provisions of this chapter.

(35) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(36) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

(37) "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own, intended to be used with any other pesticide as an aid to the application or to the effect of the pesticide, and which is in a package or container separate from that of the pesticide with which it is to be used.

(38) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(39) "Structural pest control inspector" means any individual who commercially performs the service of inspecting a building for the presence of pests destructive to its structural components.

(40) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((40))~~ (41) "Weed" means any plant which grows where not wanted.

Sec. 2. RCW 15.58.040 and 1989 c 380 s 2 are each amended to read as follows:

(1) The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter. All the authority and requirements provided for in chapter 34.05 RCW (Administrative Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the adoption of rules including those requiring due notice and a hearing for the adoption of permanent rules.

(2) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, people, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to people. For the purpose of this chapter, highly toxic pesticide means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 162.10 for toxicity category I due to oral inhalation or dermal toxicity. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require rules restricting or prohibiting their distribution or use. The director may include in the rule the time and conditions of distribution or use of such restricted use pesticides and may, if it is found necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under

permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations. The director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter; ~~((and))~~

(j) Regulating the labeling of devices; and

(k) The establishment of criteria governing the conduct of a structural pest control inspection.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, established by the United States environmental protection agency or any other federal agency.

Sec. 3. RCW 15.58.150 and 1989 c 380 s 11 are each amended to read as follows:

(1) It is unlawful for any person to distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of this chapter;

(b) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: PROVIDED, That at the discretion of the director, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(c) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this chapter and the rules adopted under this chapter;

(d) Any pesticide including arsenicals, fluorides, fluosilicates, and/or any other white powdered pesticides unless they have been distinctly denatured as to color, taste, odor, or form if so required by rule;

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(f) Any pesticide in containers, violating rules adopted pursuant to RCW 15.58.040(2)(f) or pesticides found in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) To sell or deliver any pesticide to any person who is required by law or rules promulgated under such law to be certified, licensed, or have a permit to use or purchase the pesticide unless such person or the person's agent, to whom sale or delivery is made, has a valid certification, license, or permit to use or purchase the kind and quantity of such pesticide sold or delivered: **PROVIDED**, That, subject to conditions established by the director, such permit may be obtained immediately prior to sale or delivery from any person designated by the director;

(b) For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this chapter or rules adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter or the rules adopted thereunder;

(c) For any person to use or cause to be used any pesticide contrary to label directions or to regulations of the director if those regulations differ from or further restrict the label directions: **PROVIDED**, The compliance to the term "contrary to label directions" is enforced by the director consistent with the intent of this chapter;

(d) For any person to use for his or her own advantage or to reveal, other than to the director or proper officials or employees of the state, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of RCW 15.58.060;

(e) For any person to make false, misleading, or erroneous statements or reports concerning any pest during or after a ((structural)) pest inspection or to fail to comply with criteria established by rule for structural pest control inspections;

(f) For any person to make false, misleading, or erroneous statements or reports in connection with any pesticide complaint or investigation.

Sec. 4. RCW 15.58.210 and 1989 c 380 s 16 are each amended to read as follows:

Except as provided in subsection (2) of this section, no individual may perform services as a pest control consultant without obtaining from the director an annual license, which license shall expire on the final day of February of each year. No individual may act as a structural pest control inspector without first obtaining from the director a pest control consultant license in the special category of structural pest control inspector. Application for a license shall be on a form prescribed by the director and shall be accompanied by a fee of thirty dollars.

(2) The following are exempt from the licensing requirements of subsection (1) of this section when acting within the authorities of their existing licenses issued under chapter 17.21 RCW: Licensed commercial pesticide applicators and operators; licensed private-commercial applicators;

and licensed demonstration and research applicators((;)). The following are also exempt from the licensing requirements of subsection (1) of this section: Employees of federal, state, county, or municipal agencies when acting in their official governmental capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet(~~(; are exempt from this licensing provision))~~).

Passed the House March 12, 1991.

Passed the Senate April 9, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 265

[Engrossed Substitute House Bill 1329]

SPECIAL EDUCATIONAL SERVICES DEMONSTRATION PROJECTS

Effective Date: 5/17/91

AN ACT Relating to special educational services demonstration projects; adding new sections to chapter 28A.630 RCW; creating a new section; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature to (1) encourage school districts, individually and cooperatively, to develop innovative special services demonstration projects that use resources efficiently and increase student learning; (2) promote noncategorical approaches to special services program design, funding, and administration; (3) develop efficient and cost-effective means for identifying students as specific learning disabled, in order to increase the proportion of resources devoted to classroom instruction; and (4) provide a means to grant waivers from state rules.

NEW SECTION. Sec. 2. The superintendent of public instruction shall:

- (1) Make ten to twenty-five awards for demonstration projects in individual school districts and cooperatives;
- (2) Make awards for in-service training of teachers and other staff;
- (3) Provide technical assistance;
- (4) Grant waivers from state rules needed to implement the projects, or request such waivers to be granted by the appropriate agency;
- (5) Contract with school districts for demonstration projects and make contract payments in accordance with sections 1 through 5 of this act;
- (6) Perform or contract for an evaluation of the projects;
- (7) Confer on the evaluation design with the selection advisory committee; and
- (8) Submit to the legislature an interim report on the evaluation by December 31, 1993, and a final report by December 31, 1995.

NEW SECTION. Sec. 3. (1) The selection advisory committee is created. The committee shall be composed of up to three members from the house of representatives, up to three members from the senate, up to two members from the office of the superintendent of public instruction, and one member from each of the following: The office of financial management, Washington state special education coalition, transitional bilingual instruction educators, and Washington education association.

(2) The legislative budget committee and the superintendent of public instruction shall provide staff for the selection advisory committee.

(3) The selection advisory committee shall:

(a) Develop appropriate criteria for selecting demonstration projects;

(b) Issue requests for proposals in accordance with sections 1 through 5 of this act for demonstration projects to commence during the 1991-92 and 1992-93 school years;

(c) Review proposals and recommend demonstration projects for approval by the superintendent of public instruction;

(d) Advise the superintendent of public instruction on the evaluation design; and

(e) Report each year by December 1st on the status of the demonstration projects to the legislative budget committee and the appropriate policy and fiscal committees of the house of representatives and the senate.

NEW SECTION. Sec. 4. School districts with demonstration projects shall:

(1) Confer on a regular basis during project planning and implementation with teachers, support staff, parents of handicapped students, and parents of other students served in the project;

(2) Administer annual achievement tests to all students served in the project if required in the project contract; and

(3) Cooperate in providing all information needed for the evaluation.

NEW SECTION. Sec. 5. (1) Project funding may include state, federal, and local funds, as specified by the district in its approved project cost proposal. The superintendent of public instruction shall include all project funding for a participating district in a project contract and disburse the funds as contract payments.

(2) As a general guideline, subject to refinements in the district cost proposal and approval by the superintendent of public instruction, the portion of state handicapped funding included as project funding shall be determined as follows:

(a) If the district serves specific learning disabled students in the project, the portion of the handicapped allocation attributed to specific learning disabled students shall be included, with proportional adjustments if the project serves only part of the district's specific learning disabled population;

(b) If other handicapped students are served in the project, the portions of the handicapped allocation attributed to those students shall be included, with proportional adjustments if the project serves only part of the district's population in those categories of handicapped students.

(3) State handicapped allocations shall be calculated for project districts according to the handicapped funding formula in use for other districts, but with the following changes:

(a) Except as provided in (b) of this subsection, funding in each school year for specific learning disabled and other handicapped students served in a project shall be based on the average percentage of the kindergarten through twelfth grade enrollment in the particular handicapped category during the prior three years.

(b) Project funding for school districts that had pilot projects approved under section 13, chapter 233, Laws of 1989, shall be based for the duration of a project under sections 1 through 5 of this act on four percent of the kindergarten through twelfth grade enrollment considered as specific learning disabled, without regard to the actual number of students so identified. The legislature recognizes the importance of continuing and developing the pilot projects.

(c) The funding percentages for demonstration projects specified in (a) and (b) of this subsection shall be used to adjust basic education allocations under RCW 28A.150.260 and learning assistance program allocations under RCW 28A.165.070.

(d) State handicapped allocations under subsection (2) of this section up to the level required by federal maintenance of effort rules shall be expended for services to handicapped students in the project. Allocations greater than the amount needed to comply with federal maintenance of effort rules shall be designated as noncategorical project funds and may be expended on services to any student served in the project.

(4) Federal handicapped allocations may be designated in whole or in part for project use, if the amounts are included in the district's approved cost proposal and the project contract.

(5) Learning assistance program allocations may be designated in whole or in part for project use, if the amounts are included in the district's approved cost proposal and the project contract. These allocations shall be calculated for project districts according to the funding formula in use for other districts, except that any increases in the district allocation above the fiscal year 1991 amount shall be designated as noncategorical project funds and may be expended on services to any student served in the project.

(6) Transitional bilingual program allocations may be designated in whole or in part for project use, if the amounts are included in the district's approved cost proposal and the project contract. These allocations shall be calculated for project districts according to the funding formula in use for other districts, except that any increases in the district allocation above the

fiscal year 1991 amount shall be designated as noncategorical project funds and may be expended on services to any student served in the project.

(7) Funding under the federal remediation program allocations may be designated in whole or in part for project use, if the amounts are included in the district's approved cost proposal and the project contract.

(8) Funding from local sources may be designated for project use, if the amounts are included in the district's approved cost proposal and the project contract.

(9) Expenditures of noncategorical project funds under subsections (3)(d), (5), and (6) of this section shall be accounted for in new and discrete program or subprogram codes designated by the superintendent of public instruction. The codes shall take effect by September 1, 1991.

NEW SECTION. Sec. 6. Sections 1 through 5 of this act are each added to chapter 28A.630 RCW.

NEW SECTION. Sec. 7. Sections 1 through 5 of this act shall expire January 1, 1996.

NEW SECTION. Sec. 8. 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 shall take effect immediately.

NEW SECTION. Sec. 9. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the House March 7, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 266

[House Bill 1460]

RECIPROCAL INSURERS—POWERS REGARDING REAL PROPERTY

Effective Date: 7/28/91

AN ACT Relating to the maintenance and investment of assets by reciprocal exchanges; and adding a new section to chapter 48.10 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 48.10 RCW to read as follows:

A reciprocal insurer may purchase, sell, mortgage, encumber, lease, or otherwise affect the title to real property for the purposes and objects of the reciprocal insurer. All deeds, notes, mortgages, or other documents relating

to the real property may be executed in the name of the reciprocal insurer by its attorney.

Passed the House March 8, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 267

[Engrossed Substitute House Bill 1534]

SEXUAL ASSAULT INVESTIGATION AND PROSECUTION TRAINING

Effective Date: 7/1/91

AN ACT Relating to training for investigating and prosecuting sexual assault cases; adding a new section to chapter 43.101 RCW; adding a new section to chapter 70.125 RCW; creating new sections; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The safety of all children is enhanced when sexual assault cases are properly investigated and prosecuted. The victim of the sexual assault and the victim's family have a right to be treated with sensitivity and professionalism, which also increases the likelihood of their continued cooperation with the investigation and prosecution of the case. The legislature finds the sexual assault cases, particularly those involving victims who are children, are difficult to prosecute successfully. The cooperation of a victim and the victim's family through the investigation and prosecution of the sexual assault case is enhanced and the trauma associated with the investigation and prosecution is reduced when trained victim advocates assist the victim and the victim's family through the investigation and prosecution of the case. Trained victim advocates also assist law enforcement, prosecutors, and defense attorneys, by relieving some of the burden of explaining the investigation and prosecution process and possible delays to the victim and accompanying the victim during interviews by the police, prosecutor, and defense attorney, and accompanying the victim during hearings and the trial.

The legislature finds that counties should give priority to the successful prosecution of sexual assault cases, especially those that involve children, by ensuring that prosecutors, investigators, defense attorneys, and victim advocates are properly trained and available. Therefore, the legislature intends to establish a mechanism to provide the necessary training of prosecutors, law enforcement investigators, defense attorneys, and victim advocates and ensure the availability of victim advocates for victims of sexual assault and their families.

NEW SECTION. Sec. 2. (1) Each year the criminal justice training commission shall offer an intensive, integrated training session on investigating and prosecuting sexual assault cases. The training shall place particular emphasis on the development of professionalism and sensitivity towards the victim and the victim's family.

(2) The commission shall seek advice from the Washington association of prosecuting attorneys, the Washington defender association, the Washington association of sheriffs and police chiefs, and the Washington coalition of sexual assault programs.

(3) The training shall be an integrated approach to sexual assault cases so that prosecutors, law enforcement, defenders, and victim advocates can all benefit from the training.

(4) The training shall be self-supporting through fees charged to the participants of the training.

NEW SECTION. Sec. 3. (1) Rape crisis centers which are eligible for funding from the department of social and health services under chapter 70.125 RCW may apply for grants for the purpose of hiring and training victim advocates to assist victims and their families through the investigation and prosecution of sexual assault cases. The victim advocates shall complete a training program either through the criminal justice training program under section 2 of this act or, at the election of the rape crisis center, a training program to be designed and administered by the Washington association of prosecuting attorneys and the Washington coalition of sexual assault programs.

(2) Twenty-five percent of the funding for the victim advocate grants under this section must be provided by one or more local, municipal, or county source, either public or private. The department shall seek, receive, and make use of any funds which may be available from federal or other sources to augment state funds appropriated for the purpose of this section, and shall make every effort to qualify for federal funding.

NEW SECTION. Sec. 4. Section 2 of this act is added to chapter 43-.101 RCW.

NEW SECTION. Sec. 5. Section 3 of this act is added to chapter 70-.125 RCW.

NEW SECTION. Sec. 6. If by June 30, 1991, the omnibus operating budget appropriations act for the 1991-93 biennium does not provide specific funding for section 3 of this act, referencing this act by bill number and section, section 3 of this act shall be null and void.

NEW SECTION. Sec. 7. 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 shall take effect July 1, 1991.

Passed the House March 18, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 268

[Substitute House Bill 1971]

ALIEN INSURERS—REGULATION OF

Effective Date: 5/17/91

AN ACT Relating to alien insurers; adding a new chapter to Title 48 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. This chapter applies to all alien insurers using this state as a state of entry to transact insurance in the United States.

For the purposes of this chapter, "alien insurer" has the definition supplied in RCW 48.05.010.

NEW SECTION. Sec. 2. (1) An alien insurer may use this state as a state of entry to transact insurance in the United States by maintaining in this state a deposit of assets in a solvent trust company or other solvent financial institution having trust powers domiciled in this state and so designated by the commissioner. The commissioner's designated depositories are authorized to receive and hold a deposit of assets. A deposit so held is at the expense of the insurer. A solvent financial institution domiciled in this state, the deposits of which are insured by the federal deposit insurance corporation and which is a member of the federal reserve system, may be designated as the commissioner's depository to receive and hold a deposit of assets.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, must be in an amount not less than the higher of deposits required of an alien insurer under RCW 48.05.090 or five hundred thousand dollars and consist of eligible assets as set forth in RCW 48.16.030.

(3) The deposit may be referred to as "trusteed assets."

NEW SECTION. Sec. 3. All trusts of trustee assets created before the effective date of this act must be continued under the instruments creating those trusts. If the commissioner determines that the instruments are inconsistent with the provisions of this chapter, the insurer shall correct those inconsistencies within six months of the commissioner's determination.

NEW SECTION. Sec. 4. The deposit required by this chapter must be for the benefit, security, and protection of the policyholders or creditors, or both, of the insurer in the United States. It shall be maintained as long as

there is outstanding any liability of the insurer arising out of its insurance transactions in the United States.

NEW SECTION. Sec. 5. (1) The alien insurer shall create the trustee assets required by this chapter under a written trust agreement between the insurer and the trustee, consistent with the provisions of this chapter, and in such form and manner as the commissioner may designate or approve.

(2) The agreement is effective when filed with and approved in writing by the commissioner. The commissioner shall not approve any trust agreement not found to be in compliance with state or federal law or the terms of which do not in fact provide reasonably adequate protection for the insurer's policyholders or creditors, or both, in the United States.

NEW SECTION. Sec. 6. An alien insurer proposing to use this state as a state of entry to transact insurance in the United States, must be authorized to transact insurance in this state and may make and execute any trust agreement required by this chapter.

NEW SECTION. Sec. 7. A trust agreement may be amended. However, the amendment is not effective until filed with the commissioner and the commissioner finds and states in writing that the amendment is in compliance with this chapter.

NEW SECTION. Sec. 8. The commissioner may withdraw his or her approval of a trust agreement, or of an amendment to the agreement, if the commissioner determines that the requisites for the approval no longer exist. The determination shall be made after notice and a hearing as provided in chapter 48.04 RCW.

NEW SECTION. Sec. 9. The trust agreement must provide that title to the trustee assets vests and remains vested in the trustees and their successors for the purposes of the trust deposit.

NEW SECTION. Sec. 10. The trustee shall keep the trustee assets separate from other assets and shall maintain a record sufficient to identify the trustee assets at all times.

NEW SECTION. Sec. 11. (1) The trustee of trustee assets shall file statements with the commissioner, in a form required by the commissioner, certifying the character and amount of the assets.

(2) If the trustee fails to file a requested statement after a reasonable time has expired, the commissioner may suspend or revoke the certificate of authority of the insurer required under RCW 48.05.030.

NEW SECTION. Sec. 12. (1) The commissioner may examine trustee assets of any insurer at any time in accordance with the same conditions and procedures governing the examination of insurers provided in chapter 48.03 RCW.

(2) The depositing insurer shall not assign or transfer, voluntarily, involuntarily, or by operation of law, all or a part of its interest in the trustee assets without the prior written approval of the commissioner, and a transfer or assignment occurring without approval is void. The assignee or transferee of the trustee assets shall irrevocably and automatically assume all of the obligations and liabilities of the assignor or transferor.

NEW SECTION. Sec. 13. (1) The trust agreement must provide that the commissioner shall authorize and approve in writing all withdrawals of trustee assets in advance except as follows:

(a) Any or all income, earnings, dividends, or interest accumulations of the trustee assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager;

(b) Withdrawals coincident with substitutions of securities or assets that are at least equal in value to those being withdrawn, if the substituted securities or assets would be eligible for investment by domestic insurers, and the insurer's United States manager requests the withdrawal in writing under a general or specific written authority previously given or delegated by the insurer's board of directors, or other similar governing body, and a copy of such authority has been filed with the trustee;

(c) For the purpose of making deposits required by another state in which the insurer is, or becomes, an authorized insurer and for the protection of the insurer's policyholders or creditors, or both, in the state or United States, if the withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required. The trustee shall transfer any assets withdrawn and in the amount required to be deposited in the other state, directly to the depository required to receive the deposit as certified in writing by the public official having supervision of insurance in that state; and

(d) For the purpose of transferring the trustee assets to an official liquidator, conservator, or rehabilitator under an order of a court of competent jurisdiction.

(2) The commissioner shall authorize a withdrawal of only those assets that are in excess of the amount of assets required to be held in trust, or as may otherwise be consistent with the provisions of this chapter.

(3) If at any time the insurer becomes insolvent or if its assets held in the United States are less than required as determined by the commissioner, the commissioner shall order in writing the trustee to suspend the withdrawal of assets until a further order of the commissioner releasing the assets.

NEW SECTION. Sec. 14. A new trustee may be substituted for the original trustee of trustee assets in the event of a vacancy or for other proper cause. Any such substitution is subject to the commissioner's approval.

NEW SECTION. Sec. 15. The insurer shall provide for the compensation and expenses of the trustees of assets of an alien insurer under this chapter in an amount, or on a basis, as agreed upon by the insurer and the trustees in the trust agreement, subject to the prior approval of the commissioner.

NEW SECTION. Sec. 16. The provisions of this chapter applicable to a United States manager shall, in the case of insurers domiciled in Mexico or Canada, be deemed to refer to the president, vice-president, secretary, or treasurer of the Mexican or Canadian insurer.

NEW SECTION. Sec. 17. (1) Upon compliance with this chapter, an alien insurer authorized to do business in this state may, with the prior written approval of the commissioner, domesticate its United States branch by entering into an agreement in writing with a domestic insurer providing for the acquisition by the domestic insurer of all of the assets and the assumption of all of the liabilities of the United States branch.

(2) The acquisition of assets and assumption of liabilities of the United States branch by the domestic insurer is effected by filing with the commissioner an instrument or instruments of transfer and assumption in form satisfactory to the commissioner and executed by the alien insurer and the domestic insurer.

NEW SECTION. Sec. 18. (1) The domestication agreement shall be authorized, adopted, approved, signed, and acknowledged by the alien insurer in accordance with the laws of the country under which it is organized.

(2) In the case of a domestic insurer, the domestication agreement shall be approved, adopted, and authorized by its board of directors and executed by its president or a vice-president and attested by its secretary or assistant secretary under its corporate seal.

NEW SECTION. Sec. 19. An executed counterpart of the domestication agreement, together with certified copies of the corporate proceedings of the domestic insurer and the alien insurer, approving, adopting, and authorizing the execution of the domestication agreement, shall be submitted to the commissioner for approval. The commissioner shall thereupon consider the agreement, and, if the commissioner finds that the same is in accordance with the provisions hereof and that the interests of the policyholders of the United States branch of the alien insurer and of the domestic insurer are not materially adversely affected, the commissioner shall approve the domestication agreement and authorize the consummation thereof.

NEW SECTION. Sec. 20. (1) Upon the filing with the commissioner of a certified copy of the instrument of transfer and assumption pursuant to which a domestic company succeeds to the business and assets of the United

States branch of an alien insurer and assumes all its liabilities, the domestication of the United States branch is deemed effective; and all the rights, franchises, and interests of the United States branch in and to every species of property and things, in actions thereunder belonging, are deemed as transferred to and vested in the domestic insurer, and simultaneously the domestic insurer is deemed to have assumed all of the liabilities of the United States branch. The domestic insurer is considered as having the age as the oldest of the two parties to the domestication agreement for purposes of laws relating to age of company.

(2) All deposits of the United States branch held by the commissioner, or by state officers, or other state regulatory agencies pursuant to requirements of state laws, are deemed to be held as security for the satisfaction by the domestic insurer of all liabilities to policyholders within the United States assumed from the United States branch; and the deposits are deemed to be assets of the domestic insurer and are reported as such in the annual financial statements and other reports that the domestic insurer may be required to file. Upon the ultimate release by a state officer or agency of a deposit, the securities and cash constituting the released deposit is delivered and paid over to the domestic insurer as the lawful successor in interest to the United States branch.

(3) Contemporaneously with the consummation of the domestication of the United States branch, the commissioner shall direct the trustee, if any, of the United States branch's trustee assets, as set forth in section 2 of this act, to transfer and deliver to the domestic insurer all assets, if any, held by such trustee.

NEW SECTION. Sec. 21. 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 shall take effect immediately.

NEW SECTION. Sec. 22. Sections 1 through 20 of this act shall constitute a new chapter in Title 48 RCW.

Passed the House March 20, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 17, 1991.

Filed in Office of Secretary of State May 17, 1991.

CHAPTER 269

[Senate Bill 5148]

LIMITED PARTNERSHIPS—REVISED PROVISIONS

Effective Date: 7/28/91

AN ACT Relating to limited partnerships; amending RCW 25.10.020, 25.10.030, 25.10.100, 25.10.110, 25.10.130, 25.10.140, 25.10.160, 25.10.180, 25.10.190, 25.10.210, 25.10.600, 25.10.370, 25.10.440, 23B.01.400, 23B.04.010, and 23B.13.020; adding new sections to chapter

25.10 RCW; adding new sections to chapter 23B.11 RCW; adding a new article to chapter 25.10 RCW; creating a new section; and repealing RCW 25.10.380.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 25.10.020 and 1987 c 55 s 2 are each amended to read as follows:

(1) The name of each limited partnership formed pursuant to this chapter as set forth in its certificate of limited partnership:

~~((1))~~ (a) Shall contain the words "limited partnership" or the abbreviation "L.P.";

~~((2))~~ (b) May not contain the name of a limited partner unless ~~((a))~~ (i) it is also the name of a general partner, or the corporate name of a corporate general partner, or ~~((b))~~ (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

~~((3))~~ May not be the same as, or deceptively similar to the name of any domestic corporation or limited partnership existing under the laws of this state or any foreign corporation or limited partnership authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this title, or under the provisions of RCW 23A.08.060, or the name of a corporation or limited partnership which has in effect a registration of its corporate or limited partnership name as provided in this title or under the provisions of Title 23A RCW, unless:

(a) The written consent of such other domestic or foreign corporation or limited partnership or holder of a reserved or registered name to use the same or deceptively similar name has been filed with the certificate and one or more words or numerals are added or deleted to make the name distinguishable from the other name as determined by the secretary of state; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the limited partnership to use the name in this state is filed with the certificate;

~~(4))~~ (c) May not contain any of the following words or phrases: "Bank", "banking", "banker", "trust", "cooperative"; or any combination of the words "industrial" and "loan"; or any combination of any two or more of the words "building", "savings", "loan", "home", "association" and "society"; or any other words or phrases prohibited by any statute of this state;

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The name or reserved name of a foreign or domestic limited partnership;

(ii) The corporate name of a corporation incorporated or authorized to transact business in this state;

(iii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

(iv) The fictitious name adopted pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

(v) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state.

(2) A limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other limited partnership, corporation, or holder consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited partnership; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A limited partnership may use the name, including the fictitious name, of another domestic or foreign limited partnership or corporation that is used in this state if the other limited partnership or corporation is organized, incorporated, or authorized to transact business in this state and the proposed user limited partnership:

(a) Has merged with the other limited partnership or corporation; or

(b) Results from reorganization with the other limited partnership or corporation.

(4) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(5) This title does not control the use of assumed business names or "trade names."

Sec. 2. RCW 25.10.030 and 1981 c 51 s 3 are each amended to read as follows:

(1) The exclusive right to the use of a name may be reserved by:

(a) Any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(c) Any foreign limited partnership intending to register in this state and to adopt that name; and

(d) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he or she shall reserve the name for the exclusive use of the applicant for a period of one hundred and eighty days. Such reservation shall be limited to one filing and ~~((one renewal for a like period))~~ shall be nonrenewable.

The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Sec. 3. RCW 25.10.100 and 1987 c 55 s 7 are each amended to read as follows:

(1) Upon the dissolution and ~~((commencement))~~ completion of winding up of a limited partnership or at any time there are no limited partners, duplicate originals of a certificate of ~~((dissolution))~~ cancellation shall be filed with the secretary of state and set forth:

(a) The name of the limited partnership;

(b) The date and place of filing of its original certificate of limited partnership;

(c) The reason for dissolution ~~((and commencement of winding up));~~
~~((and))~~

(d) The effective date, which shall be a later date certain, of cancellation if it is not to be effective upon the filing of the certificate; and

(e) Any other information the person filing the certificate determines.

(2) A certificate of limited partnership shall be canceled upon the effective date of a certificate of cancellation. ~~((A certificate of cancellation shall be filed upon the completion of winding up the limited partnership. Duplicate originals of a certificate of cancellation shall be filed with the secretary of state and shall set forth:~~

~~(a) The name of the limited partnership;~~

~~(b) The date and place of filing of its original certificate of limited partnership;~~

~~(c) The effective date, which shall be a later date certain, of cancellation if it is not to be effective upon the filing of the certificate; and~~

~~(d) Any other information the person filing the certificate determines:))~~

(3) A certificate of limited partnership for a domestic limited partnership which is not the surviving entity in a merger shall be canceled upon the effective date of the merger.

Sec. 4. RCW 25.10.110 and 1987 c 55 s 8 are each amended to read as follows:

(1) Each ~~((certificate))~~ document required by this article to be filed in the office of the secretary of state shall be executed in the following manner:

(a) Each original certificate of limited partnership must be signed by all general partners named therein;

(b) A certificate of amendment or restatement must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; ~~((and))~~

(c) A certificate of ~~((dissolution and a certificate of))~~ cancellation must be signed by all general partners or the limited partners winding up the partnership pursuant to RCW 25.10.460;

(d) If a surviving domestic limited partnership is filing articles of merger, the articles of merger must be signed by at least one general partner of the domestic limited partnership, or if the articles of merger are being filed by a surviving foreign limited partnership or by a corporation, the articles of merger must be signed by a person authorized by such foreign limited partnership or corporation; and

(e) A foreign limited partnership's application for a certificate of authority must be signed by one of its general partners.

(2) Any person may sign a certificate, articles of merger, or partnership agreement by an attorney-in-fact: PROVIDED, That each document signed in such manner identifies the capacity in which the signator signed.

(3) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(4) The execution of a certificate or articles of merger by a partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

Sec. 5. RCW 25.10.130 and 1987 c 55 s 10 are each amended to read as follows:

(1) Two signed copies of the certificate of limited partnership and of any certificates of amendment, restatement, ~~((dissolution;))~~ or cancellation (or of any judicial decree of amendment or cancellation) shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) Endorse on each duplicate original the word "Filed" and the effective date of the filing;

(b) File one duplicate original; and

(c) Return the other duplicate original to the person who filed it or the person's representative.

(2) Upon the filing of a certificate of amendment or restatement, or judicial decree of amendment, in the office of the secretary of state, the certificate of limited partnership shall be amended or restated as set forth therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership is canceled.

Sec. 6. RCW 25.10.140 and 1987 c 55 s 11 are each amended to read as follows:

If any certificate of limited partnership or certificate of amendment, restatement, ~~((dissolution;))~~ or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) Any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under RCW 25.10.120.

Sec. 7. RCW 25.10.160 and 1987 c 55 s 13 are each amended to read as follows:

Upon the return by the secretary of state pursuant to RCW 25.10.130 of a certificate marked "Filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment, restatement, ~~((dissolution;))~~ or cancellation to each limited partner unless the partnership agreement provides otherwise.

**Sec. 8. RCW 25.10.180 and 1981 c 51 s 18 are each amended to read as follows:*

~~((Subject to RCW 25.10.190;))~~ (1) The partnership agreement may grant to all or a specified group of the limited partners the right to vote on a per capita or other basis upon any matter.

(2) The partnership agreement may authorize any one or more limited partners to exercise all or any part of the other rights and powers a general partner has under RCW 25.10.240(1).

**Sec. 8 was vetoed, see message at end of chapter.*

**Sec. 9. RCW 25.10.190 and 1987 c 55 s 15 are each amended to read as follows:*

(1) Except as provided in subsection ~~((4))~~ (2) of this section, a limited partner is not liable for the obligations of a limited partnership by reason of

being a limited partner. A limited partner does not become liable for the obligations of the limited partnership by participating in the management or control of the business of the limited partnership unless the limited partner is also a general partner ((or, in addition to the exercise of rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner)).

(2) ~~((A limited partner does not participate in the control of the business within the meaning of subsection (1) of this section solely by doing one or more of the following:~~

~~(a) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or being an officer, director, or shareholder of a general partner that is a corporation;~~

~~(b) Consulting with and advising a general partner with respect to the business of the limited partnership;~~

~~(c) Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership or providing collateral for partnership obligations;~~

~~(d) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;~~

~~(e) Requesting or attending a meeting of partners;~~

~~(f) Proposing, approving, or disapproving, by voting or otherwise, on one or more of the following matters:~~

~~(i) The dissolution and winding up of the limited partnership;~~

~~(ii) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;~~

~~(iii) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;~~

~~(iv) A change in the nature of its business;~~

~~(v) The admission or removal of a limited partner;~~

~~(vi) The admission or removal of a general partner;~~

~~(vii) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;~~

~~(viii) An amendment to the partnership agreement or certificate of limited partnership; or~~

~~(ix) Matters related to the business of the limited partnership not otherwise enumerated in this subsection (2), that the partnership agreement states in writing may be subject to the approval or disapproval of limited partners or a committee of limited partners;~~

~~(g) Winding up the limited partnership pursuant to RCW 25.10.460 or conducting the affairs of the limited partnership during any portion of the ninety days referred to in RCW 25.10.440; or~~

~~(b) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2);~~

~~(3) The enumeration in subsection (2) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership;~~

~~(4)) A limited partner who knowingly permits his or her name to be used in the name of the limited partnership, except under circumstances permitted by RCW ((25.10.020(2))) 25.10.020(1)(b), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~

*Sec. 9 was vetoed, see message at end of chapter.

Sec. 10. RCW 25.10.210 and 1987 c 55 s 17 are each amended to read as follows:

Each limited partner or limited partner's agent or attorney has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by RCW 25.10.050; and

(2) Obtain from the general partners from time to time upon reasonable demand (a) true and full information regarding the state of the business and financial condition of the limited partnership, (b) promptly after becoming available, a copy of the limited partnership's federal income tax returns and state business and occupation tax return for each year, and (c) other information regarding the affairs of the limited partnership as is just and reasonable.

NEW SECTION. Sec. 11. A new section is added to chapter 25.10 RCW to read as follows:

(1) One or more domestic limited partnerships may merge with one or more domestic limited partnerships or domestic corporations pursuant to a plan of merger approved or adopted as provided in section 13 of this act.

(2) The plan of merger must set forth:

(a) The name of each limited partnership and corporation planning to merge and the name of the surviving limited partnership or corporation into which the other limited partnership or corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the partnership interests of each limited partnership and the shares of each corporation party to the merger into the partnership interests, shares, obligations, or other securities of the surviving or any other limited partnership or corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the certificate of limited partnership of the surviving limited partnership;

(b) Amendments to the articles of incorporation of the surviving corporation; and

(c) Other provisions relating to the merger.

(4) If the plan of merger does not specify a delayed effective date, it shall become effective upon the filing of articles of merger. If the plan of merger specifies a delayed effective time and date, the plan of merger becomes effective at the time and date specified. If the plan of merger specifies a delayed effective date but no time is specified, the plan of merger is effective at the close of business on that date. A delayed effective date for a plan of merger may not be later than the ninetieth day after the date it is filed.

Sec. 12. RCW 25.10.600 and 1987 c 55 s 35 are each amended to read as follows:

The secretary of state shall adopt rules establishing fees which shall be charged and collected for:

(1) Filing of a certificate of limited partnership for a domestic or foreign limited partnership;

(2) Filing of a certificate of cancellation (~~(or a certificate of dissolution)~~) for a domestic or foreign limited partnership;

(3) Filing of a certificate of amendment or restatement for a domestic or foreign limited partnership;

(4) Filing an application to reserve or transfer a limited partnership name;

(5) Filing any other statement or report authorized or permitted to be filed;

(6) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

In the establishment of a fee schedule, the secretary of state shall, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations registering pursuant to Title ~~((23A))~~ 23B RCW. Fees for copies, certified copies, certificates of record, and service of process filings shall be as provided for in RCW ~~((23A.40.030))~~ 23B.01.220.

All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law.

NEW SECTION. Sec. 13. A new section is added to chapter 25.10 RCW to read as follows:

(1) Unless otherwise provided in its partnership agreement, approval of a plan of merger by a domestic limited partnership party to a merger shall occur when the plan is approved (a) by all general partners of such limited partnership, and (b) by the limited partners or, if there is more than one class of limited partners, then by each class or group of limited partners of such limited partnership, in either case, by limited partners who own more than fifty percent of the then current percentage or other interest in the profits of such limited partnership owned by all limited partners or by the limited partners in each class or group, as appropriate.

(2) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

NEW SECTION. Sec. 14. A new section is added to chapter 25.10 RCW to read as follows:

After a plan of merger is approved or adopted, the surviving limited partnership or corporation shall deliver to the secretary of state for filing articles of merger setting forth:

(1) The plan of merger;

(2) If the approval of any partners or shareholders of one or more limited partnerships or corporations party to the merger was not required, a statement to that effect; or

(3) If the approval of any partners or shareholders of one or more of the limited partnerships or corporations party to the merger was required, a statement that the merger was duly approved by such partners and shareholders pursuant to section 13 of this act or chapter 23B.11 RCW.

NEW SECTION. Sec. 15. A new section is added to chapter 25.10 RCW to read as follows:

(1) When a merger takes effect:

(a) Every other limited partnership or corporation that is party to the merger merges into the surviving limited partnership or corporation and the separate existence of every limited partnership and corporation except the surviving limited partnership or corporation ceases;

(b) The title to all real estate and other property owned by each limited partnership and corporation party to the merger is vested in the surviving limited partnership or corporation without reversion or impairment;

(c) The surviving limited partnership or corporation has all liabilities of each limited partnership and corporation that is party to the merger;

(d) A proceeding pending against any limited partnership or corporation that is party to the merger may be continued as if the merger did not occur or the surviving limited partnership or corporation may be substituted in the proceeding for the limited partnership or corporation whose existence ceased;

(e) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(f) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(g) The former holders of the partnership interests of every domestic limited partnership that is party to the merger and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the articles of merger or to their rights under sections 17 through 28 of this act or to the rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving

entity in the merger, shall not require the domestic limited partnership to wind up its affairs under RCW 25.10.460 or pay its liabilities and distribute its assets under RCW 25.10.470.

NEW SECTION. Sec. 16. A new section is added to chapter 25.10 RCW to read as follows:

(1) One or more foreign limited partnerships and one or more foreign corporations may merge with one or more domestic limited partnerships or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign limited partnership and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with section 14 of this act;

(c) Each domestic limited partnership complies with section 13 of this act; and

(d) Each domestic corporation complies with section 38 of this act.

(2) Upon the merger taking effect, a surviving foreign limited partnership or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners or shareholders of each domestic limited partnership or domestic corporation party to the merger.

NEW SECTION. Sec. 17. As used in this article:

(1) "Limited partnership" means the domestic limited partnership in which the dissenter holds or held a partnership interest, or the surviving limited partnership or corporation by merger, whether foreign or domestic, of that limited partnership.

(2) "Dissenter" means a partner who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.

(3) "Fair value," with respect to a dissenter's partnership interest, means the value of the partnership interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the limited partnership on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

NEW SECTION. Sec. 18. (1) Except as provided in section 20 or 22(2) of this act, a partner of a domestic limited partnership is entitled to dissent from, and obtain payment of, the fair value of the partner's partnership interest in the event of consummation of a plan of merger to which

the limited partnership is a party as permitted by section 11 or 16 of this act.

(2) A partner entitled to dissent and obtain payment for the partner's partnership interest under this article may not challenge the merger creating the partner's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, Title 23B RCW, the partnership agreement, or is fraudulent with respect to the partner or the limited partnership.

(3) The right of a dissenting partner to obtain payment of the fair value of the partner's partnership interest shall terminate upon the occurrence of any one of the following events:

(a) The proposed merger is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the merger; or

(c) The partner's demand for payment is withdrawn with the written consent of the limited partnership.

NEW SECTION. Sec. 19. (1) Not less than ten days prior to the approval of a plan of merger, the limited partnership must send a written notice to all partners who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.

(2) The limited partnership shall notify in writing all partners not entitled to vote on or approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by section 21 of this act.

NEW SECTION. Sec. 20. A partner who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A partner who does not satisfy the requirements of this section is not entitled to payment for the partner's interest under this article.

NEW SECTION. Sec. 21. (1) If the plan of merger is approved, the limited partnership shall deliver a written dissenters' notice to all partners who satisfied the requirements of section 20 of this act.

(2) The dissenters' notice required by section 19(2) of this act or by subsection (1) of this section must be sent within ten days after the approval of the plan of merger, and must:

(a) State where the payment demand must be sent;

(b) Inform holders of the partnership interest as to the extent transfer of the partnership interest will be restricted as permitted by section 23 of this act after the payment demand is received;

(c) Supply a form for demanding payment;

(d) Set a date by which the limited partnership must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice under this section is delivered; and

(e) Be accompanied by a copy of this article.

NEW SECTION. Sec. 22. (1) A partner who demands payment retains all other rights of a partner until the proposed merger becomes effective.

(2) A partner sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the partner's partnership interest under this article.

NEW SECTION. Sec. 23. The limited partnership may restrict the transfer of partnership interests from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article.

NEW SECTION. Sec. 24. (1) Within thirty days of the later of the date the proposed merger becomes effective, or the payment demand is received, the limited partnership shall pay each dissenter who complied with section 22 of this act the amount the limited partnership estimates to be the fair value of the partnership interest, plus accrued interest.

(2) The payment must be accompanied by:

(a) Copies of the financial statements for the most recent fiscal year maintained as required by RCW 25.10.050;

(b) An explanation of how the limited partnership estimated the fair value of the partnership interest;

(c) An explanation of how the accrued interest was calculated;

(d) A statement of the dissenter's right to demand payment; and

(e) A copy of this article.

NEW SECTION. Sec. 25. (1) If the proposed merger does not become effective within sixty days after the date set for demanding payment, the limited partnership shall release any transfer restrictions imposed as permitted by section 23 of this act.

(2) If, after releasing transfer restrictions, the proposed merger becomes effective, the limited partnership must send a new dissenters' notice as provided in sections 19(2) and 21 of this act and repeat the payment demand procedure.

NEW SECTION. Sec. 26. (1) A dissenter may notify the limited partnership in writing of the dissenter's own estimate of the fair value of the dissenter's partnership interest and amount of interest due, and demand payment of the dissenter's estimate, less any payment under section 24 of this act, if:

(a) The dissenter believes that the amount paid is less than the fair value of the dissenter's partnership interest or that the interest due is incorrectly calculated;

(b) The limited partnership fails to make payment within sixty days after the date set for demanding payment; or

(c) The limited partnership, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on partnership interests as permitted by section 23 of this act within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited partnership of the dissenter's demand in writing under subsection (1) of this section within thirty days after the limited partnership made payment for the dissenter's partnership interest.

NEW SECTION. Sec. 27. (1) If a demand for payment under section 26 of this act remains unsettled, the limited partnership shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the partnership interest and accrued interest. If the limited partnership does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The limited partnership shall commence the proceeding in the superior court. If the limited partnership is a domestic limited partnership, it shall commence the proceeding in the county where its office is maintained as required by RCW 25.10.040(1). If the limited partnership is a domestic corporation, it shall commence the proceeding in the county where its principal office, as defined in RCW 23B.01.400(17), is located, or if none is in this state, its registered office under RCW 23B.05.010. If the limited partnership is a foreign limited partnership or corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the office of the domestic limited partnership maintained pursuant to RCW 25.10.040(1) merged with the foreign limited partnership or foreign corporation was located.

(3) The limited partnership shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their partnership interests and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The limited partnership may join as a party to the proceeding any partner who claims to be a dissenter but who has not, in the opinion of the limited partnership, complied with the provisions of this chapter. If the court determines that such partner has not complied with the provisions of this article, the partner shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of fair value. The appraisers have the powers described in the order appointing

them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of the dissenter's partnership interest, plus interest, exceeds the amount paid by the limited partnership.

NEW SECTION. Sec. 28. (1) The court in a proceeding commenced under section 27 of this act shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited partnership, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited partnership and in favor of any or all dissenters if the court finds the limited partnership did not substantially comply with the requirements of this article; or

(b) Against either the limited partnership or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the limited partnership, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

Sec. 29. RCW 25.10.370 and 1987 c 55 s 28 are each amended to read as follows:

~~((A partner may not receive a distribution from a limited partnership))~~

(1) A limited partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, (a) the limited partnership would not be able to pay its debts as they become due in the usual course of business, or (b) all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the ((limited partnership)) assets of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.

(2)(a) A limited partner who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution

that the distribution violated subsection (1) of this section, shall be liable to the limited partnership for the amount of the distribution.

(b) A limited partner who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. This subsection (2)(b) shall not affect any obligation or liability of a limited partner under a partnership agreement or other applicable law for the amount of a distribution.

(3) A limited partner who receives a distribution from a limited partnership shall have no liability under this chapter for the amount of the distribution after the expiration of three years from the date of the distribution, except to the extent such limited partner shall have agreed in writing to extend liability beyond the expiration of the three-year period.

Sec. 30. RCW 25.10.440 and 1987 c 55 s 32 are each amended to read as follows:

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) At the time specified in the certificate of limited partnership;
- (2) Upon the happening of events specified in the partnership agreement;
- (3) Written consent of all partners;
- (4) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; ((or))
- (5) Entry of a decree of judicial dissolution under RCW 25.10.450; or
- (6) Administrative dissolution under section 32 of this act.

NEW SECTION. Sec. 31. A new section is added to chapter 25.10 RCW to read as follows:

The secretary of state may commence a proceeding under section 32 of this act to administratively dissolve a limited partnership if:

- (1) An amendment to the certificate of limited partnership required by RCW 25.10.090(2)(c) is not filed when specified by that provision;
- (2) The limited partnership is without a registered agent or registered office in this state for sixty days or more; or
- (3) The limited partnership does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

NEW SECTION. Sec. 32. A new section is added to chapter 25.10 RCW to read as follows:

(1) If the secretary of state determines that one or more grounds exist under section 31 of this act for dissolving a limited partnership, the secretary of state shall give the limited partnership written notice of the determination by first class mail, postage prepaid reciting the grounds therefor. Notice shall be sent to the address of the office for records and address of the agent for service of process contained in the certificate having this information which is most recently filed with the secretary of state.

(2) If the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is sent, the limited partnership is thereupon dissolved, the secretary of state shall give the limited partnership written notice of the dissolution that recites the ground or grounds therefor and its effective date.

(3) A limited partnership administratively dissolved continues its limited partnership existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs.

(4) The administrative dissolution of a limited partnership does not terminate the authority of its registered agent.

NEW SECTION. Sec. 33. A new section is added to chapter 25.10 RCW to read as follows:

(1) A limited partnership administratively dissolved under section 32 of this act may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must:

(a) Recite the name of the limited partnership and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the limited partnership's name satisfies the requirements of RCW 25.10.020.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the limited partnership and give the limited partnership written notice, as provided in section 32(1) of this act of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited partnership must file with its application for reinstatement an amendment to its certificate of limited partnership reflecting a change of name.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume carrying on its business as if the administrative dissolution had never occurred.

(4) If an application for reinstatement is not made within the two-year period set forth in subsection (1) of this section, or if the application made within this period is not granted, the secretary of state shall cancel the limited partnership's certificate of limited partnership.

NEW SECTION. Sec. 34. RCW 25.10.380 and 1987 c 55 s 29 & 1981 c 51 s 38 are each repealed.

Sec. 35. RCW 23B.01.400 and 1989 c 165 s 14 are each amended to read as follows:

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

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(5) "Deliver" includes mailing.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Effective date of notice" has the meaning provided in RCW 23B.01.410.

(8) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(9) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest, and the state, United States, and a foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.

(12) "Governmental subdivision" includes authority, county, district, and municipality.

~~((12))~~ (13) "Includes" denotes a partial definition.

~~((13))~~ (14) "Individual" includes the estate of an incompetent or deceased individual.

~~((14))~~ (15) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(16) "Means" denotes an exhaustive definition.

~~((15))~~ (17) "Notice" has the meaning provided in RCW 23B.01.410.

~~((16))~~ (18) "Person" includes an individual and an entity.

~~((17))~~ (19) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

~~((18))~~ (20) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

~~((19))~~ (21) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute, and that has more than three hundred holders of record of its shares.

~~((20))~~ (22) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

~~((21))~~ (23) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

~~((22))~~ (24) "Shares" means the units into which the proprietary interests in a corporation are divided.

~~((23))~~ (25) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

~~((24))~~ (26) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

~~((25))~~ (27) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~((26))~~ (28) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

~~((27))~~ (29) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

Sec. 36. RCW 23B.04.010 and 1989 c 165 s 37 are each amended to read as follows:

(1) A corporate name:

(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.;"

(b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Must not contain any of the following words or phrases:

"Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more ~~(of the)~~ of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

(iii) The fictitious name adopted pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; and

(v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW.

(2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, or of a domestic or foreign limited partnership, that is used in this state if the other corporation is incorporated or authorized to transact business in this state, or if the limited partnership is formed or authorized to transact business in this state, and the proposed user corporation:

(a) Has merged with the other corporation or limited partnership; or

(b) Has been formed by reorganization of the other corporation.

(4) This title does not control the use of assumed business names or "trade names."

Sec. 37. RCW 23B.13.020 and 1989 c 165 s 141 are each amended to read as follows:

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by RCW 23B.11.030, section 38 of this act, or the articles of incorporation and the shareholder is entitled to vote on the merger, or (ii) if the corporation is a subsidiary that is merged with its parent under RCW 23B.11.040;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation that materially reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under RCW 23B.06.040; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, sections 17 through 28 of this act, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

- (a) The proposed corporate action is abandoned or rescinded;
- (b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or
- (c) The shareholder's demand for payment is withdrawn with the written consent of the corporation.

NEW SECTION. Sec. 38. A new section is added to chapter 23B.11 RCW to read as follows:

(1) One or more domestic corporations may merge with one or more limited partnerships if:

(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030; and

(b) The partners of each limited partnership approve the plan of merger as required by section 13 of this act.

(2) The plan of merger must set forth:

(a) The name of each corporation and limited partnership planning to merge and the name of the surviving corporation or limited partnership into which each other corporation or limited partnership plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation and the partnership interests of each limited partnership into shares, partnership interests, obligations or other securities of the surviving corporation or limited partnership, or into cash or other property, including shares, obligations, or securities of any other corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership; and

(c) Other provisions relating to the merger.

NEW SECTION. Sec. 39. A new section is added to chapter 23B.11 RCW to read as follows:

After a plan of merger for one or more corporations and one or more limited partnerships is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), and is approved by the partners for each limited partnership as required by section 13 of this act, the surviving entity must:

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

- (a) The plan of merger;
 - (b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and
 - (c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to section 13 of this act.
- (2) If the surviving entity is a limited partnership, comply with the requirements in section 14 of this act.

NEW SECTION. Sec. 40. A new section is added to chapter 23B.11 RCW to read as follows:

When a merger of one or more corporations and one or more limited partnerships takes effect, and a corporation is the surviving entity:

(1) Every other corporation and every limited partnership party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation, and every limited partnership, ceases;

(2) The title to all real estate and other property owned by each corporation and limited partnership party to the merger is vested in the surviving corporation without reversion or impairment;

(3) The surviving corporation has all the liabilities of each corporation and limited partnership party to the merger;

(4) A proceeding pending against any corporation or limited partnership party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation or limited partnership whose existence ceased;

(5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger;

(6) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 23B.13 RCW; and

(7) The former holders of partnership interests of every limited partnership party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 25.10 RCW.

NEW SECTION. Sec. 41. A new section is added to chapter 23B.11 RCW to read as follows:

(1) One or more foreign limited partnerships and one or more foreign corporations may merge with one or more domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with section 39 of this act;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with section 14 of this act;

(d) Each domestic corporation complies with section 38 of this act; and

(e) Each domestic limited partnership complies with section 13 of this act.

(2) Upon the merger taking effect, a surviving foreign corporation or limited partnership is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation or domestic limited partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation or domestic limited partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10 RCW, in the case of dissenting partners.

NEW SECTION. Sec. 42. Sections 17 through 28 of this act constitute a new article in chapter 25.10 RCW and shall be codified with the heading of "DISSENTERS' RIGHTS."

NEW SECTION. Sec. 43. A new section is added to chapter 25.10 RCW to read as follows:

The secretary of state may commence a proceeding under section 45 of this act to revoke registration of a foreign limited partnership authorized to transact business in this state if:

(1) The foreign limited partnership is without a registered agent or registered office in this state for sixty days or more;

(2) The foreign limited partnership does not inform the secretary of state under RCW 25.10.520 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(3) A general partner or other agent of the foreign limited partnership signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(4) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of partnership records in the jurisdiction under which the foreign limited partnership was organized stating that the foreign limited partnership has been dissolved or its limited partnership certificate canceled.

NEW SECTION. Sec. 44. A new section is added to chapter 25.10 RCW to read as follows:

(1) If the secretary of state determines that one or more grounds exist under section 43 of this act for revocation of a foreign limited partnership's registration, the secretary of state shall give the foreign limited partnership written notice of the determination by first class mail, postage prepaid, stating in the notice the ground or grounds for and effective date of the secretary of state's determination, which date shall not be earlier than the date on which the notice is mailed.

(2) If the foreign limited partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall revoke the foreign limited partnership's registration by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and mail a copy to the foreign limited partnership.

(3) Documents to be mailed by the secretary of state to a foreign limited partnership for which provision is made in this section shall be sent to the foreign limited partnership at the address of the agent for service of process contained in the application or certificate of this partnership which is most recently filed with the secretary of state.

(4) The authority of a foreign limited partnership to transact business in this state ceases on the date shown on the certificate revoking its registration.

(5) The secretary of state's revocation of a foreign limited partnership's registration appoints the secretary of state the foreign limited partnership's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited partnership was authorized to transact business in this state.

(6) Revocation of a foreign limited partnership's registration does not terminate the authority of the registered agent of the foreign limited partnership.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 17, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 17, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 8 and 9, Senate Bill No. 5148 entitled:

"AN ACT Relating to Limited Partnerships."

This legislation provides beneficial flexibility to limited partnerships so they can merge with each other or with corporations. Additional statutory changes clarify and add certainty to filing requirements.

Sections 8 and 9, however, would significantly change business operations in this state against the public interest. Limited partnerships evolved so certain business

partners could invest with limited personal liability. In return for the limited liability, these partners have been proscribed from engaging in certain managerial activities. This concept protects creditors, other limited partners, clients and others who do business with partnerships. The amendments in this bill turn this concept on its face and extend the liability shield for limited partners, while removing the limits on their managerial control of the business.

For these reasons, I have vetoed sections 8 and 9 of Senate Bill No. 5148.

With the exception of sections 8 and 9, Senate Bill No. 5148 is approved."

CHAPTER 270

[Engrossed Substitute House Bill 1120] HORSE RACING—REVISED PROVISIONS

Effective Date: 5/20/91

AN ACT Relating to horse racing; amending RCW 67.16.010, 67.16.014, 67.16.060, 67.16.102, 67.16.105, 67.16.130, 67.16.170, 67.16.170, 67.16.200, and 67.16.230; reenacting and amending RCW 67.16.100 and 67.16.175; adding a new section to chapter 67.16 RCW; repealing RCW 67.16.210, 67.16.220, 67.16.910, and 67.16.911; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 67.16.010 and 1985 c 146 s 1 are each amended to read as follows:

Unless the context otherwise requires, words and phrases as used herein shall mean:

"Commission" shall mean the Washington horse racing commission, hereinafter created.

"Parimutuel machine" shall mean and include both machines at the track and machines at the satellite locations, that record parimutuel bets and compute the payoff.

"Person" shall mean and include individuals, firms, corporations and associations.

"Race meet" shall mean and include any exhibition of thoroughbred, quarter horse, paint horse, appaloosa horse racing, arabian horse racing, or standard bred harness horse racing, where the parimutuel system is used.

Singular shall include the plural, and the plural shall include the singular; and words importing one gender shall be regarded as including all other genders.

Sec. 2. RCW 67.16.014 and 1987 c 453 s 3 are each amended to read as follows:

In addition to the commission members appointed under RCW 67.16.012, there shall be four ex officio nonvoting members consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; and (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives. The appointments

shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first. Members may be reappointed, and vacancies shall be filled in the same manner as original appointments are made. The ex officio members shall assist in the policy making, rather than administrative, functions of the commission, and shall collect data deemed essential to future legislative proposals and exchange information with the commission. The ex officio members shall be deemed engaged in legislative business while in attendance upon the business of the commission and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the horse racing commission fund as being expenses relative to commission business.

~~((This section shall expire on October 31, 1991.))~~

Sec. 3. RCW 67.16.060 and 1985 c 146 s 4 are each amended to read as follows:

(1) It shall be unlawful:

(a) To conduct pool selling, bookmaking, or to circulate hand books; or
(b) To bet or wager on any horse race other than by the parimutuel method; or

(c) For any licensee to take more than the percentage provided in RCW 67.16.170 and 67.16.175; or

(d) For any licensee to compute breaks in the parimutuel system otherwise than at ten cents.

(2) Any willful violation of the terms of this chapter, or of any rule, regulation, or order of the commission shall constitute a gross misdemeanor and when such violation is by a person holding a license under this chapter, the commission may cancel the license held by the offender, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the commission by the offender; and the action of the commission in that respect shall be final.

(3) The commission shall have power to exclude from any and all race courses of the state of Washington any person whom the commission deems detrimental to the best interests of racing or any person who willfully violates any of the provisions of this chapter or of any rule, regulation, or order issued by the commission.

(4) Every race meet held in this state contrary to the provisions of this chapter is hereby declared to be a public nuisance.

Sec. 4. RCW 67.16.100 and 1985 c 466 s 67 and 1985 c 146 s 6 are each reenacted and amended to read as follows:

~~((In addition to the license fees required by this chapter, the licensee shall pay to the commission the percentages of the gross receipts of all parimutuel machines at each race meet in accordance with RCW 67.16.105, which sums shall be paid daily to the commission.))~~

(1) All sums paid to the commission under this chapter, ~~((together with all))~~ including those sums collected for license fees ~~((under the provisions of this chapter))~~ and excluding those sums collected under RCW 67.16.102, 67.16.105(3), and 67.16.105(4), shall be disposed of by the commission as follows:

~~((Twenty-two))~~ (a) Fifty percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission.

~~((Forty))~~ (b) One percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the general fund ~~((, and))~~.

(c) Three percent shall, on the next business day following the receipt thereof, be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "state trade fair fund" which shall be maintained as a separate and independent fund, and made available to the director of trade and economic development for the sole purpose of assisting state trade fairs.

~~((Thirty-five))~~ (d) Forty-six percent shall be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "fair fund," which shall be maintained as a separate and independent fund outside of the state treasury, and made available to the director of agriculture for the sole purpose of assisting fairs in the manner provided in Title 15 RCW.

(2) Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and be placed in the general fund. The commission may, with the approval of the office of financial management, retain any sum required for working capital.

Sec. 5. RCW 67.16.102 and 1982 c 132 s 5 are each amended to read as follows:

(1) Notwithstanding any other provision of chapter 67.16 RCW to the contrary the licensee shall withhold and shall pay daily to the commission, in addition to the percentages authorized by ~~((RCW 67.16.100 and 67.16.130, as now or hereafter amended, and))~~ RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those horses finishing first, second, third and fourth Washington bred only at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race meet: PROVIDED, That nothing in this section shall apply to race meets which are nonprofit in

nature, ~~((or))~~ are of ten days or less ~~((or which))~~, and have an average daily handle of less than one hundred twenty thousand dollars: PROVIDED, That the additional one percent of the gross receipts of all parimutuel machines at each race meet and the amount retained by the commission as specified in RCW 67.16.100(1)(a) shall be deposited daily in a time deposit by the commission and the interest derived therefrom shall be distributed annually on an equal basis to those race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less: PROVIDED, That prior to receiving a payment under this section any new race course shall meet the qualifications set forth in this section for a period of two years: PROVIDED, FURTHER, That said distributed funds shall be used for the purpose of maintaining and upgrading the respective racing courses and equine quartering areas of said nonprofit meets. The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses.

(2) The commission is authorized to pay at the end of the calendar year one-half of the one percent collected from a new licensee under subsection (1) of this section for reimbursement of capital construction of that new licensee's new race track for a period of five years. This reimbursement does not include interest earned on that one-half of one percent and such interest shall continue to be collected and disbursed as provided in RCW 67.16.101 and subsection (1) of this section.

Sec. 6. RCW 67.16.105 and 1987 c 347 s 4 are each amended to read as follows:

~~((Except as provided for satellite wagers in RCW 67.16.210, the licensee shall pay to the commission daily for each authorized day of racing the following applicable percentage of all daily gross receipts from all parimutuel machines at each race meet:~~

~~(1) One-half percent of the daily gross receipts, if the daily gross receipts are two hundred thousand dollars or less;~~

~~(2) One percent of the daily gross receipts, if the daily gross receipts are two hundred thousand one dollars to four hundred thousand dollars, and~~

~~(3) Four percent of the daily gross receipts if the daily gross receipts are four hundred thousand one dollars or more:))~~ (1) Licensees of race meets that are nonprofit in nature, are of ten days or less, and have an average daily handle of one hundred twenty thousand dollars or less shall withhold and pay to the commission daily for each authorized day of racing one-half percent of the daily gross receipts from all parimutuel machines at each race meet.

(1) Licensees of race meets that are nonprofit in nature, are of ten days or less, and have an average daily handle of one hundred twenty thousand dollars or less shall withhold and pay to the commission daily for each authorized day of racing one-half percent of the daily gross receipts from all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of racing the following applicable percentage of all daily gross receipts from all parimutuel machines at each race meet:

(a) If the daily gross receipts of all parimutuel machines are more than two hundred fifty thousand dollars, the licensee shall withhold and pay to the commission daily two and one-half percent of the daily gross receipts; and

(b) If the daily gross receipts of all parimutuel machines are two hundred fifty thousand dollars or less, the licensee shall withhold and pay to the commission daily one percent of the daily gross receipts.

(3) In addition to those amounts in subsections (1) and (2) of this section, all licensees shall forward one-tenth of one percent of the daily gross receipts of all parimutuel machines to the commission daily for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensees. The total of such payments shall not exceed one hundred fifty thousand dollars in any one year and any amount in excess of one hundred fifty thousand dollars shall be remitted to the general fund. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment.

(4) In addition to those sums paid to the commission in subsection (2) of this section, licensees who are nonprofit corporations and have race meets of thirty days or more shall withhold and pay to the commission daily for each authorized day of racing an amount equal to two and one-half percent of the daily gross receipts of all parimutuel machines at each race meet. Said percentage shall come from that amount the licensee is authorized to retain under RCW 67.16.170(2). The commission shall deposit these moneys in the Washington thoroughbred racing fund created in section 12 of this act.

Sec. 7. RCW 67.16.130 and 1985 c 146 s 8 are each amended to read as follows:

(1) Notwithstanding any other provision of law or of chapter 67.16 RCW, the commission may license race meets which are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty thousand dollars or less, at a daily licensing fee of ten dollars, and the sponsoring nonprofit association shall be exempt from any other fees as provided for in chapter 67.16 RCW or by rule or regulation of the commission: PROVIDED, That the commission ((on or after January 1, 1971)) may deny the application for a license to conduct a racing meet by a nonprofit association, if same shall be determined not to be a nonprofit association by the Washington state racing commission.

(2) ((Notwithstanding any other provision of law or of chapter 67.16 RCW the licensees of race meets which are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty

~~thousand dollars or less, shall withhold and shall pay daily to the commission the percentages authorized by RCW 67.16.105, 67.16.170, and 67.16.175:~~

~~(3))~~ Notwithstanding any other provision of law or of chapter 67.16 RCW or any rule promulgated by the commission, no license for a race meet which is nonprofit in nature, of ten days or less, and which has an average daily handle of one hundred twenty thousand dollars or less, shall be denied for the reason that the applicant has not installed an electric parimutuel tote board.

~~((4))~~ (3) As a condition to the reduction in fees as provided for in subsection (1) ~~((hereof))~~ of this section, all fees charged to horse owners, trainers, or jockeys, or any other fee charged for a permit incident to the running of such race meet shall be retained by the commission as reimbursement for its expenses incurred in connection with the particular race meet.

Sec. 8. RCW 67.16.170 and 1987 c 347 s 2 are each amended to read as follows:

~~((Except as provided for satellite wagers in RCW 67.16.220, race meets which have gross receipts of all parimutuel machines for each authorized day of racing may retain the following from the daily gross receipts of all parimutuel machines:~~

~~(1) On a daily handle of two hundred thousand dollars or less, the licensee shall retain fourteen and one-half percent of such gross receipts;~~

~~(2) On a daily handle of two hundred thousand one dollars to four hundred thousand dollars, the licensee shall retain fourteen percent of such gross receipts; and~~

~~(3) On a daily handle of four hundred thousand one dollars or more, the licensee shall retain eleven percent of such gross receipts;)~~ (1) Licenses of race meets that are nonprofit in nature, are of ten days or less, and have an average daily handle of one hundred twenty thousand dollars or less may retain daily for each authorized day of racing fourteen and one-half percent of daily gross receipts of all parimutuel machines at each race meet.

(2) Licenses of race meets that do not fall under subsection (1) of this section may retain daily for each authorized day of racing the following percentages from the daily gross receipts of all parimutuel machines at each race meet:

(a) If the daily gross receipts of all parimutuel machines are more than two hundred fifty thousand dollars, the licensee may retain daily twelve and one-half percent of the daily gross receipts; and

(b) If the daily gross receipts of all parimutuel machines are two hundred fifty thousand dollars or less, the licensee may retain daily fourteen percent of the daily gross receipts.

Sec. 9. RCW 67.16.175 and 1987 c 453 s 1 and 1987 c 347 s 3 are each reenacted and amended to read as follows:

(1) ~~((Except as provided for satellite wagers in RCW 67.16.210 and 67.16.220, daily gross receipts of all parimutuel machines from wagers on exotic races shall be distributed according to this section:~~

~~(a) In addition to the amounts set forth in RCW 67.16.105, an additional two and five-tenths percent of gross receipts on races with two or more selections and three and five-tenths percent of gross receipts on races with three or more selections shall be paid to the commission. The commission shall retain thirty-one percent of the additional percentages from exotic races and shall forward the balance to the state treasurer daily for deposit in the general fund.~~

~~(b) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain an additional three percent of the daily gross receipts of all parimutuel machines from wagers on exotic races requiring two selections to be used as provided in subsection (2) of this section:~~

~~(c) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain an additional six percent of the daily gross receipts of all parimutuel machines from wagers on exotic races requiring three or more selections to be used as provided in subsection (2) of this section:)) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain daily for each authorized day of racing an additional six percent of the daily gross receipts of all parimutuel machines from exotic wagers at each race meet.~~

(2) ~~Of the amounts retained in subsection (1) ((~~(b) and (c)~~)) of this section, ((~~one percent~~)) one-sixth shall be used for Washington-bred breeder awards((, not to exceed twenty percent of the winner's share of the purse)).~~

~~(3) ((Any portion of the remaining moneys retained in subsection (1) (b) and (c) of this section shall be shared equally by the race track and participating horsemen. The amount shared by participating horsemen shall be in addition to and shall not supplant the customary purse structure between race tracks and participating horsemen:)) Of the amounts retained for breeder awards under subsection (2) of this section, twenty-five percent shall be retained by a new licensee for reimbursement of capital construction of the new licensee's new race track for a period of five years.~~

(4) ~~As used in this section, "exotic ((~~rac~~es)) wagers" means any multiple wager. Exotic ((~~rac~~es)) wagers are subject to approval of the commission.~~

Sec. 10. RCW 67.16.200 and 1987 c 347 s 1 are each amended to read as follows:

(1) A racing association licensed by the commission to conduct a race meet may seek approval from the commission to conduct parimutuel wagering on its program at a satellite location or locations within the state of Washington. The sale of parimutuel pools at satellite locations shall be

conducted only during the licensee's race meet and simultaneous to all parimutuel wagering activity conducted at the licensee's racing facility in the state of Washington. The commission's authority to approve satellite wagering at a particular location is subject to the following limitations:

(a) The commission may approve only one satellite location in each county in the state; however, the commission may grant approval for more than one licensee to conduct wagering at each satellite location.

(b) The commission shall not allow a licensee to conduct satellite wagering at a satellite location within ~~((fifty air))~~ twenty ground miles of the licensee's racing facility. For purposes of this section, "ground miles" means miles measured from point to point in a straight line.

(c)(i) The commission may allow a licensee to conduct satellite wagering at a satellite location within fifty ~~((air))~~ ground miles of the racing facility of another licensee who conducts race meets of thirty days or more, but only if the satellite location is the racing facility of another licensee who conducts race meets of thirty days or more and only if the licensee seeking to conduct satellite wagering suspends its program during the conduct of the meets of all licensees within fifty ~~((air))~~ ground miles; except that the commission may allow a licensee that conducts satellite wagering at another track, pursuant to this subsection, to use other satellite locations, used by that track with the approval of the owner of that track, even though those satellite locations are within a fifty ground mile radius.

(ii) Subject to subsection (1)(c)(i) of this section, the commission may allow a licensee to conduct satellite wagering at a satellite location within fifty ~~((air))~~ ground miles of the racing facility of another licensee who conducts race meets of under thirty days, but only if the licensee seeking to conduct satellite wagering suspends its satellite program during the conduct of the meets of all licensees within fifty ~~((air))~~ ground miles.

(2) Subject to local zoning and other land use ordinances, the commission shall be the sole judge of whether approval to conduct wagering at a satellite location shall be granted.

(3) The licensee shall combine the parimutuel pools of the satellite location with those of the racing facility for the purpose of determining odds and computing payoffs. The amount wagered at the satellite location shall be combined with the amount wagered at the racing facility for the application of take out formulas and distribution as provided in RCW 67.16.102, 67.16.105, ~~((67.16.130,))~~ 67.16.170, and 67.16.175~~((, 67.16.210, and 67.16.220)).~~ A satellite extension of the licensee's racing facility shall be subject to the same application of the rules of racing as the licensee's racing facility.

Sec. 11. RCW 67.16.230 and 1987 c 347 s 7 are each amended to read as follows:

The commission is authorized to establish and collect an annual fee for each separate satellite location. The fee to be collected from the licensee

shall be set to reflect the commission's expected costs of approving, regulating, and monitoring each satellite location, provided commission revenues generated under RCW ((67.16.210)) 67.16.105 from the licensee shall be credited annually towards the licensee's fee assessment under this section.

NEW SECTION. Sec. 12. A new section is added to chapter 67.16 RCW to read as follows:

The Washington thoroughbred racing fund is created in the state treasury. All receipts derived under RCW 67.16.105(4) from licensees who are nonprofit corporations and whose race meets are thirty days or more shall be deposited into the account. Moneys in the account may be spent only after legislative appropriation. Expenditures from the account shall be expended to benefit and support interim continuation of thoroughbred racing, capital construction of a new race track facility, and programs enhancing the general welfare, safety, and advancement of the Washington thoroughbred racing industry.

NEW SECTION. Sec. 13. The following acts or parts of acts are each repealed:

- (1) RCW 67.16.210 and 1987 c 347 s 5;
- (2) RCW 67.16.220 and 1987 c 347 s 6;
- (3) RCW 67.16.910 and 1990 c 297 s 24; and
- (4) RCW 67.16.911 and 1990 c 297 s 25.

NEW SECTION. Sec. 14. 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 shall take effect immediately.

Passed the House February 13, 1991.

Passed the Senate March 22, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 271

[Engrossed Substitute House Bill 2100]

NURSING HOME CARE FOR UNDERSERVED ETHNIC MINORITIES

Effective Date: 5/20/91

AN ACT Relating to nursing homes for underserved ethnic minorities; adding a new section to chapter 70.38 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 70.38 RCW to read as follows:

(1) The legislature recognizes that in this state ethnic minorities currently use nursing home care at a lower rate than the general population.

The legislature also recognizes and supports the federal mandate that nursing homes receiving federal funds provide residents with a homelike environment. The legislature finds that certain ethnic minorities have special cultural, language, dietary, and other needs not generally met by existing nursing homes which are intended to serve the general population. Accordingly, the legislature further finds that there is a need to foster the development of nursing homes designed to serve the special cultural, language, dietary, and other needs of ethnic minorities.

(2) The department shall establish a separate pool of no more than two hundred fifty beds for nursing homes designed to serve the special needs of ethnic minorities. The pool shall be made up of nursing home beds that become available on or after March 15, 1991, due to:

(a) Loss of license or reduction in licensed bed capacity if the beds are not otherwise obligated for replacement; or

(b) Expiration of a certificate of need.

(3) The department shall develop procedures for the fair and efficient award of beds from the special pool. In making its decisions regarding the award of beds from the pool, the department shall consider at least the following:

(a) The relative degree to which the long-term care needs of an ethnic minority are not otherwise being met;

(b) The percentage of low-income persons who would be served by the proposed nursing home;

(c) The financial feasibility of the proposed nursing home; and

(d) The impact of the proposal on the area's total need for nursing home beds.

(4) To be eligible to apply for or receive an award of beds from the special pool, an application must be to build a new nursing home, or add beds to a nursing home, that:

(a) Will be owned and operated by a nonprofit corporation, and at least fifty percent of the board of directors of the corporation are members of the ethnic minority the nursing home is intended to serve;

(b) Will be designed, managed, and administered to serve the special cultural, language, dietary, and other needs of an ethnic minority; and

(c) Will not discriminate in admissions against persons who are not members of the ethnic minority whose special needs the nursing home is designed to serve.

(5) If a nursing home or portion of a nursing home that is built as a result of an award from the special pool is sold or leased within ten years to a party not eligible under subsection (4) of this section:

(a) The purchaser or lessee may not operate those beds as nursing home beds without first obtaining a certificate of need for new beds under this chapter; and

(b) The beds that had been awarded from the special pool shall be returned to the special pool.

(6) The department shall initially award up to one hundred beds before that number of beds are actually in the special pool, provided that the number of beds so awarded are subtracted from the total of two hundred fifty beds that can be awarded from the special pool.

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 shall take effect immediately.

NEW SECTION. Sec. 3. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the House March 19, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 272

[Engrossed Substitute Senate Bill 5756]

LOW-LEVEL WASTE SITES—RATE SETTING

Effective Date: Sections 1 through 14 & 22 become effective on 7/1/91; Section 15 becomes effective on 5/20/91; & Sections 16 through 21 & 23 become effective on 1/1/93.

AN ACT Relating to low-level waste sites; amending RCW 81.04.010, 82.16.010, 82.04-.260, and 82.29A.020; adding a new chapter to Title 81 RCW; adding new sections to chapter 43.200 RCW; adding new sections to chapter 43.31 RCW; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. State and national policy directs that the management of low-level radioactive waste be accomplished by a system of interstate compacts and the development of regional disposal sites. The Northwest regional compact, comprised of the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, and Washington, has as its disposal facility the low-level radioactive waste disposal site located near Richland, Washington. This site is expected to be the sole site for disposal of low-level radioactive waste for compact members effective January 1, 1993. Future closure of this site will require significant financial resources.

Low-level radioactive waste is generated by essential activities and services that benefit the citizens of the state. Washington state's low-level radioactive waste disposal site has been used by the nation and the Northwest compact as a disposal site since 1965. The public has come to rely on access to this site for disposal of low-level radioactive waste, which requires

separate handling from other solid and hazardous wastes. The price of disposing of low-level radioactive waste at the Washington state low-level radioactive waste disposal site is anticipated to increase when the federal low-level radioactive waste policy amendments act of 1985 is implemented and waste generated outside the Northwest compact states is excluded.

When these events occur, to protect Washington and other Northwest compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, there will be a need to regulate the rates charged by the operator of Washington's low-level radioactive waste disposal site. This chapter is adopted pursuant to section 8, chapter 21, Laws of 1990.

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

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

(2) "Effective rate" means the highest permissible rate, calculated as the lowest contract rate plus an administrative fee, if applicable, determined pursuant to section 5 of this act.

(3) "Extraordinary volume" means volumes of low-level radioactive waste delivered to a site caused by nonrecurring events, outside normal operations of a generator, that are in excess of twenty thousand cubic feet or twenty percent of the preceding year's total volume at such site, whichever is less.

(4) "Extraordinary volume adjustment" means a mechanism that allocates the potential rate reduction benefits of an extraordinary volume between all generators and the generator responsible for such extraordinary volume as described in section 8 of this act.

(5) "Generator" means a person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste.

(6) "Inflation adjustment" means a mechanism that adjusts the maximum disposal rate by a percentage equal to the change in price levels in the preceding period, as measured by a common, verifiable price index as determined in section 5 of this act.

(7) "Initial rate proceeding" means the proceeding described in section 5 of this act.

(8) "Maximum disposal rate" means the rate described in section 6 of this act.

(9) "Site" means a location, structure, or property used or to be used for the storage, treatment, or disposal of low-level radioactive waste for compensation within the state of Washington.

(10) "Site operator" means a low-level radioactive waste site operating company as defined in RCW 81.04.010.

(11) "Volume adjustment" means a mechanism that adjusts the maximum disposal rate in response to material changes in volumes of waste deposited at the site during the preceding period so as to provide a level of total revenues sufficient to recover the costs to operate and maintain the site.

Sec. 3. RCW 81.04.010 and 1981 c 13 s 2 are each amended to read as follows:

As used in this title, unless specially defined otherwise or unless the context indicates otherwise:

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Corporation" includes a corporation, company, association or joint stock association.

"Low-level radioactive waste site operating company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing a low-level radioactive waste disposal site or sites located within the state of Washington.

"Low-level radioactive waste" means low-level waste as defined by RCW 43.145.010.

"Person" includes an individual, a firm or copartnership.

"Street railroad" includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place within any one city or town, and includes all equipment, switches, spurs, tracks, bridges, right of trackage, subways, tunnels, stations, terminals and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such street railroad, within this state.

"Street railroad company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any street railroad or any cars or other equipment used thereon or in connection therewith within this state.

"Railroad" includes every railroad, other than street railroad, by whatsoever power operated for public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such railroad.

"Railroad company" includes every corporation, company, association, joint stock association, partnership or person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or

managing any railroad or any cars or other equipment used thereon or in connection therewith within this state.

"Express company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, who shall engage in or transact the business of carrying any freight, merchandise or property for hire on the line of any common carrier operated in this state.

"Common carrier" includes all railroads, railroad companies, street railroads, street railroad companies, steamboat companies, express companies, car companies, sleeping car companies, freight companies, freight line companies, and every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing or controlling any such agency for public use in the conveyance of persons or property for hire within this state.

"Vessel" includes every species of watercraft, by whatsoever power operated, for public use in the conveyance of persons or property for hire over and upon the waters within this state, excepting all towboats, tugs, scows, barges, and lighters, and excepting rowboats and sailing boats under twenty gross tons burden, open steam launches of five tons gross and under, and vessels under five tons gross propelled by gas, fluid, naphtha or electric motors.

"Steamboat company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers, appointed by any court whatsoever, owning, controlling, leasing, operating or managing any vessel over and upon the waters of this state.

"Transportation of property" includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage and handling of the property transported, and the transmission of credit.

"Transportation of persons" includes any service in connection with the receiving, carriage and delivery of the person transported and his baggage and all facilities used, or necessary to be used in connection with the safety, comfort and convenience of the person transported.

"Public service company" includes every common carrier.

The term "service" is used in this title in its broadest and most inclusive sense.

NEW SECTION. Sec. 4. (1) The commission shall have jurisdiction over the sites and site operators as set forth in this chapter.

(2)(a) The commission shall establish rates to be charged by site operators. In establishing the rates, the commission shall assure that they are fair, just, reasonable, and sufficient considering the value of the site operator's leasehold and license interests, the unique nature of its business operations, the site operator's liability associated with the site, its investment

incurred over the term of its operations, and the rate of return equivalent to that earned by comparable enterprises. The rates shall only take effect following a finding that the site operator is a monopoly pursuant to section 11 of this act.

(b) In exercising the power in this subsection the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates. The relation of site operator expenses to site operator revenues may be deemed the proper test of a reasonable return.

(3) In all respects in which the commission has power and authority under this chapter, applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders, and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for review to the superior court filed therewith, appeals filed with the appellate courts of this state, considered and disposed of by said courts in the manner, under the conditions, and subject to the limitations, and with the effect specified in this title for public service companies generally.

(4) At any time after January 1, 1992, the commission may: (a) Prescribe a system of accounts for site operators using as a starting point the existing system used by site operators; (b) audit the books of site operators; (c) obtain books and records from site operators; (d) assess penalties; and (e) require semiannual reports regarding the results of operations for the site.

(5) The commission may adopt rules necessary to carry out its functions under this chapter.

NEW SECTION. Sec. 5. (1) On or before March 1, 1992, site operators shall file a request with the commission to establish an initial maximum disposal rate. The filing shall include, at a minimum, testimony, exhibits, workpapers, summaries, annual reports, cost studies, proposed tariffs, and other documents as required by the commission in rate cases generally under its jurisdiction.

(2) After receipt of a request, the commission shall set the request for a hearing and require the site operator to provide for notice to all known customers that ship or deliver waste to the site. The proceedings before the commission shall be conducted in accordance with chapter 34.05 RCW and rules of procedure established by the commission.

(3) No later than January 1, 1993, the commission shall establish the initial maximum disposal rates that may be charged by site operators.

(4) In the initial rate proceeding the commission also shall determine the factors necessary to calculate the inflation, volume, and extraordinary volume adjustments.

(5) The commission also shall determine the administrative fee, which shall be a percentage or an amount that represents increased administrative

costs associated with acceptance of small volumes of waste by a site operator. The administrative fee may be revised by the commission from time to time upon its own motion or upon the petition of an interested person.

(6) The rates specified in this section shall only take effect following a finding that the site operator is a monopoly pursuant to section 11 of this act.

NEW SECTION. Sec. 6. (1) The maximum disposal rates that a site operator may charge generators shall be determined in accordance with this section. The rates shall include all charges for disposal services at the site.

(2) Initially, the maximum disposal rates shall be the initial rates established pursuant to section 5 of this act.

(3) Subsequently, the maximum disposal rates shall be adjusted semi-annually in January and July of each year to incorporate inflation and volume adjustments. Such adjustments shall take effect thirty days after filing with the commission unless the commission authorizes that the adjustments take effect earlier, or the commission contests the calculation of the adjustments, in which case the commission may suspend the filing. A site operator shall provide notice to its customers concurrent with the filing.

(4)(a) Subsequently, a site operator may also file for revisions to the maximum disposal rates due to:

(i) Changes in any governmentally imposed fee, surcharge, or tax assessed on a volume or a gross revenue basis against or collected by the site operator, including site closure fees, perpetual care and maintenance fees, business and occupation taxes, site surveillance fees, leasehold excise taxes, commission regulatory fees, municipal taxes, and a tax or payment in lieu of taxes authorized by the state to compensate the county in which a site is located for that county's legitimate costs arising out of the presence of that site within that county; or

(ii) Factors outside the control of the site operator such as a material change in regulatory requirements regarding the physical operation of the site.

(b) Revisions to the maximum disposal rate shall take effect thirty days after filing with the commission unless the commission suspends the filing or authorizes the proposed adjustments to take effect earlier.

(5) Upon establishment of a contract rate pursuant to section 7 of this act for a disposal fee, the site operator may not collect a disposal fee that is greater than the effective rate. The effective rate shall be in effect so long as such contract rate remains in effect. Adjustments to the maximum disposal rates may be made during the time an effective rate is in place. Contracts for disposal of extraordinary volumes pursuant to section 8 of this act shall not be considered in determining the effective rate.

(6) The site operator may petition the commission for new maximum disposal rates at any time. Upon receipt of such a petition, the commission shall set the matter for hearing and shall issue an order within seven months

of the filing of the petition. The petition shall be accompanied by the documents required to accompany the filing for initial rates. The hearing on the petition shall be conducted in accordance with the commission's rules of practice and procedure.

(7) This section shall only take effect following a finding that the site operator is a monopoly pursuant to section 11 of this act.

NEW SECTION. Sec. 7. (1) At any time, a site operator may contract with any person to provide a contract disposal rate lower than the maximum disposal rate.

(2) A contract or contract amendment shall be submitted to the commission for approval at least thirty days before its effective date. The commission may approve the contract or suspend the contract and set it for hearing. If the commission takes no action within thirty days of filing, the contract or amendment shall go into effect according to its terms. Each contract filing shall be accompanied with documentation to show that the contract does not result in discrimination between generators receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs associated with the provision of the service.

(3) This section shall only take effect following a finding that the site operator is a monopoly pursuant to section 11 of this act.

NEW SECTION. Sec. 8. (1) In establishing the extraordinary volume adjustment, unless the site operator and generator of the extraordinary volume agree to a contract disposal rate, one-half of the extraordinary volume delivery shall be priced at the maximum disposal rate and one-half shall be priced at the site operator's incremental cost to receive the delivery. Such incremental cost shall be determined in the initial rate proceeding.

(2) For purposes of the subsequent calculation of the volume adjustment, one-half of the total extraordinary volume shall be included in the calculation.

(3) This section shall only take effect following a finding that the site operator is a monopoly pursuant to section 11 of this act.

NEW SECTION. Sec. 9. (1) At any time, the commission or an interested person may file a complaint against a site operator alleging that the rates established pursuant to section 5 or 6 of this act are not in conformity with the standards set forth in section 4 of this act or that the site operator is otherwise not acting in conformity with the requirements of this chapter. Upon filing of the complaint, the commission shall cause a copy of the complaint to be served upon the site operator. The complaining party shall have the burden of proving that the maximum disposal rates determined pursuant to section 6 of this act are not just, fair, reasonable, or sufficient. The hearing shall conform to the rules of practice and procedure of the commission for other complaint cases.

(2) The commission shall encourage alternate forms of dispute resolution to resolve disputes between a site operator and any other person regarding matters covered by this chapter.

NEW SECTION. Sec. 10. (1) A site operator shall, on or before May 1, 1992, and each year thereafter, file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one percent of the amount of the gross operating revenue, exclusive of site surveillance fees, perpetual care and maintenance fees, site closure fees, and state or federally imposed out-of-region surcharges.

(2) Fees collected under this chapter shall reasonably approximate the cost of supervising and regulating site operators. The commission may order a decrease in fees by March 1st of any year in which it determines that the moneys then in the radioactive waste disposal companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating site operators.

(3) Fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund.

NEW SECTION. Sec. 11. (1) A low-level waste disposal site operator is exempt as specified in sections 4(2)(a), 5(6), 6(7), 7(3), and 8(3) of this act unless a monopoly situation exists with respect to the site operated by such site operator. A monopoly situation exists if either of the following is present:

(a) No disposal facility is available to Northwest compact generators of low-level radioactive waste other than the site or sites operated by such site operator or its affiliates; or

(b) Disposal rates at other sites are not reasonable alternatives for Northwest compact generators, considering: Disposal rates at other facilities; current disposal rates charged by the site operator; historic relationships between the site operator's rates and rates at other facilities; and changes in the operator's rates considering changes in waste volumes, taxes, and fees. A monopoly situation does not exist if either of the following facilities operates or is projected to operate after December 31, 1992:

(i) Any existing low-level radioactive waste disposal site outside the state of Washington, other than facilities operated by affiliates of a site operator, provided that such site or sites do not charge disposal rates that discriminate against Northwest compact generators, except to the extent, through December 31, 1994, such discrimination is authorized by amendment of current federal law.

(ii) An existing facility within the Northwest compact not receiving low-level radioactive waste offers to receive such waste under substantially similar terms and conditions.

(2) The exemption shall be in effect until such time as the commission finds, after notice and hearing, upon motion by the commission or upon petition by any interested party, that a monopoly situation exists or will exist as of January 1, 1993. The finding shall be based upon application of the criteria set forth in this section. The commission may assess a site operator for all of the commission's costs of supervision and regulation prior to and relative to determining whether the exemption applies to the site operator. If the commission determines that a site operator is not subject to the exemption, it shall collect its costs of supervision and regulation under section 10 of this act.

(3) When an exemption is in effect, any increase in the rates charged by the operator effective January 1, 1993, for services other than the base rate for disposal of solid material in packages of twelve cubic feet or less shall be no more than the percentage increase in the base rate in effect on January 1, 1993.

NEW SECTION. Sec. 12. (1) At any time after this chapter has been implemented with respect to a site operator, such site operator may petition the commission to be classified as competitive. The commission may initiate classification proceedings on its own motion. The commission shall enter its final order with respect to classification within seven months from the date of filing of a company's petition or the commission's motion.

(c) The commission shall classify a site operator as a competitive company if the commission finds, after notice and hearing, that the disposal services offered are subject to competition because the company's customers have reasonably available alternatives. In determining whether a company is competitive, the commission's consideration shall include, but not be limited to:

(a) Whether the system of interstate compacts and regional disposal sites established by federal law has been implemented so that the Northwest compact site located near Richland, Washington is the exclusive site option for disposal by customers within the Northwest compact states;

(b) Whether waste generated outside the Northwest compact states is excluded; and

(c) The ability of alternative disposal sites to make functionally equivalent services readily available at competitive rates, terms, and conditions.

(3) The commission may reclassify a competitive site operator if reclassification would protect the public interest as set forth in this section.

(4) Competitive low-level radioactive waste disposal companies shall be exempt from commission regulation and fees during the time they are so classified.

NEW SECTION. Sec. 13. Nothing in this chapter shall be construed to affect the jurisdiction of another state agency.

Sec. 14. RCW 82.16.010 and 1989 c 302 s 203 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of renting, leasing or operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the

business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business as defined in RCW 82.04.065 and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, log patrol, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

Sec. 15. RCW 82.04.260 and 1990 c 21 s 2 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, corn, rye and barley, but not including any manufactured or processed products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of one one-hundredth of one percent.

(2) Upon every person engaging within this state in the business of manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, or oil manufactured, multiplied by the rate of one-eighth of one percent.

(3) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of one-quarter of one percent.

(4) Upon every person engaging within this state in the business of manufacturing seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of one-eighth of one percent.

(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing or dehydrating fresh fruits and vegetables; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen or dehydrated multiplied by the rate of three-tenths of one percent.

(6) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of forty-four one-hundredths of one percent.

(7) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of twenty-five one-hundredths of one percent through June 30, 1986, and one-eighth of one percent thereafter.

(8) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of twenty-five one-hundredths of one percent.

(9) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of twenty-five one-hundredths of one percent.

(10) Upon every person engaging within this state in the business of acting as a travel agent; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of twenty-five one-hundredths of one percent.

(11) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of thirty-three one-hundredths of one percent.

(12) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of thirty-three one hundredths of one percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(13) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of fifteen percent.

(a) The rate specified in this subsection shall be reduced to ten percent ~~((upon the effective date of legislation adopted pursuant to RCW 81.04.520 governing regulation of the business of low-level radioactive waste disposal))~~ on the effective date of this section.

(b) The rate specified in this subsection shall be further reduced to five percent on January 1, 1992(~~(, if (a) of this subsection has taken effect)~~).

(c) The rate specified in this subsection shall be further reduced to three percent on July 1, 1993.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(14) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of one percent.

NEW SECTION. Sec. 16. A new section is added to chapter 43.200 RCW to read as follows:

The director of the department of ecology shall require that generators of waste pay a fee for each cubic foot of waste disposed at any facility in the state equal to six dollars and fifty cents. The fee shall be imposed specifically on the generator of the waste and shall not be considered to apply in any way to the low-level site operator's disposal activities. The fee shall be allocated in accordance with sections 17 and 18 of this act. This subsection shall be invalidated and the authorization to collect a surcharge removed if the legislature or any administrative agency of the state of Washington prior to January 1, 1993, (1) imposes fees, assessments, or charges other than perpetual care and maintenance, site surveillance, and site closing fees currently applicable to the Hanford commercial low-level waste site operator's activities, (2) imposes any additional fees, assessments, or charges on generators using the Hanford commercial low-level waste site, or (3) increases any existing fees, assessments, or charges.

NEW SECTION. Sec. 17. A new section is added to chapter 43.200 RCW to read as follows:

A portion of the surcharge received under section 16 of this act shall be remitted monthly to the county in which the low-level radioactive waste disposal facility is located in the following manner:

- (1) During 1993, six dollars and fifty cents per cubic foot of waste;
- (2) During 1994, three dollars and twenty-five cents per cubic foot of waste; and
- (3) During 1995 and thereafter, two dollars per cubic foot of waste.

NEW SECTION. Sec. 18. A new section is added to chapter 43.200 RCW to read as follows:

Except for moneys that may be remitted to a county in which a low-level radioactive waste disposal facility is located, all surcharges authorized

under section 16 of this act shall be deposited in the fund created in section 19 of this act.

NEW SECTION. Sec. 19. A new section is added to chapter 43.31 RCW to read as follows:

The Hanford area economic investment fund is established in the custody of the state treasurer. Moneys in the fund shall only be used pursuant to the recommendations of the committee created in section 20 of this act and the approval of the director of the department of trade and economic development for Hanford area revolving loan funds, Hanford area infrastructure projects, or other Hanford area economic development and diversification projects, but may not be used for government or nonprofit organization operating expenses. Up to five percent of moneys in the fund may be used for program administration. For the purpose of this chapter "Hanford area" means Benton and Franklin counties. Disbursements from the fund shall be on the authorization of the director of trade and economic development or the director's designee after an affirmative vote of at least six members of the committee created in section 20 of this act on any recommendations by the committee created in section 20 of this act. The fund is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for disbursements. The legislature intends to establish similar economic investment funds for areas that develop low-level radioactive waste disposal facilities.

NEW SECTION. Sec. 20. A new section is added to chapter 43.31 RCW to read as follows:

The Hanford area economic investment fund committee staffed by the local associate development organization is hereby established.

(1) The committee shall have eleven members. The governor shall appoint the members, in consultation with the Hanford area associate development organization and Hanford area elected officials, subject to the following requirements:

(a) All members shall either reside or be employed within the Hanford area;

(b) The committee shall have a balanced membership representing one member each from the elected leadership of Benton county, Franklin county, the city of Richland, the city of Kennewick, the city of Pasco, a Hanford area port district, the labor community, and four members from the Hanford area business and financial community.

(c) Careful consideration shall be given to assure minority representation on the committee.

(2) Each member appointed by the governor shall serve a term of three years, except that of the members first appointed, four shall serve two-year terms and four shall serve one-year terms. A person appointed to fill a vacancy of a member shall be appointed in a like manner and shall serve for

only the unexpired term. A member is eligible for reappointment. A member may be removed by the governor for cause.

(3) The governor shall designate a member of the committee as its chairperson. The committee may elect such other officers as it deems appropriate. Six members of the committee constitute a quorum and six affirmative votes are necessary for the transaction of business or the exercise of any power or function of the committee.

(4) The members shall serve without compensation, but are entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties in accordance with RCW 43.03.050 and 43.03.060.

(5) Members shall not be liable to the state, to the fund, or to any other person as a result of their activities, whether ministerial or discretionary, as members except for willful dishonesty or intentional violations of law. The department may purchase liability insurance for members and may indemnify these persons against the claims of others.

NEW SECTION. Sec. 21. A new section is added to chapter 43.31 RCW to read as follows:

The Hanford area economic investment fund committee created under section 20 of this act may:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) Utilize the services of other governmental agencies;

(3) Accept from any federal or state agency loans or grants for the purposes of funding Hanford area revolving loan funds, Hanford area infrastructure projects, or Hanford area economic development projects;

(4) Recommend to the director rules for the administration of the program, including the terms and rates pertaining to its loans, and criteria for awarding grants, loans, and financial guarantees;

(5) Recommend to the director a spending strategy for the moneys in the fund created in section 19 of this act. The strategy shall include five and ten year goals for economic development and diversification for use of the moneys in the Hanford area; and

(6) Recommend to the director no more than two allocations eligible for funding per calendar year, with a first priority on Hanford area revolving loan allocations, and Hanford area infrastructure allocations followed by other Hanford area economic development and diversification projects if the committee finds that there are no suitable allocations in the priority allocations described in this section.

NEW SECTION. Sec. 22. Sections 1, 2, and 4 through 13 of this act shall constitute a new chapter in Title 81 RCW.

Sec. 23. RCW 82.29A.020 and 1986 c 285 s 1 are each amended to read as follows:

As used in this chapter the following terms shall be defined as follows, unless the context otherwise requires:

(1) "Leasehold interest" shall mean an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership: PROVIDED, That no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government shall constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" shall include the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites. The term "leasehold interest" shall not include road or utility easements or rights of access, occupancy or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner.

(2) "Taxable rent" shall mean contract rent as defined in subsection (a) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor: PROVIDED, That after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in subsection (b) of this subsection. All other leasehold interests shall be subject to the determination of taxable rent under the terms of subsection (b) of this subsection.

For purposes of determining leasehold excise tax on any lands on the Hanford reservation subleased to a private or public entity by the department of ecology, taxable rent shall include only the annual cash rental payment made by such entity to the department of ecology as specifically referred to as rent in the sublease agreement between the parties and shall not include any other fees, assessments, or charges imposed on or collected by such entity irrespective of whether the private or public entity pays or collects such other fees, assessments, or charges as specified in the sublease agreement.

(a) "Contract rent" shall mean the amount of consideration due as payment for a leasehold interest, including: The total of cash payments

made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement, including any rents paid by a sublessee; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest shall be part of contract rent.

"Contract rent" shall not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee or expenditures for improvements and protection made pursuant to a lease or an agreement which requires that the use of the improved property be open to the general public and that no profit will inure to the lessee from the lease; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty including payments for insurance to provide reimbursement for losses or payments to a public or private entity for protection of such property from damage or loss or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements shall be taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

Any prepaid contract rent shall be considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent shall be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, shall be prorated from the date of prepayment.

With respect to a "product lease", the value of agricultural products received as rent shall be the value at the place of delivery as of the fifteenth day of the month of delivery; with respect to all other products received as contract rent, the value shall be that value determined at the time of sale under terms of the lease.

(b) If it shall be determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration shall be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter shall mean a lease of property for use in the production of agricultural or marine products to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" shall mean a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town.

NEW SECTION. Sec. 24. (1) Sections 1 through 15 and 22 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Sections 1 through 14 and 22 of this act shall take effect July 1, 1991, and section 15 of this act shall take effect immediately.

(2) Sections 16 through 21 and 23 of this act shall take effect January 1, 1993.

Passed the Senate April 25, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 273

[House Bill 2021]

JOINT SELECT COMMITTEE ON WATER RESOURCE POLICY

Effective Date: 7/28/91

AN ACT Relating to the joint select committee on water resource policy; and amending RCW 90.54.024.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 90.54.024 and 1988 c 47 s 3 are each amended to read as follows:

(1) The legislature finds that state-wide water resource policies are undergoing transition as state, local, and tribal governments and interested parties attempt to confront increasing demands for limited water resources. Water resource issues are complex and far-reaching; they require vision and foresight in addition to a solid foundation of knowledge to guide legislative decision making. It is in the best interests of the public that a joint committee of the legislature gain particular expertise in water resource issues and actively participate with local governments, Indian tribes, and interested parties in the development of recommendations for state water resource policy.

(2) There is hereby created a joint select committee on water resource policy to address ((the findings reached by the fact-finding service pursuant to RCW 90.54.022)) the important water resource issues of this state, to monitor the implementation of comprehensive regional water resource planning and data management required by RCW 90.54.010, 90.54.030, and 90.54.045, and to otherwise develop an expertise in water resource issues in order to advise the legislature regarding state water policy. The committee shall consist of twelve voting members appointed jointly by the speaker of the house of representatives and the president of the senate. The speaker of the house of representatives and the president of the senate may each appoint nonvoting members to participate in the meetings of the joint select committee. The voting membership shall be equally divided from each major political caucus and shall, to the extent possible, represent all major water interests, including but not limited to agriculture, fisheries, municipal, environmental, recreational, and hydroelectric.

~~((2))~~ (3) The staff support shall be provided by the senate committee services and the office of program research as mutually agreed by the cochairs of the joint select committee. The cochairs shall be designated by the speaker of the house of representatives and the president of the senate.

~~((3))~~ (4) In addition to responsibilities identified in ((subsection (6) of)) this section, the purpose of the joint select committee shall be to address and recommend in ((a)) written annual reports to the full legislature the fundamentals of water resource policy for the state of Washington.

~~((The joint select committee shall review and evaluate the report of the fact-finding service and shall hold a minimum of four public hearings throughout the state:~~

~~The committee shall recommend in its report the procedures for allocating water resources of the state, considering the findings of the fact-finding service and the present and future demands on the use of water resources. The joint select committee shall further evaluate the need to prioritize the use of the water resources of this state:~~

~~(4)) The joint select committee shall work with state, tribal, and local governments and interested parties to identify significant water resource issues and to develop recommendations to the legislature to address water resource needs.~~

~~(5) The joint select committee may include in its annual reports to the legislature recommendations for revisions to existing laws to set forth the water policies of the state and may also recommend revisions to existing law to give direction to the department of ecology and other agencies and officials in carrying out the fundamental water policies of the state as adopted by the legislature. In its 1991 report to the legislature, the joint select committee shall provide information and recommendations regarding the regulatory role of the utilities and transportation commission, with particular emphasis on problems and recommended solutions associated with financial viability of small water systems.~~

~~((5) The joint select committee shall submit its written report of findings and recommendations to the 1989 legislature. A draft report shall be completed by December 1, 1988, and distributed to interested parties. The final report shall be distributed and a public hearing shall be held no later than one week prior to the first day of the 1989 legislative session:~~

~~(6) The joint select committee shall monitor the actions taken to implement the recommendations made in the written report required in subsection (5) of this section and the results of any legislation enacted affecting the fundamental water resource policies of the state. At its discretion, the joint select committee may address issues affecting the allocation, efficient use, conservation, or distribution of surface and ground water to achieve the maximum benefits to the state. The committee shall report periodically to the legislature:~~

~~(7)) (6) This section shall expire June 30, ((1991)) 1993.~~

Passed the House March 12, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 274

[Substitute House Bill 1997]

SEX OFFENDER REGISTRATION REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to sex offender registration; amending RCW 9A.44.130 and 9A.44.140; creating new sections; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that sex offender registration has assisted law enforcement agencies in protecting their communities. This act is intended to clarify and amend the deadlines for sex offenders to register. This act's clarification or amendment of RCW 9A.44.130 does not relieve the obligation of sex offenders to comply with the registration requirements of RCW 9A.44.130 as that statute exists before the effective date of this act.

Sec. 2. RCW 9A.44.130 and 1990 c 3 s 402 are each amended to read as follows:

(1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense shall register with the county sheriff for the county of the person's residence.

(2) The person shall ~~((, within forty-five days of establishing residence in Washington, or if a current resident within thirty days of release from confinement, if any;))~~ provide the county sheriff with the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; ~~((d))~~ (e) crime for which convicted; ~~((e))~~ (f) date and place of conviction; ~~((f))~~ (g) aliases used; and ~~((g))~~ (h) social security number.

(3)(a) Sex offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses:

(i) SEX OFFENDERS IN CUSTODY. Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after the effective date of this act, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the sex offender of the duty to register. Failure to register within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(ii) SEX OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders, who, on the effective date of

this act, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the active supervision of the state department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of the effective date of this act.

(iii) SEX OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense on or after the effective date of this act for a sex offense that was committed on or after February 28, 1990, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(iv) SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS. Sex offenders who move to Washington state from another state that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state, federal statutes, or Washington state for offenses committed on or after February 28, 1990. Sex offenders from other states who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (7) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to the effective date of this act.

(4) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within ten days of establishing the new residence. If any person required to register pursuant to this section moves to a new county, the person must register with the county sheriff in the new county within ten days of establishing the new residence. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered.

~~((4))~~ (5) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

~~((5))~~ (6) "Sex offense" for the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330 means any offense defined as a sex offense by RCW 9.94A.030(:

(a) ~~Committed on or after February 28, 1990, or~~

(b) ~~Committed prior to February 28, 1990, if the person, as a result of the offense, is under the custody or active supervision of the department of corrections or the department of social and health services on or after February 28, 1990).~~

~~((6))~~ (7) A person who knowingly fails to register as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony. If the crime was other than a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony, violation of this section is a gross misdemeanor.

Sec. 3. RCW 9A.44.140 and 1990 c 3 s 408 are each amended to read as follows:

(1) The duty to register under RCW 9A.44.130 shall end:

(a) For a person convicted of a class A felony: Such person may only be relieved of the duty to register under subsection (2) or (3) of this section.

(b) For a person convicted of a class B felony: Fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of any new offenses.

(c) For a person convicted of a class C felony: Ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of any new offenses.

(2) Any person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register, or, in the case of convictions in other states, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction, and may consider other factors. Except as provided in subsection (3) of this section, the court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(3) An offender having a duty to register under RCW 9A.44.130 for a sex offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after adjudication, and may consider other factors. The court may relieve the petitioner of the duty to register for a sex offense that was committed while the petitioner was fifteen years of age or older only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The court may relieve the petitioner of the duty to register for a sex offense that was committed while the petitioner was under the age of fifteen if the petitioner (a) has not been adjudicated of any additional sex offenses during the twenty-four months following the adjudication for the sex offense giving rise to the duty to register, and (b) the petitioner proves by a preponderance of the evidence that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(4) Unless relieved of the duty to register pursuant to this section, a violation of RCW 9A.44.130 is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

~~((4))~~ (5) Nothing in RCW 9.94A.220 relating to discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to RCW 9A.44.130.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the House March 13, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 275

[Substitute House Bill 2132]

BUSINESS AND OCCUPATION TAX EXEMPTION FOR LIFE INSURANCE
SALESPERSONS

Effective Date: 7/1/91

AN ACT Relating to business and occupation taxation of insurance salespersons; amending RCW 82.04.360; creating a new section; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

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

(a) The existing state policy is to exempt employees from the business and occupation tax.

(b) It has been difficult to distinguish, for business and occupation tax purposes, between independent contractors and employees who are in the business of selling life insurance. The tests commonly used by the department of revenue to determine tax status have not successfully differentiated employees from independent contractors when applied to the life insurance industry.

(2) The intent of this act is to apply federal tax law and rules to distinguish between employees and independent contractors for business and occupation tax purposes, solely for the unique business of selling life insurance.

Sec. 2. RCW 82.04.360 and 1961 c 15 s 82.04.360 are each amended to read as follows:

This chapter shall not apply to any person in respect to his employment in the capacity of an employee or servant as distinguished from that of an independent contractor. For the purposes of this section, the definition of employee shall include those persons that are defined in Section 3121(d)(3)(B) of the Internal Revenue Code of 1986, as amended through January 1, 1991.

NEW SECTION. Sec. 3. 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 shall take effect July 1, 1991.

Passed the House March 19, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 276

[House Bill 1262]

TOW TRUCK HEIGHT, WEIGHT, AND LENGTH RESTRICTIONS

Effective Date: 7/28/91

AN ACT Relating to weight, height, and length exemptions for tow trucks operated by registered tow truck operators; and adding a new section to chapter 46.44 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.44 RCW to read as follows:

The limitations of RCW 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.041, 46.44.042, 46.44.050, and 46.44.080 do not apply to the movement of a tow truck, as defined in RCW 46.55.010, if the tow truck is performing the initial tow truck service, as defined in RCW 46.55.010, regardless of the destination, for a vehicle disabled on the public streets and highways of this state: PROVIDED, That an overweight permit has been obtained by the tow truck operator with such permit being available on a twenty-four hour basis by telephone.

Passed the House March 11, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 277

[Substitute House Bill 1496]

LICENSING FEES—REAL ESTATE BROKERS AND SALESPERSONS AND PROFESSIONAL ENGINEERS

Effective Date: 7/1/93

AN ACT Relating to the license fees of real estate brokers, real estate salespersons, and professional engineers; amending RCW 18.85.220 and 18.43.150; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.85.220 and 1987 c 332 s 8 are each amended to read as follows:

All fees required under this chapter shall be set by the director in accordance with RCW 43.24.086 and shall be paid to the state treasurer.

~~((The sum of five dollars from each license fee and each renewal fee received from a broker, associate broker, or salesperson, shall be placed in the general fund. The balance of such fees and all other))~~ All fees paid under the provisions of this chapter shall be placed in the real estate commission account in the state treasury. All money derived from fines imposed under this chapter shall also be deposited in the real estate commission account, shall be used solely for education for the benefit of licensees and shall be subject to appropriation pursuant to chapter 43.88 RCW.

Sec. 2. RCW 18.43.150 and 1985 c 57 s 5 are each amended to read as follows:

All fees collected under the provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, and 18.43.130 and fines collected under RCW 18.43.110 shall be ~~((divided and twenty percent paid into the state general fund and eighty percent))~~ paid into the professional engineers' account, which account is hereby established in the state treasury to be used to carry out the purposes and provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, 18.43.110, 18.43.120, 18.43.130, 18.43.140 and all other duties required for operation and enforcement of this chapter. ~~((All earnings of investments of balances in the professional engineers' account shall be credited to the general fund.))~~

NEW SECTION. Sec. 3. This act shall take effect July 1, 1993.

Passed the House March 12, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 278

[Substitute Senate Bill 5359]

TEACHERS' RETIREMENT—TRANSFER OF CREDITS FROM OUT-OF-STATE PLANS

Effective Date: 5/20/91

AN ACT Relating to the transfer of credits from out-of-state teacher retirement plans; adding new sections to chapter 41.32 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 41.32 RCW to read as follows:

A member may elect under this section to apply service credit earned in an out-of-state retirement system that covers teachers in public schools solely for the purpose of determining the time at which the member may retire. The benefit shall be actuarially reduced to recognize the difference between the age a member would have first been able to retire based on service in the state of Washington and the member's retirement age.

NEW SECTION. Sec. 2. A new section is added to chapter 41.32 RCW to read as follows:

A member may purchase additional benefits subject to the following:

(1) The member shall pay all reasonable administrative and clerical costs; and

(2) The member shall make an annuity fund contribution to be actuarially converted to a monthly benefit at the time of retirement.

NEW SECTION. Sec. 3. 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 shall take effect immediately.

Passed the Senate March 18, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 279

[Engrossed Substitute Senate Bill 5624]

BULKHEAD OR ROCKWALL CONSTRUCTION—HYDRAULIC PERMITS FOR

Effective Date: 7/28/91

AN ACT Relating to the protection of the food fish resource; and adding a new section to chapter 75.20 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 75.20 RCW to read as follows:

(1) In order to protect the property of marine waterfront shoreline owners it is necessary to facilitate issuance of hydraulic permits for bulkheads or rockwalls under certain conditions.

(2) The department shall issue a hydraulic 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;

(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 hydraulic permit approval under this section may formally appeal the decision to the hydraulic appeals board pursuant to this chapter.

Passed the Senate April 22, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 280

[Engrossed Second Substitute Senate Bill 5096]

DEPARTMENT OF AGRICULTURE—DUTY TO PROMOTE AGRICULTURE

Effective Date: 7/28/91

AN ACT Relating to the duties and responsibilities of the department of agriculture; and adding new sections to chapter 15.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 15.04 RCW to read as follows:

The history, economy, culture, and the future of Washington state to a large degree all involve agriculture, which is vital to the economic well-being of the state. The legislature finds that farmers and ranchers are responsible stewards of the land, but are increasingly subjected to complaints and unwarranted restrictions that encourage, and even force, the premature removal of lands from agricultural uses.

The legislature further finds that it is now in the overriding public interest that support for agriculture be clearly expressed and that adequate protection be given to agricultural lands, uses, activities, and operations.

The legislature further finds that the department of agriculture has a duty to promote and protect agriculture and its dependent rural community in Washington state.

NEW SECTION. Sec. 2. A new section is added to chapter 15.04 RCW to read as follows:

The department shall seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber. Additionally, the department shall seek to maintain the economic well-being of the agricultural industry and its dependent rural community in Washington state.

Passed the Senate April 28, 1991.

Passed the House April 28, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 281

[Substitute Senate Bill 5497]

CONSTRUCTION LIENS

Effective Date: 4/1/92

AN ACT Relating to construction liens; amending RCW 19.27.095 and 60.04.230; adding new sections to chapter 60.04 RCW; adding a new section to chapter 60.24 RCW; recodifying RCW 60.04.045; repealing RCW 60.04.010, 60.04.020, 60.04.030, 60.04.040, 60.04.050, 60.04.060, 60.04.064, 60.04.067, 60.04.070, 60.04.080, 60.04.090, 60.04.100, 60.04.110, 60.04.115, 60.04.120, 60.04.130, 60.04.140, 60.04.150, 60.04.160, 60.04.170, 60.04.180, 60.04.200, 60.04.210, 60.04.220, 60.20.010, 60.20.020, 60.20.030, 60.20.040, 60.20.050, 60.20.060, 60.48.010, and 60.48.020; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. **DEFINITIONS.** Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Construction agent" means any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person having charge of any improvement to real property, who shall be deemed the agent of the owner for the limited purpose of establishing the lien created by this chapter.

(2) "Contract price" means the amount agreed upon by the contracting parties, or if no amount is agreed upon, then the customary and reasonable charge therefor.

(3) "Draws" means periodic disbursements of interim or construction financing by a lender.

(4) "Furnishing labor, professional services, materials, or equipment" means the performance of any labor or professional services, the contribution owed to any employee benefit plan on account of any labor, the provision of any supplies or materials, and the renting, leasing, or otherwise supplying of equipment for the improvement of real property.

(5) "Improvement" means: (a) Constructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property or street or road in front of or adjoining the same; (b) planting

of trees, vines, shrubs, plants, hedges, or lawns, or providing other landscaping materials on any real property; and (c) providing professional services upon real property or in preparation for or in conjunction with the intended activities in (a) or (b) of this subsection.

(6) "Interim or construction financing" means that portion of money secured by a mortgage, deed of trust, or other encumbrance to finance improvement of, or to real property, but does not include:

(a) Funds to acquire real property;

(b) Funds to pay interest, insurance premiums, lease deposits, taxes, assessments, or prior encumbrances;

(c) Funds to pay loan, commitment, title, legal, closing, recording, or appraisal fees;

(d) Funds to pay other customary fees, which pursuant to agreement with the owner or borrower are to be paid by the lender from time to time;

(e) Funds to acquire personal property for which the potential lien claimant may not claim a lien pursuant to this chapter.

(7) "Labor" means exertion of the powers of body or mind performed at the site for compensation. "Labor" includes amounts due and owed to any employee benefit plan on account of such labor performed.

(8) "Mortgagee" means a person who has a valid mortgage of record or deed of trust of record securing a loan.

(9) "Owner" means the record holder of any legal or beneficial title to the real property to be improved or developed.

(10) "Owner-occupied" means a single-family residence occupied by the owner as his or her principal residence.

(11) "Payment bond" means a surety bond issued by a surety licensed to issue surety bonds in the state of Washington that confers upon potential claimants the rights of third party beneficiaries.

(12) "Potential lien claimant" means any person or entity entitled to assert lien rights under this chapter who has otherwise complied with the provisions of this chapter and is registered or licensed if required to be licensed or registered by the provisions of the laws of the state of Washington.

(13) "Prime contractor" includes all contractors, general contractors, and specialty contractors, as defined by chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who contract directly with a property owner or their common law agent to assume primary responsibility for the creation of an improvement to real property, and includes property owners or their common law agents who are contractors, general contractors, or specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year.

(14) "Professional services" means surveying, establishing or marking the boundaries of, preparing maps, plans, or specifications for, or inspecting, testing, or otherwise performing any other architectural or engineering services for the improvement of real property.

(15) "Real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, trust, or individual that makes loans secured by real property located in the state of Washington.

(16) "Site" means the real property which is or is to be improved.

(17) "Subcontractor" means a general contractor or specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who is otherwise required to be registered or licensed by law, who contracts for the improvement of real property with someone other than the owner of the property or their common law agent.

NEW SECTION. Sec. 2. LIEN AUTHORIZED. Except as provided in section 3 of this act, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner.

NEW SECTION. Sec. 3. NOTICES—EXCEPTIONS. (1) Except as otherwise provided in this section, every person furnishing professional services, materials, or equipment for the improvement of real property shall give the owner or reputed owner notice in writing of the right to claim a lien. If the prime contractor is in compliance with the requirements of RCW 19.27.095, 60.04.230, and section 24 of this act, this notice shall be given to the prime contractor unless the potential lien claimant has contracted directly with the prime contractor. The notice may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after the date which is sixty days before:

(a) Mailing the notice by certified or registered mail to the owner or reputed owner; or

(b) Serving the notice personally upon the owner or reputed owner and obtaining evidence of service in the form of a receipt or other acknowledgment signed by the owner or reputed owner.

In the case of new construction of a single-family residence, the notice of a right to claim a lien may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after a date which is ten days before the notice is mailed or served as described in this subsection.

(2) Notices of a right to claim a lien shall not be required of:

(a) Persons who contract directly with the owner or the owner's common law agent;

(b) Laborers whose claim of lien is based solely on performing labor; or

COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

We have or will be providing labor, materials, professional services, or equipment for the improvement of your commercial or new residential project. In the event you or your contractor fail to pay us, we may file a lien against your property. A lien may be claimed for all materials, equipment, and professional services furnished after a date that is sixty days before this notice was mailed to you, unless the improvement to your property is the construction of a new single-family residence, then ten days before this notice was mailed to you.

Sender:

Address:

Telephone:

Brief description of professional services, materials, or equipment provided or to be provided:

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

This notice is sent to inform you that we have or will provide materials, professional services, or equipment for the repair, remodel, or alteration of your property. We expect to be paid by the person who ordered our services, but if we are not paid, we have the right to enforce our claim by filing a construction lien against your property.

LEARN more about the lien laws and the meaning of this notice by discussing with your contractor, suppliers, department of labor and industries, the firm sending you this notice, your lender, or your attorney.

COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods available to protect your property from construction liens. The following are two of the more commonly used methods.

DUAL PAYCHECKS (Joint Checks): When paying your contractor for services or materials, you may make checks payable jointly to the contractor and the firms furnishing you this notice.

LIEN RELEASES: You may require your contractor to provide lien releases signed by all the suppliers and subcontractors from whom you have received this notice. If they cannot obtain lien releases because you have not paid them, you may use the dual payee check method to protect yourself.

YOU SHOULD TAKE WHATEVER STEPS YOU BELIEVE NECESSARY TO PROTECT YOUR PROPERTY FROM LIENS.

YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT RECEIVED IT, ASK THEM FOR IT.

(5) Every potential lien claimant providing professional services where no improvement as defined in section 1(5) (a) or (b) of this act has been commenced, and the professional services provided are not visible from an inspection of the real property shall record in the real property records of the county where the property is located a notice which shall contain the provider's name, address, telephone number, legal description of the property, the owner or reputed owner's name, and the general nature of the professional services provided. If such notice is not recorded, the lien claimed shall be subordinate to the interest of any subsequent mortgagee and invalid as to the interest of any subsequent purchaser who acts in good faith and for a valuable consideration acquires an interest in the property prior to the commencement of an improvement as defined in section 1(5) (a) or (b) of this act without notice of the professional services being provided.

(6) A lien authorized by this chapter shall not be enforced unless the lien claimant has complied with the provisions of this section.

NEW SECTION. Sec. 4. CONTRACTOR REGISTRATION. A contractor or subcontractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other certificate or license issued pursuant to law, covering the period when the labor, professional services, material, or equipment shall be furnished, and the lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. No lien rights described in this section shall be lost or denied by virtue of the absence, suspension, or revocation of such registration or license with respect to any contractor or subcontractor not in immediate contractual privity with the lien claimant.

NEW SECTION. Sec. 5. PROPERTY SUBJECT TO LIEN. The lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the person for whom the labor, professional services, equipment, or materials were furnished, as the court deems appropriate for satisfaction of the lien. If, for any reason, the title or interest in the land upon which the improvement is situated cannot be subjected to the lien, the court

in order to satisfy the lien may order the sale and removal of the improvement which is subject to the lien, from the land.

NEW SECTION. Sec. 6. **PRIORITY OF LIEN.** The claim of lien created by this chapter upon any lot or parcel of land shall be prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant.

NEW SECTION. Sec. 7. **RELEASE OF LIEN RIGHTS.** Upon payment and acceptance of the amount due to the lien claimant and upon demand of the owner or the person making payment, the lien claimant shall immediately prepare and execute a release of all lien rights for which payment has been made, and deliver the release to the person making payment. In any suit to compel deliverance of the release thereafter in which the court determines the delay was unjustified, the court shall, in addition to ordering the deliverance of the release, award the costs of the action including reasonable attorneys' fees and any damages.

NEW SECTION. Sec. 8. **FRIVOLOUS CLAIM—PROCEDURE.** (1) Any owner of real property subject to a recorded notice of claim of lien under this chapter, or the contractor or subcontractor who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply to the superior court for the county where the property, or some part thereof is located, for an order directing the lien claimant to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the lien claim should not be dismissed, with prejudice.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien claim shall be dismissed, with prejudice and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) If, following a full hearing on the matter, the court determines that the lien claim is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order dismissing the lien claim if frivolous or reducing the claim if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the claim of lien is not frivolous and made with reasonable cause, and is not clearly excessive, the court shall issue and order so

stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(5) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise.

NEW SECTION. Sec. 9. RECORDING—TIME—CONTENTS OF LIEN. Every person claiming a lien under section 2 of this act shall record, in the county where the subject property is located, a notice of claim of lien not later than ninety days after the person has ceased to furnish labor, professional services, materials, or equipment or the last date on which employee benefit contributions were due. The notice of claim of lien:

(1) Shall state in substance and effect:

(a) The name, phone number, and address of the claimant;

(b) The first and last date on which the labor, professional services, materials, or equipment was furnished or employee benefit contributions were due;

(c) The name of the person indebted to the claimant;

(d) The street address, legal description, or other description reasonably calculated to identify, for a person familiar with the area, the location of the real property to be charged with the lien;

(e) The name of the owner or reputed owner of the property, if known, and, if not known, that fact shall be stated; and

(f) The principal amount for which the lien is claimed.

(2) Shall be signed by the claimant or some person authorized to act on his or her behalf who shall affirmatively state they have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury, and shall be acknowledged pursuant to chapter 64.08 RCW. If the claim has been assigned, the name of the assignee shall be stated. Where an action to foreclose the lien has been commenced such notice of claim of lien may be amended as pleadings may be by order of the court insofar as the interests of third parties are not adversely affected by such amendment. A claim of lien substantially in the following form shall be sufficient:

....., claimant, vs , owner or reputed owner

Notice is hereby given that on the day of (date of commencement of furnishing labor, professional services, materials, or equipment and the last date contributions to any type of employee benefit plan became due), at the request of, commenced to (perform labor, furnish professional services, materials, or equipment) upon (here describe property subject to the lien) of which property the owner, or reputed owner, is (or if the owner or reputed owner is not known, insert

the word "unknown"), the (furnishing of labor, professional services, materials, or equipment) ceased on the day of; that said (labor, professional services, material, or equipment) was of the value of dollars, for which the undersigned claims a lien upon the property herein described for the sum of dollars. (In case the claim has been assigned, add the words "and is assignee of said claim", or claims, if several are united.)

....., Claimant.
.....
.....
(Phone number, address, city,
and state of claimant)

STATE OF WASHINGTON, COUNTY OF

....., ss.
....., being sworn, says: I am the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the same to be true and correct under penalty of perjury.

.....
Subscribed and sworn to before me this day of
.....

The period provided for recording the notice is a period of limitation and no action to foreclose a claim of lien shall be maintained unless the notice is recorded within the ninety-day period stated. The lien claimant shall give notice of the claim of lien to the owner or reputed owner by certified or registered mail or by personal service within fourteen days of the time the claim is recorded. Failure to do so results in a forfeiture of any right the claimant may have to attorneys' fees and costs against the owner under section 18 of this act.

NEW SECTION. Sec. 10. SEPARATE RESIDENTIAL UNITS—TIME FOR FILING. When furnishing labor, professional services, materials, or equipment for the construction of two or more separate residential units, the time for filing claims of lien against each separate residential unit shall commence to run upon the cessation of the furnishing of labor, professional services, materials, or equipment on each residential unit, as provided in this chapter. For the purposes of this section a separate residential unit is defined as consisting of one residential structure together with any garages or other outbuildings appurtenant thereto.

NEW SECTION. Sec. 11. RECORDING—FEES. The county auditor shall record the notice of claim of lien in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of lien for registered land need not be recorded in the Torrens register. The county auditor shall charge no higher fee for recording notices of claim of lien than other documents.

NEW SECTION. Sec. 12. LIEN—ASSIGNMENT. Any lien or right of lien created by this chapter and the right of action to recover therefor, shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made.

NEW SECTION. Sec. 13. CLAIMS—DESIGNATION OF AMOUNT DUE. In every case in which the notice of claim of lien is recorded against two or more separate pieces of property owned by the same person or owned by two or more persons jointly or otherwise, who contracted for the labor, professional services, material, or equipment for which the notice of claim of lien is recorded, the person recording the notice of claim of lien shall designate in the notice of claim of lien the amount due on each piece of property, otherwise the lien is subordinated to other liens that may be established under this chapter. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon any of such pieces of property.

NEW SECTION. Sec. 14. LIEN—DURATION—PROCEDURAL LIMITATIONS. No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the notice of claim of lien has been recorded unless an action is filed by the lien claimant within that time in the superior court in the county where the subject property is located to enforce the lien, and service is made upon the owner of the subject property within ninety days of the date of filing the action; or, if credit is given and the terms thereof are stated in the notice of claim of lien, then eight calendar months after the expiration of such credit; and in case the action is not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the action for want of prosecution, and the dismissal of the action or a judgment rendered thereon that no lien exists shall constitute a cancellation of the lien. This is a period of limitation, which shall be tolled by the filing of any petition seeking protection under Title Eleven, United States Code by an owner of any property subject to the lien established by this chapter.

NEW SECTION. Sec. 15. RIGHTS OF OWNER—RECOVERY OPTIONS. The lien claimant shall be entitled to recover upon the claim recorded the contract price after deducting all claims of other lien claimants to whom the claimant is liable, for furnishing labor, professional services, materials, or equipment; and in all cases where a notice of claim of lien

shall be recorded under this chapter for labor, professional services, materials, or equipment supplied to any lien claimant, he or she shall defend any action brought thereupon at his or her own expense; and during the pendency of the action, the owner may withhold from the prime contractor the amount of money for which a claim is recorded by any subcontractor, supplier, or laborer; and in case of judgment against the owner or the owner's property, upon the lien, the owner shall be entitled to deduct the principal amount of the judgment from any amount due or to become due from him or her to the lien claimant plus such costs, including interest and attorneys' fees, as the court deems just and equitable, and he or she shall be entitled to recover back from the lien claimant the amount for which the lien is established in excess of any sum that may remain due from him or her to the lien claimant.

NEW SECTION. Sec. 16. BOND IN LIEU OF CLAIM. Any owner of real property subject to a recorded notice of claim of lien under this chapter, or the contractor or subcontractor who disputes the correctness or validity of the notice of claim of lien may record, either before or after the commencement of an action to enforce the lien, in the office of the county recorder or auditor in the county where the notice of claim of lien was recorded, a bond issued by a surety company authorized to issue surety bonds in the state. The surety shall be listed in the latest federal department of the treasury list of surety companies acceptable on federal bonds, published in the Federal Register, as authorized to issue bonds on United States government projects with an underwriting limitation, including applicable reinsurance, equal to or greater than the amount of the bond to be recorded. The bond shall contain a description of the notice of claim of lien and real property involved, and be in an amount equal to the greater of five thousand dollars or two times the amount of the lien claimed if it is ten thousand dollars or less, and in an amount equal to or greater than one and one-half times the amount of the lien if it is in excess of ten thousand dollars. If the notice of claim of lien affects more than one parcel of real property and is segregated to each parcel, the bond may be segregated the same as in the notice of claim of lien. A separate bond shall be required for each notice of claim of lien made by separate claimants. However, a single bond may be used to guarantee payment of amounts claimed by more than one lien claim by a single claimant so long as the amount of the bond meets the requirements of this section as applied to the aggregate sum of all claims by such claimant. The condition of the bond shall be to guarantee payment of any judgment upon the lien in favor of the lien claimant entered in any action to recover the amount claimed in a notice of claim of lien, or on the claim asserted in the notice of claim of lien. The effect of recording a bond shall be to release the real property described in the notice of claim of lien from the lien and any action brought to recover the amount claimed. Unless otherwise prohibited by law, if no action is commenced to recover on a lien

within the time specified in section 14 of this act, the surety shall be discharged from liability under the bond. If an action is timely commenced, then on payment of any judgment entered in the action or on payment of the full amount of the bond to the holder of the judgment, whichever is less, the surety shall be discharged from liability under the bond.

Nothing in this section shall in any way prohibit or limit the use of other methods, devised by the affected parties to secure the obligation underlying a claim of lien and to obtain a release of real property from a claim of lien.

NEW SECTION. Sec. 17. FORECLOSURE—PARTIES. The lien provided by this chapter, for which claims of lien have been recorded, may be foreclosed and enforced by a civil action in the court having jurisdiction in the manner prescribed for the judicial foreclosure of a mortgage. The court shall have the power to order the sale of the property. In any action brought to foreclose a lien, the owner shall be joined as a party. The lien claims of all persons who, prior to the commencement of the action, have legally recorded claims of lien against the same property, or any part thereof, shall not be foreclosed or affected unless they are joined as a party.

A person shall not begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to the prior action, he or she may apply to the court to be joined as a party thereto, and his or her lien may be foreclosed in the same action. The filing of such application shall toll the running of the period of limitation established by section 14 of this act until disposition of the application or other time set by the court. The court shall grant the application for joinder unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions as the court deems just. If a lien foreclosure action is filed during the pendency of another such action, the court may, on its own motion or the motion of any party, consolidate actions upon such terms and conditions as the court deems just, unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions. If consolidation of actions is not permissible under this section, the lien foreclosure action filed during the pendency of another such action shall not be dismissed if the filing was the result of mistake, inadvertence, surprise, excusable neglect, or irregularity. An action to foreclose a lien shall not be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien.

NEW SECTION. Sec. 18. RANK OF LIEN—APPLICATION OF PROCEEDS—ATTORNEYS' FEES. (1) In every case in which different construction liens are claimed against the same property, the court shall declare the rank of such lien or class of liens, which liens shall be in the following order:

- (a) Liens for the performance of labor;

- (b) Liens for contributions owed to employee benefit plans;
- (c) Liens for furnishing material, supplies, or equipment;
- (d) Liens for subcontractors, including but not limited to their labor and materials; and
- (e) Liens for prime contractors, or for professional services.

(2) The proceeds of the sale of property must be applied to each lien or class of liens in order of its rank and, in an action brought to foreclose a lien, pro rata among each claimant in each separate priority class. A personal judgment may be rendered against any party personally liable for any debt for which the lien is claimed. If the lien is established, the judgment shall provide for the enforcement thereof upon the property liable as in the case of foreclosure of judgment liens. The amount realized by such enforcement of the lien shall be credited upon the proper personal judgment. The deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against any party liable therefor.

(3) The court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for recording the notice of claim of lien, costs of title report, bond costs, and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems reasonable. Such costs shall have the priority of the class of lien to which they are related, as established by subsection (1) of this section.

(4) Real property against which a lien under this chapter is enforced may be ordered sold by the court and the proceeds deposited into the registry of the clerk of the court, pending further determination respecting distribution of the proceeds of the sale.

NEW SECTION. Sec. 19. **EFFECT OF NOTE—PERSONAL ACTION PRESERVED.** The taking of a promissory note or other evidence of indebtedness for any labor, professional services, material, or equipment furnished for which a lien is created by this chapter does not discharge the lien therefor, unless expressly received as payment and so specified therein.

Nothing in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for the furnishing of labor, professional services, material, or equipment to maintain a personal action to recover the debt against any person liable therefor.

NEW SECTION. Sec. 20. **MATERIAL EXEMPT FROM PROCESS—EXCEPTION.** Whenever material is furnished for use in the improvement of property subject to a lien created by this chapter, the material is not subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of the material, except a debt due for the purchase money thereof, so long as in good faith, the material is about to be applied in the improvement of such property.

.....
(City) (State) (Zip)

AND TO:
(Owner)

AND TO:
(Prime Contractor-If Different Than Owner)

.....
(Name of Laborer, Professional, Materials, or Equipment Supplier)
whose business address is, did at the property located at
(Check appropriate box) () perform labor () furnish professional services () provide materials
() supply equipment as follows:

.....
.....
.....
which was ordered by
(Name of Person)

whose address was stated to be
.....

The amount owing to the undersigned according to contract or purchase order
for labor, supplies, or equipment (as above mentioned) is the sum of
Dollars
(\$). Said sums became due and owing as of
(State Date)

You are hereby required to withhold from any future draws on existing construction financing which has been made on the subject property (to the extent there remain undisbursed funds) the sum of Dollars
(\$).

IMPORTANT

Failure to comply with the requirements of this notice may subject the lender to a whole or partial compromise of any priority lien interest it may have pursuant to section 23 of this act.

DATE:

By:
Its:

(4) After the receipt of the notice, the lender shall withhold from the next and subsequent draws the amount claimed to be due as stated in the notice. Alternatively, the lender may obtain from the prime contractor or borrower a payment bond for the benefit of the potential lien claimant in an amount sufficient to cover the amount stated in the potential lien claimant's notice. The lender shall be obligated to withhold amounts only to the extent that sufficient interim or construction financing funds remain undisbursed as of the date the lender receives the notice.

(5) Sums so withheld shall not be disbursed by the lender, except by the written agreement of the potential lien claimant, owner, and prime contractor in such form as may be prescribed by the lender, or the order of a court of competent jurisdiction.

(6) In the event a lender fails to abide by the provisions of subsections (4) and (5) of this section, then the mortgage, deed of trust, or other encumbrance securing the lender will be subordinated to the lien of the potential lien claimant to the extent of the interim or construction financing

wrongfully disbursed, but in no event more than the amount stated in the notice plus costs as fixed by the court, including reasonable attorneys' fees.

(7) Any potential lien claimant shall be liable for any loss, cost, or expense, including reasonable attorneys' fees and statutory costs, to a party injured thereby arising out of any unjust, excessive, or premature notice filed under purported authority of this section. "Notice" as used in this subsection does not include notice given by a potential lien claimant of the right to claim liens under this chapter where no actual claim is made.

(8)(a) Any owner of real property subject to a notice to real property lender under this section, or the contractor or subcontractor who believes the claim that underlies the notice is frivolous and made without reasonable cause, or clearly excessive may apply to the superior court for the county where the property, or some part thereof is located, for an order commanding the potential lien claimant who issued the notice to the real property lender to appear before the court at a time no earlier than six nor later than fifteen days from the date of service of the application and order on the potential lien claimant, and show cause, if any he or she has, why the notice to real property lender should not be declared void.

(b) The order shall clearly state that if the potential lien claimant fails to appear at the time and place noted, the notice to lender shall be declared void and that the potential lien claimant issuing the notice shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(c) The clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars.

(d) If, following a full hearing on the matter, the court determines that the claim upon which the notice to real property lender is based is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order declaring the notice to real property lender void if frivolous, or reducing the amount stated in the notice if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the person who issued the notice. If the court determines that the claim underlying the notice to real property lender is not frivolous and made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the issuer of the notice to be paid by the applicant.

(e) Proceedings under this subsection shall not affect other rights and remedies available to the parties under this chapter or otherwise.

NEW SECTION. Sec. 23. FINANCIAL ENCUMBRANCES—PRIORITIES. Except as otherwise provided in section 6 or 22 of this act, any mortgage or deed of trust shall be prior to all liens, mortgages, deeds of trust, and other encumbrances which have not been recorded prior to the recording of the mortgage or deed of trust to the extent of all sums secured

by the mortgage or deed of trust regardless of when the same are disbursed or whether the disbursements are obligatory.

NEW SECTION. Sec. 24. AVAILABILITY OF INFORMATION. The prime contractor shall immediately supply the information listed in RCW 19.27.095(2) to any person who has contracted to supply materials, equipment, or professional services or who is a subcontractor on the improvement, as soon as the identity and mailing address of such subcontractor, supplier, or professional is made known to the prime contractor either directly or through another subcontractor, supplier, or professional.

NEW SECTION. Sec. 25. LIBERAL CONSTRUCTION. RCW 19.27.095, 60.04.230, and sections 1 through 24 of this act are to be liberally construed to provide security for all parties intended to be protected by their provisions.

NEW SECTION. Sec. 26. CAPTIONS—NOT PART OF LAW. Section headings as used in sections 1 through 26 of this act do not constitute any part of the law.

Sec. 27. RCW 19.27.095 and 1987 c 104 s 1 are each amended to read as follows:

(1) A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

(2) The requirements for a fully completed application shall be defined by local ordinance but for any construction project costing more than five thousand dollars the application shall include, at a minimum:

(a) The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

(ii) The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than fifty percent of the total amount of the construction project.

(3) The information required on the building permit application by subsection (2) (a) through (d) of this section shall be set forth on the building permit document which is issued to the owner, and on the inspection record card which shall be posted at the construction site.

(4) The information required by subsection (2) of this section and information supplied by the applicant after the permit is issued under subsection (5) of this section shall be kept on record in the office where building permits are issued and made available to any person on request. If a copy is requested, a reasonable charge may be made.

(5) If any of the information required by subsection (2)(d) of this section is not available at the time the application is submitted, the applicant shall so state and the application shall be processed forthwith and the permit issued as if the information had been supplied, and the lack of the information shall not cause the application to be deemed incomplete for the purposes of vesting under subsection (1) of this section. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

(6) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW.

Sec. 28. RCW 60.04.230 and 1984 c 202 s 3 are each amended to read as follows:

(1) For any construction project costing more than five thousand dollars ~~((where the primary use of the improvements on the real property is for one or more residences))~~ the prime contractor shall post in plain view for the duration of the construction project a legible notice at the construction job site containing the following:

(a) The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number and identification; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

(ii) The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner if the bond is for an amount not less than fifty percent of the total amount of the construction project.

~~(2) For any construction project ((not subject to subsection (1) of this section costing more than five thousand dollars, the prime contractor shall post in plain view for the duration of the construction project a legible notice at the construction job site containing the following:~~

~~(a) The legal description or the street address and any other identification of the construction site by the prime contractor;~~

~~(b) The property owner's name, address, and phone number;~~

~~(c) The prime contractor's business name, address, phone number, current state contractor registration number and identification.~~

(f)) which requires a building permit under local ordinance, compliance with the posting requirements of RCW 19.27.095 shall constitute compliance with this section. Otherwise, the information shall be posted as set forth in this section.

(3) Failure to comply with this section ((is a gross misdemeanor)) shall subject the prime contractor to a civil penalty of not more than five thousand dollars, payable to the county where the project is located.

NEW SECTION. Sec. 29. Sections 1 through 26 of this act are each added to chapter 60.04 RCW.

NEW SECTION. Sec. 30. RCW 60.04.045 is recodified as a section in chapter 60.24 RCW.

NEW SECTION. Sec. 31. The following acts or parts of acts are each repealed:

(1) RCW 60.04.010 and 1975 c 34 s 3, 1971 ex.s. c 94 s 2, 1959 c 279 s 1, 1905 c 116 s 1, & 1893 c 24 s 1;

(2) RCW 60.04.020 and 1984 c 202 s 4, 1977 ex.s. c 57 s 1, 1969 ex.s. c 84 s 1, 1965 c 98 s 1, 1959 c 279 s 2, 1959 c 278 s 1, 1957 c 214 s 1, 1911 c 77 s 1, & 1909 c 45 s 1;

(3) RCW 60.04.030 and 1905 c 116 s 2 & 1893 c 24 s 2;

(4) RCW 60.04.040 and 1975 c 34 s 4, 1971 ex.s. c 94 s 3, 1959 c 279 s 3, 1929 c 230 s 1, & 1893 c 24 s 3;

(5) RCW 60.04.050 and 1975 c 34 s 5, 1959 c 279 s 4, & 1893 c 24 s 4;

(6) RCW 60.04.060 and 1975 c 34 s 6, 1971 ex.s. c 94 s 1, 1959 c 279 s 5, 1949 c 217 s 1(5a), & 1893 c 24 s 5;

(7) RCW 60.04.064 and 1959 c 279 s 6 & 1949 c 217 s 1(5b);

(8) RCW 60.04.067 and 1975 c 34 s 7, 1959 c 279 s 7, & 1949 c 217 s 1(5c);

(9) RCW 60.04.070 and 1985 c 44 s 10, 1949 c 217 s 2, & 1893 c 24 s 6;

(10) RCW 60.04.080 and 1893 c 24 s 7;

(11) RCW 60.04.090 and 1959 c 279 s 8 & 1893 c 24 s 8;

(12) RCW 60.04.100 and 1975 1st ex.s. c 231 s 1, 1943 c 209 s 1, & 1893 c 24 s 9;

(13) RCW 60.04.110 and 1975 c 34 s 8, 1959 c 279 s 9, & 1893 c 24 s 10;

(14) RCW 60.04.115 and 1986 c 314 s 4;

(15) RCW 60.04.120 and 1893 c 24 s 11;

(16) RCW 60.04.130 and 1975 c 34 s 9, 1971 c 81 s 129, 1969 c 38 s 1, 1959 c 279 s 10, & 1893 c 24 s 12;

(17) RCW 60.04.140 and 1959 c 279 s 11 & 1893 c 24 s 14;

(18) RCW 60.04.150 and 1893 c 24 s 15;

(19) RCW 60.04.160 and 1893 c 24 s 16;

- (20) RCW 60.04.170 and 1893 c 24 s 17;
- (21) RCW 60.04.180 and 1959 c 279 s 12 & 1893 c 24 s 13;
- (22) RCW 60.04.200 and 1984 c 202 s 1 & 1973 1st ex.s. c 47 s 1;
- (23) RCW 60.04.210 and 1984 c 202 s 2, 1975 c 34 s 10, & 1973 1st ex.s. c 47 s 2;
- (24) RCW 60.04.220 and 1973 1st ex.s. c 47 s 3;
- (25) RCW 60.20.010 and 1943 c 18 s 1;
- (26) RCW 60.20.020 and 1943 c 18 s 2;
- (27) RCW 60.20.030 and 1955 c 239 s 1 & 1943 c 18 s 3;
- (28) RCW 60.20.040 and 1943 c 18 s 4;
- (29) RCW 60.20.050 and 1943 c 18 s 5;
- (30) RCW 60.20.060 and 1943 c 18 s 6;
- (31) RCW 60.48.010 and 1931 c 107 s 1; and
- (32) RCW 60.48.020 and 1931 c 107 s 2.

NEW SECTION. Sec. 32. This act shall take effect April 1, 1992. Lien claims based on an improvement commenced by a potential lien claimant on or after April 1, 1992, shall be governed by the provisions of this act.

Passed the Senate April 22, 1991.
 Passed the House April 10, 1991.
 Approved by the Governor May 20, 1991.
 Filed in Office of Secretary of State May 20, 1991.

CHAPTER 282

[House Bill 2142]

PUBLIC EMPLOYEES—RETIREMENT—NOTICE OF ACCUMULATED SERVICE CREDIT

Effective Date: 7/28/91

AN ACT Relating to notification to public employees of accumulated service credit by the department of retirement systems; and amending RCW 41.50.065.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.50.065 and 1990 c 8 s 2 are each amended to read as follows:

(1) The department shall annually notify each member of each retirement system listed in RCW 41.50.030 of his or her:

- (a) Service credit accumulated in the preceding calendar year; and
- (b) Total service credit accumulated.

(2) The department shall begin notifying members under this section ~~((no later than October 1, 1993. The department shall initially concentrate on auditing members who are within five years of being eligible for service retirement))~~ according to the following schedule:

(a) All members of the teachers' retirement system shall begin receiving annual notification of accumulated service credit and service credit

earned within the preceding school year or one school year, as appropriate, no later than January 1, 1991;

(b) All members, other than members of the teachers' retirement system, shall begin receiving annual notification of service credit accumulated within the preceding calendar year or school year, as appropriate, no later than June 30, 1992;

(c) All members within five years of being eligible for service retirement shall begin receiving annual notification of total service credit accumulated no later than October 1, 1993;

(d) Members, other than members of the teachers' retirement system, who are not within five years of being eligible for service retirement shall begin receiving annual notification of total service credit accumulated according to the following schedule:

(i) For members of the law enforcement officers' and fire fighters' retirement system, Washington state patrol retirement system, judicial retirement system, and judges' retirement system, no later than August 30, 1993;

(ii) For employees of the state of Washington who are members of the public employees' retirement system, no later than August 30, 1994;

(iii) For employees of political subdivisions of the state of Washington, no later than January 31, 1995;

(iv) For employees of institutions of higher education as defined in RCW 28B.10.016, no later than June 30, 1995; and

(v) For school district employees who are members of the public employees' retirement system, no later than April 30, 1996.

(3) The department shall adopt rules implementing this section.

Passed the House March 19, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 283

[Second Substitute Senate Bill 5341]

FOSTER PARENT INSURANCE

Effective Date: 7/1/91

AN ACT Relating to insurance for foster parents; adding a new section to chapter 74.14B RCW; adding a new section to chapter 4.24 RCW; creating new sections; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes the unique legal risks that foster parents face in taking children into their care. Third parties have filed claims against foster parents for losses and damage caused by foster children. Additionally, foster children and their parents have sued foster parents for actions occurring while the children were in foster care.

The legislature finds that some potential foster parents are unwilling to subject themselves to potential liability without insurance protection. The legislature further finds that to encourage those people to serve as foster parents, it is necessary to assure that such insurance is available to them.

NEW SECTION. Sec. 2. A new section is added to chapter 74.14B RCW to read as follows:

(1) Subject to subsection (2) of this section, the secretary of social and health services shall provide liability insurance to foster parents licensed under chapter 74.15 RCW. The coverage shall be for personal injury and property damage caused by foster parents or foster children that occurred while the children were in foster care. Such insurance shall cover acts of ordinary negligence but shall not cover illegal conduct or bad faith acts taken by foster parents in providing foster care. Moneys paid from liability insurance for any claim are limited to the amount by which the claim exceeds the amount available to the claimant from any valid and collectible liability insurance.

(2) The secretary of social and health services may purchase the insurance required in subsection (1) of this section or may choose a self-insurance method. The total moneys expended pursuant to this authorization shall not exceed five hundred thousand dollars per biennium. If the secretary elects a method of self-insurance, the expenditure shall include all administrative and staff costs. If the secretary elects a method of self-insurance, he or she may, by rule, place a limit on the maximum amount to be paid on each claim.

(3) Nothing in this section or section 3 of this act is intended to modify the foster parent reimbursement plan in place on the effective date of this act.

(4) The liability insurance program shall be available by July 1, 1991.

NEW SECTION. Sec. 3. A new section is added to chapter 4.24 RCW to read as follows:

In actions for personal injury or property damage commenced by foster children or their parents against foster parents licensed pursuant to chapter 74.15 RCW, the liability of foster parents for the care and supervision of foster children shall be the same as the liability of biological and adoptive parents for the care and supervision of their children.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 5. 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 shall take effect July 1, 1991.

Passed the Senate April 17, 1991.

Passed the House April 9, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 284

[Engrossed House Bill 1428]

CAPITAL BUDGETS—DOCUMENTATION REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to the content of budget documents; amending RCW 43.88.030 and 43.88.150; and adding a new section to chapter 43.88 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.88.030 and 1990 c 115 s 1 are each amended to read as follows:

(1) The director of financial management shall provide all agencies with a complete set of instructions for submitting biennial budget requests to the director at least three months before agency budget documents are due into the office of financial management. The budget document or documents shall consist of the governor's budget message which shall be explanatory of the budget and shall contain an outline of the proposed financial policies of the state for the ensuing fiscal period and shall describe in connection therewith the important features of the budget. The message shall set forth the reasons for salient changes from the previous fiscal period in expenditure and revenue items and shall explain any major changes in financial policy. Attached to the budget message shall be such supporting schedules, exhibits and other explanatory material in respect to both current operations and capital improvements as the governor shall deem to be useful to the legislature. The budget document or documents shall set forth a proposal for expenditures in the ensuing fiscal period based upon the estimated revenues as approved by the economic and revenue forecast council for such fiscal period from the source and at the rates existing by law at the time of submission of the budget document. However, the estimated revenues for use in the governor's budget document may be adjusted to reflect budgetary revenue transfers and revenue estimates dependent upon budgetary assumptions of enrollments, workloads, and caseloads. All adjustments to the approved estimated revenues must be set forth in the budget document. The governor may additionally submit, as an appendix to each agency budget or to the budget document or documents, a proposal for expenditures in the ensuing fiscal period from revenue sources derived from proposed changes in existing statutes.

The budget document or documents shall also contain:

(a) Revenues classified by fund and source for the immediately past fiscal period, those received or anticipated for the current fiscal period, and those anticipated for the ensuing biennium;

(b) The undesignated fund balance or deficit, by fund;

(c) Such additional information dealing with expenditures, revenues, workload, performance and personnel as the legislature may direct by law or concurrent resolution;

(d) Such additional information dealing with revenues and expenditures as the governor shall deem pertinent and useful to the legislature;

(e) Tabulations showing expenditures classified by fund, function, activity and object;

(f) A delineation of each agency's activities, including those activities funded from nonbudgeted, nonappropriated sources, including funds maintained outside the state treasury; and

(g) Identification of all proposed direct expenditures to implement the Puget Sound water quality plan under chapter 90.70 RCW, shown by agency and in total.

(2) The budget document or documents shall include detailed estimates of all anticipated revenues applicable to proposed operating or capital expenditures and shall also include all proposed operating or capital expenditures. The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures. The budget document or documents shall further include:

(a) Interest, amortization and redemption charges on the state debt;

(b) Payments of all reliefs, judgments and claims;

(c) Other statutory expenditures;

(d) Expenditures incident to the operation for each agency;

(e) Revenues derived from agency operations;

(f) Expenditures and revenues shall be given in comparative form showing those incurred or received for the immediately past fiscal period and those anticipated for the current biennium and next ensuing biennium;

(g) A showing and explanation of amounts of general fund obligations for debt service and any transfers of moneys that otherwise would have been available for general fund appropriations;

(h) Common school expenditures on a fiscal-year basis;

(i) A showing, by agency, of the value and purpose of financing contracts for the lease/purchase or acquisition of personal or real property for the current and ensuing fiscal periods.

(3) A separate budget document or schedule may be submitted consisting of:

(a) Expenditures incident to current or pending capital projects and to proposed new capital projects, relating the respective amounts proposed to be raised therefor by appropriations in the budget and the respective

amounts proposed to be raised therefor by the issuance of bonds during the fiscal period;

(b) A capital program consisting of proposed capital projects for at least the two fiscal periods succeeding the next fiscal period. The capital program shall include for each proposed project a statement of the reason or purpose for the project along with an estimate of its cost;

(c) A capital plan consisting of proposed capital spending for at least four fiscal periods succeeding the next fiscal period;

(d) Such other information bearing upon capital projects as the governor shall deem to be useful to the legislature;

~~((d))~~ (e) Such other information relating to capital improvement projects as the legislature may direct by law or concurrent resolution.

(4) No change affecting the comparability of agency or program information relating to expenditures, revenues, workload, performance and personnel shall be made in the format of any budget document or report presented to the legislature under this section or RCW 43.88.160(1) relative to the format of the budget document or report which was presented to the previous regular session of the legislature during an odd-numbered year without prior legislative concurrence. Prior legislative concurrence shall consist of (a) a favorable majority vote on the proposal by the standing committees on ways and means of both houses if the legislature is in session or (b) a favorable majority vote on the proposal by members of the legislative evaluation and accountability program committee if the legislature is not in session.

NEW SECTION. Sec. 2. A new section is added to chapter 43.88 RCW to read as follows:

A capital appropriation bill shall include the estimated general fund debt service costs associated with new capital appropriations contained in that bill for the biennia in which the appropriations occur and for the succeeding two biennia.

Sec. 3. RCW 43.88.150 and 1981 c 270 s 10 are each amended to read as follows:

(1) For those agencies (~~which~~) that make expenditures from both appropriated and nonappropriated funds for the same purpose, the governor shall direct such agencies to charge their expenditures in such ratio, as between appropriated and nonappropriated funds, as will conserve appropriated funds.

(2) Unless otherwise provided by law, if state moneys are appropriated for a capital project and matching funds or other contributions are required as a condition of the receipt of the state moneys, the state moneys shall be disbursed in proportion to and only to the extent that the matching funds or other contributions have been received and are available for expenditure.

(3) The office of financial management shall adopt guidelines for the implementation of this section. The guidelines may account for federal

matching requirements or other requirements to spend other moneys in a particular manner.

Passed the House March 8, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 285

[Engrossed Substitute House Bill 1813]

CENTERS FOR THE IMPROVEMENT OF TEACHING

Effective Date: 7/28/91

AN ACT Relating to K-12 education personnel training and recruitment; amending RCW 28A.415.010 and 28A.630.400; creating new sections; and recodifying RCW 28A.305.260, 28A.305.270, and 28A.405.450.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.415.010 and 1990 c 33 s 414 are each amended to read as follows:

It shall be the responsibility of each educational service district board to establish a center for the improvement of teaching. The center shall administer, coordinate, and act as fiscal agent for such programs related to the recruitment and training of certificated and classified K-12 education personnel as may be delegated to the center by the superintendent of public instruction under RCW 28A.310.470, or the state board of education under RCW 28A.310.480. To assist in these activities, each educational service district board shall establish an improvement of teaching coordinating council to include, at a minimum, representatives as specified in RCW 28A.415.040. An existing in-service training task force, established pursuant to RCW 28A.415.040, may serve as the improvement of teaching coordinating council. The educational service district board shall ensure coordination of programs established pursuant to RCW 28A.415.030, 28A.410.060, and 28A.405.450 as recodified by this 1991 act.

The educational service district board may arrange each year for the holding of one or more teachers' institutes and/or workshops for professional staff preparation and in-service training in such manner and at such time as the board believes will be of benefit to the teachers and other professional staff of school districts within the educational service district and shall comply with rules and regulations of the state board of education pursuant to RCW 28A.410.060 or the superintendent of public instruction or state board of education pursuant to RCW 28A.405.450 as recodified by this 1991 act. The board may provide such additional means of teacher and other professional staff preparation and in-service training as it may deem

necessary or appropriate and there shall be a proper charge against the educational service district general expense fund when approved by the educational service district board.

Educational service district boards of contiguous educational service districts, by mutual arrangements, may hold joint institutes and/or workshops, the expenses to be shared in proportion to the numbers of certificated personnel as shown by the last annual reports of the educational service districts holding such joint institutes or workshops.

In local school districts employing more than one hundred teachers and other professional staff, the school district superintendent may hold a teachers' institute of one or more days in such district, said institute when so held by the school district superintendent to be in all respects governed by the provisions of this title and state board of education rules and regulations relating to teachers' institutes held by educational service district superintendents.

Sec. 2. RCW 28A.630.400 and 1989 c 370 s 1 are each amended to read as follows:

(1) The state board of education and the state board for community college education, in consultation with the superintendent of public instruction, the higher education coordinating board, the state apprenticeship training council, and community colleges, shall work cooperatively to develop by September 1, 1992, (~~a ninety unit~~) an educational paraprofessional associate of arts degree.

(2) As used in this section, an "educational paraprofessional" is an individual who has completed an associate of arts degree for an educational paraprofessional. The educational paraprofessional may be hired by a school district to assist certificated instructional staff in the direct instruction of children in small and large groups, individualized instruction, testing of children, recordkeeping, and preparation of materials. The educational paraprofessional shall work under the direction of instructional certificated staff.

(3) The training program for an educational paraprofessional associate of arts degree shall include, but is not limited to, the general requirements for receipt of an associate of arts degree and training in the areas of introduction to childhood education, orientation to handicapped children, fundamentals of childhood education, creative activities for children, instructional materials for children, fine art experiences for children, the psychology of learning, introduction to education, child health and safety, child development and guidance, first aid, and a practicum in a school setting.

(4) In developing the program, consideration shall be given to transferability of credit earned in this program to teacher preparation programs at colleges and universities.

(5) The agencies identified under subsection (1) of this section shall adopt rules as necessary under chapter 34.05 RCW to implement this section.

NEW SECTION. Sec. 3. RCW 28A.305.260, 28A.305.270, and 28A.405.450 are each recodified as sections in chapter 28A.415 RCW.

NEW SECTION. Sec. 4. The code reviser shall correct all references in the revised code of Washington to the sections of the code that are recodified by section 3 of this act.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the House March 19, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 286

[Substitute Senate Bill 5628]

CROP LIENS

Effective Date: 7/28/91

AN ACT Relating to crop liens for handlers; and amending RCW 60.11.010, 60.11.020, 60.11.030, 60.11.040, 60.11.050, 60.11.140, and 62A.9-310.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 60.11.010 and 1986 c 242 s 1 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Crop" means all products of the soil either growing or cropped, cut, or gathered which require annual planting, harvesting, or cultivating. A crop does not include vegetation produced by the powers of nature alone, nursery stock, or vegetation intended as a permanent enhancement of the land itself.

(2) "Handler" means a person: Who prepares an orchard crop for market for the account of, or as agent for, the producer of the crop, which preparation includes, but is not limited to, receiving, storing, packing, marketing, selling, or delivering the orchard crop; and who takes delivery of the crop from the producer of the crop or from another handler. "Handler" does not include a person who solely transports the crop from the producer to another person.

(3) "Landlord" means a person who leases or subleases to a tenant real property upon which crops are growing or will be grown.

~~((3))~~ (4) "Orchard crop" means cherries, peaches, nectarines, plums or prunes, pears, apricots, and apples.

(5) "Secured party" and "security interest" have the same meaning as used in the Uniform Commercial Code, Title 62A RCW.

~~((4))~~ (6) "Supplier" includes, but is not limited to, a person who furnishes seed, furnishes and/or applies commercial fertilizer, pesticide, fungicide, weed killer, or herbicide, including spraying and dusting, upon the land of the grower or landowner, or furnishes any work or labor upon the land of the grower or landowner including tilling, preparing for the growing of crops, sowing, planting, cultivating, cutting, digging, picking, pulling, or otherwise harvesting any crop grown thereon, or in gathering, securing, or housing any crop grown thereon, or in threshing any grain or hauling to any warehouse any crop or grain grown thereon.

~~((5))~~ (7) "Lien debtor" means the person who is obligated or owes payment or other performance. If the lien debtor and the owner of the collateral are not the same person, "lien debtor" means the owner of the collateral.

~~((6))~~ (8) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest.

Sec. 2. RCW 60.11.020 and 1986 c 242 s 2 are each amended to read as follows:

(1) A landlord whose lease or other agreement with the tenant provides for cash rental payment shall have a lien upon all crops grown upon the demised land in which the landlord has an interest for no more than one year's rent due or to become due within six months following harvest. A landlord with a crop share agreement has an interest in the growing crop which shall not be encumbered by crop liens except as provided in subsections (2) and (3) of this section.

(2) A supplier shall have a lien upon all crops for which the supplies are used or applied to secure payment of the purchase price of the supplies and/or services performed: PROVIDED, That the landlord's interest in the crop shall only be subject to the lien for the amount obligated to be paid by the landlord if prior written consent of the landlord is obtained or if the landlord has agreed in writing with the tenant to pay or be responsible for a portion of the supplies and/or services provided by the lien holder.

(3) A handler shall have a lien on all orchard crops delivered by the lien debtor or another handler to the handler and on all proceeds of the orchard crops for: (a) All customary charges for the ordinary and necessary handling of the crop, including but not limited to charges for transporting, receiving, inspecting, materials and supplies furnished, washing, waxing, sorting, packing, storing, promoting, marketing, selling, advertising, insuring, or otherwise handling the lien debtor's crop; and (b) reasonable cooperative per unit retainages, and for all governmental or quasi-governmental

assessments imposed by statute, ordinance, or government regulation. Charges shall not include direct or indirect advances or extensions of credit to lien debtor.

Sec. 3. RCW 60.11.030 and 1986 c 242 s 3 are each amended to read as follows:

(1) Upon filing, the liens described in RCW 60.11.020 (1) and (2) shall attach to the crop for all sums then and thereafter due and owing the lien holder and shall continue in all identifiable cash proceeds of the crop.

(2) Upon the delivery of an orchard crop by the lien debtor, without the necessity of filing, the lien for charges as set forth in RCW 60.11.020(3) shall attach to the delivered crop and shall continue in both the crop and all proceeds of the crop.

Sec. 4. RCW 60.11.040 and 1989 c 229 s 1 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section with respect to the lien of a landlord, and except for the lien of a handler as provided in RCW 60.11.020(3), any lien holder must after the commencement of delivery of such supplies and/or of provision of such services, but before the completion of the harvest of the crops for which the lien is claimed, or in the case of a lien for furnishing work or labor within twenty days after the cessation of the work or labor for which the lien is claimed: (a) File a statement evidencing the lien with the department of licensing; and (b) if the lien holder is to be allowed costs, disbursements, and attorneys' fees, mail a copy of such statement to the last known address of the debtor by certified mail, return receipt requested, within ten days.

(2) The statement shall be in writing, signed by the claimant, and shall contain in substance the following information:

(a) The name and address of the claimant;

(b) The name and address of the debtor;

(c) The date of commencement of performance for which the lien is claimed;

(d) A description of the labor services, materials, or supplies furnished;

(e) A description of the crop and its location to be charged with the lien sufficient for identification; and

(f) The signature of the claimant.

(3) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers, including provisions for filing crop liens together with financing statements filed pursuant to RCW 62A.9-401 so that one request will reveal all filed crop liens and security interests.

(4) Any landlord claiming a lien under this chapter for rent shall file a statement evidencing the lien with the department of licensing. A lien for rent claimed by a landlord pursuant to this chapter shall be effective during

the term of the lease for a period of up to five years. A landlord lien covering a lease term longer than five years may be refiled in accordance with RCW 60.11.050(~~((4))~~) (5). A landlord who has a right to a share of the crop may place suppliers on notice by filing evidence of such interest in the same manner as provided for filing a landlord's lien.

Sec. 5. RCW 60.11.050 and 1986 c 242 s 5 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), (~~((and))~~) (4), and (5) of this section, conflicting liens and security interests shall rank in accordance with the time of filing.

(2) The lien created in RCW 60.11.020(2) in favor of any person who furnishes any work or labor upon the land of the grower or landowner shall be preferred and prior to any other lien or security interest upon the crops to which they attach including the liens described in subsections (3) (~~((and))~~), (4), and (5) of this section.

(3) The lien created in RCW 60.11.020(3) in favor of handlers is preferred and prior to a lien or security interest described in subsection (4) or (5) of this section and to any other lien or security interest upon the crops to which they attach except the liens in favor of a person who furnishes work or labor upon the land of the grower or landlord. Whenever more than one handler holds a handler's lien created by RCW 60.11.020(3) in the same crop, unless the affected parties otherwise agree in writing, the later of the liens to attach has priority over all previously attached handlers' liens.

(4) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a later filed lien or security interest incurred to produce the crop to the extent that obligations secured by such earlier filed security interest or lien were not incurred to produce such crops.

(~~((4))~~) (5) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a properly filed landlord's lien. A landlord's lien shall retain its priority if refiled within six months prior to its expiration.

Sec. 6. RCW 60.11.140 and 1986 c 242 s 14 are each amended to read as follows:

(1) Whenever the total amount of the lien has been fully paid, the lien holder filing a lien shall, within fifteen days following receipt of full payment, file its lien termination statement with the department of licensing. Failure to file a lien termination statement by the lien holder or the assignee of the lien holder shall cause the lien holder or its assignee to be liable to the debtor for the attorneys' fees and costs incurred by the debtor to have the lien terminated together with damages incurred by the debtor due to the failure of the lien holder to terminate the lien.

(2) There shall be no charge by the department of licensing for entering the lien termination statement and indexing the same and returning a

copy of the lien termination statement stamped as "filed" with the filing date thereon.

(3) The department of licensing may enter the lien termination statement on microfilm or other photographic record and destroy all originals of the lien and lien satisfaction filed with him or her.

Sec. 7. RCW 62A.9-310 and 1986 c 242 s 16 are each amended to read as follows:

(1) When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest only if the lien is statutory and the statute expressly provides for such priority.

(2) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest.

(3) Conflicting priorities between ((nonpossessory)) crop liens created under chapter 60.11 RCW and security interests shall be governed by chapter 60.11 RCW.

Passed the Senate April 22, 1991.

Passed the House April 10, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 287

[Engrossed Senate Bill 5745]

SPECIAL AMUSEMENT GAMES LICENSES

Effective Date: 7/28/91

AN ACT Relating to special amusement game licenses; and amending RCW 9.46.0331.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.46.0331 and 1987 c 4 s 30 are each amended to read as follows:

The legislature hereby authorizes any person to conduct or operate amusement games when licensed and operated pursuant to the provisions of this chapter and rules and regulations adopted by the commission at such locations as the commission may authorize. The rules shall provide for at least the following:

(1) Persons other than bona fide charitable or bona fide nonprofit organizations shall conduct amusement games only after obtaining a special amusement game license from the commission.

(2) Amusement games may be conducted under such a license only as a part of, and upon the site of:

(a) Any agricultural fair as authorized under chapter 15.76 or 36.37 RCW; or

(b) A civic center of a county, city, or town; or

(c) A world's fair or similar exposition that is approved by the bureau of international expositions at Paris, France; or

(d) A community-wide civic festival held not more than once annually and sponsored or approved by the city, town, or county in which it is held; or

(e) A commercial exposition organized and sponsored by an organization or association representing the retail sales and service operators conducting business in a shopping center or other commercial area developed and operated for retail sales and service, but only upon a parking lot or similar area located in said shopping center or commercial area for a period of no more than seventeen consecutive days by any licensee during any calendar year; or

(f) An amusement park. An amusement park is a group of activities, at a permanent location, to which people go to be entertained through a combination of various mechanical or aquatic rides, theatrical productions, motion picture, and/or slide show presentations with food and drink service. The amusement park must include at least five different mechanical, or aquatic rides, three additional activities, and the gross receipts must be primarily from these amusement activities; or

(g) Within a regional shopping center. A regional shopping center is a shopping center developed and operated for retail sales and service by retail sales and service operators and consisting of more than six hundred thousand gross square feet not including parking areas. Amusement games conducted as a part of, and upon the site of, a regional shopping center shall not be subject to the prohibition on revenue sharing set forth in RCW 9.46.120(2); or

(h) A location that possesses a valid license from the Washington state liquor board and prohibits minors on their premises; or

(i) Movie theaters, bowling alleys, miniature golf course facilities, and amusement centers. For the purposes of this section an amusement center shall be defined as a permanent location whose primary source of income is from the operation of 10 or more amusement devices; or

(j) Any business whose primary activity is to provide food service for on premises consumption and who offers family entertainment which includes at least three of the following activities: amusement devices; theatrical productions; mechanical rides; motion pictures; and slide show presentations.

(3) No amusement games may be conducted in any location except in conformance with local zoning, fire, health, and similar regulations. In no event may the licensee conduct any amusement games at any of the locations set out in subsection (2) of this section without first having obtained

the written permission to do so from the person or organization owning the premises or an authorized agent thereof, and from the persons sponsoring the fair, exhibition, commercial exhibition, or festival, or from the city or town operating the civic center, in connection with which the games are to be operated.

(4) In no event may a licensee conduct any amusement games at the location described in subsection (2)(g) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from entry during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and providing for hours for the close of business at such location that are no later than 10:00 p.m. on Fridays and Saturdays and on all other days that are the same as those of the regional shopping center in which the licensee is located.

(5) In no event may a licensee conduct any amusement game at a location described in subsections (2)(i) or (j) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from playing licensed amusement games during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and prohibiting minors from playing the amusement games after 10:00 p.m. on any day.

Passed the Senate April 23, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 288

[Substitute House Bill 1222]

SCHOOL DISTRICT DIRECTORS' DISTRICTS

Effective Date: 7/28/91 – Except Sections 6 & 8 which take effect on 7/1/92; & Sections 1 through 5, 7, & 10 which take effect on 5/20/91.

AN ACT Relating to school district directors' districts; amending RCW 28A.315.110, 28A.315.590, 28A.315.670, and 28A.315.680; reenacting and amending RCW 28A.315.580, 28A.315.670, and 28A.315.680; adding new sections to chapter 28A.315 RCW; repealing RCW 28A.315.685; providing an effective date; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28A.315 RCW to read as follows:

It is the responsibility of each school district board of directors to prepare for the division or redivision of the district into director districts no later than eight months after any of the following:

(1) Receipt of federal decennial census data from the redistricting commission established in RCW 44.05.030;

(2) Consolidation of two or more districts into one district under RCW 28A.315.270;

(3) Transfer of territory to or from the district under RCW 28A.315.280;

(4) Annexation of territory to or from the district under RCW 28A.315.290 or 28A.315.320; or

(5) Approval by a majority of the registered voters voting on a proposition authorizing the division of the district into director districts pursuant to RCW 28A.315.590.

The districting or redistricting plan shall be consistent with the criteria and adopted according to the procedure established under RCW 29.70.100.

Sec. 2. RCW 28A.315.110 and 1990 c 161 s 2 are each amended to read as follows:

The powers and duties of each regional committee shall be:

(1) To initiate, on its own motion and whenever it deems such action advisable, proposals or alternate proposals for changes in the organization and extent of school districts in the educational service district; to receive, consider, and revise, whenever in its judgment revision is advisable, proposals initiated by petition or presented to the committee by the educational service district superintendent as provided for in this chapter; to prepare and submit to the state board any of the aforesaid proposals that are found by the regional committee to provide for satisfactory improvement in the school district system of the educational service district and state; to prepare and submit with the aforesaid proposals, a map showing the boundaries of existing school districts affected by any proposed change and the boundaries, including a description thereof, of each proposed new school district or of each existing school district as enlarged or diminished by any proposed change, or both, and a summary of the reasons for the proposed change; and such other reports, records, and materials as the state board may request. The committee may utilize as a basis of its proposals and changes that comprehensive plan for changes in the organization and extent of the school districts of the county prepared and submitted to the state board prior to September 1, 1956, or, if the then county committee found, after considering the factors listed in RCW 28A.315.120, that no changes in the school district organization of the county were needed, the report to this effect submitted to the state board.

(2)(a) To make an equitable adjustment of the property and other assets and of the liabilities, including bonded indebtedness and excess tax levies as otherwise authorized under this section, as to the old school districts and the new district or districts, if any, involved in or affected by a proposed change in the organization and extent of the school districts; and (b) to make an equitable adjustment of the bonded indebtedness outstanding

against any of the aforesaid districts whenever in its judgment such adjustment is advisable, as to all of the school districts involved in or affected by any change heretofore or hereafter effected; and (c) to provide that territory transferred from a school district by a change in the organization and extent of school districts shall either remain subject to, or be relieved of, any one or more excess tax levies which are authorized for the school district under RCW 84.52.053 before the effective date of the transfer of territory from the school district; and (d) to provide that territory transferred to a school district by a change in the organization and extent of school districts shall either be made subject to, or be relieved of, any one or more excess tax levies which are authorized for the school district under RCW 84.52.053 before the effective date of the transfer of territory to the school district; and (e) to submit to the state board the proposed terms of adjustment and a statement of the reasons therefor in each case. In making the adjustments herein provided for, the regional committee shall consider the number of children of school age resident in and the assessed valuation of the property located in each school district and in each part of a district involved or affected; the purpose for which the bonded indebtedness of any school district was incurred; the value, location, and disposition of all improvements located in the school districts involved or affected; and any other matters which in the judgment of the committee are of importance or essential to the making of an equitable adjustment.

(3) To hold and keep a record of a public hearing or public hearings (a) on every proposal for the formation of a new school district or for the transfer from one existing district to another of any territory in which children of school age reside or for annexation of territory when the conditions set forth in RCW 28A.315.290 or 28A.315.320 prevail; and (b) on every proposal for adjustment of the assets and of the liabilities of school districts provided for in this chapter. Three members of the regional committee or two members of the committee and the educational service district superintendent may be designated by the committee to hold any public hearing that the committee is required to hold. The regional committee shall cause notice to be given, at least ten days prior to the date appointed for any such hearing, in one or more newspapers of general circulation within the geographical boundaries of the school districts affected by the proposed change or adjustment. In addition notice may be given by radio and television, or either thereof, when in the committee's judgment the public interest will be served thereby.

(4) ~~((To divide into five school directors' districts all first and second class school districts now in existence and not heretofore so divided and all first and second class school districts hereafter established. PROVIDED; That no first or second class school district shall be divided into directors' districts and no second class school district shall be divided into a combination of no fewer than three directors' districts nor more than two directors~~

~~at large, unless a majority of the registered voters voting thereon at an election shall approve a proposition authorizing the division of the district in such manner. The boundaries of each directors' district shall be so established that each such district shall comprise as nearly as practicable an equal portion of the population of the school district.~~

~~(5) To rearrange at any time the committee deems such action advisable in order to correct inequalities caused by changes in population and changes in school district boundaries, the boundaries of any of the directors' districts of any school district heretofore or hereafter so divided. PROVIDED, That a petition therefor, shall be required for rearrangement in order to correct inequalities caused by changes in population. Said petition shall be signed by at least ten registered voters residing in the aforesaid school district, and shall be presented to the educational service district superintendent. A public hearing thereon shall be held by the regional committee, which hearing shall be called and conducted in the manner prescribed in subsection (3) of this section.~~

(6)) To prepare and submit to the superintendent of public instruction from time to time or, upon his or her request, reports and recommendations respecting the urgency of need for school plant facilities, the kind and extent of the facilities required, and the development of improved local school administrative units and attendance areas in the case of school districts that seek state assistance in providing school plant facilities.

Sec. 3. RCW 28A.315.580 and 1990 c 161 s 5 and 1990 c 33 s 319 are each reenacted and amended to read as follows:

Whenever an election shall be held for the purpose of securing the approval of the voters for the formation of a new school district other than a school district of the first class having within its boundaries a city with a population of four hundred thousand people or more in class AA counties, if requested by one of the boards of directors of the school districts affected, there shall also be submitted to the voters at the same election a proposition to authorize the ((regional committee)) board of directors to divide the school district, if formed, into five directors' districts in first class school districts and a choice of five directors' districts or no fewer than three directors' districts with the balance of the directors to be elected at large in second class school districts. Such director districts in second class districts, if approved, shall not become effective until the regular school election following the next regular school election at which time a new board of directors shall be elected as provided in RCW 28A.315.550. Such director districts in first class districts, if approved, shall not become effective until the next regular school election at which time a new board of directors shall be elected as provided in RCW 28A.315.600, 28A.315.610, and 28A.315.620. Each of the five directors shall be elected from among the residents of the respective director district, or from among the residents of

the entire school district in the case of directors at large, by the electors of the entire school district.

Sec. 4. RCW 28A.315.590 and 1990 c 161 s 6 are each amended to read as follows:

The board of directors of every first class school district other than a school district of the first class having within its boundaries a city with a population of four hundred thousand people or more in class AA counties which is not divided into directors' districts may submit to the voters at any regular school district election a proposition to authorize the ~~((regional committee))~~ board of directors to divide the district into directors' districts or for second class school districts into director districts or a combination of no fewer than three director districts and no more than two at large positions. If a majority of the votes cast on the proposition ~~((shall be))~~ is affirmative, the ~~((regional committee))~~ board of directors shall proceed to divide the district into directors' districts following the procedure established in RCW 29.70.100. Such director districts, if approved, shall not become effective until the next regular school election when a new five member board of directors shall be elected, one from each of the director districts from among the residents of the respective director district, or from among the residents of the entire school district in the case of directors at large, by the electors of the entire district, two for a term of two years and three for a term of four years, unless such district elects its directors for six years, in which case, one for a term of two years, two for a term of four years, and two for a term of six years.

Sec. 5. RCW 28A.315.670 and 1990 c 33 s 327 are each amended to read as follows:

Notwithstanding any other provision of law, any school district of the first class having within its boundaries a city with a population of four hundred thousand people or more in class AA counties shall be divided into seven director districts. The boundaries of such director districts shall be established by the members of the school board ~~((and approved by the county committee on school district organization))~~, such boundaries to be established so that each such district shall ~~((comprise))~~ comply, as nearly as practicable, ~~((an equal portion of the population of the school district))~~ with the criteria established in RCW 29.70.100. Boundaries of such director districts shall be adjusted by the school board ~~((and approved by the county committee))~~ following the procedure established in RCW 29.70.100 after each federal decennial census if population change shows the need thereof to comply with the ~~((equal population requirement above))~~ criteria of RCW 29.70.100. No person shall be eligible for the position of school director in any such director district unless such person resides in the particular director district. Residents in the particular director district desiring to be a candidate for school director shall file their declarations of candidacy for such director district and for the position of director in that district and

shall be voted upon in the primary election by the registered voters of that particular director district: **PROVIDED**, That if not more than one person files a declaration of candidacy for the position of school director in any director district, no primary election shall be held in that district, and such candidate's name alone shall appear on the ballot for the director district position at the general election. The name of the person who receives the greatest number of votes and the name of the person who receives the next greatest number of votes at the primary for each director district position shall appear on the general election ballot under such position and shall be voted upon by all the registered voters in the school district. Except as provided in RCW 28A.315.680, every such director so elected in school districts divided into seven director districts shall serve for a term of four years as otherwise provided in RCW 28A.315.460.

Sec. 6. RCW 28A.315.670 and 1990 c 59 s 99 and 1990 c 33 s 327 are each reenacted and amended to read as follows:

Notwithstanding any other provision of law, any school district of the first class having within its boundaries a city with a population of four hundred thousand people or more in class AA counties shall be divided into seven director districts. The boundaries of such director districts shall be established by the members of the school board (~~and approved by the county committee on school district organization~~), such boundaries to be established so that each such district shall ~~((comprise))~~ comply, as nearly as practicable, ~~((an equal portion of the population of the school district))~~ with the criteria established in RCW 29.70.100. Boundaries of such director districts shall be adjusted by the school board (~~and approved by the county committee~~) following the procedure established in RCW 29.70.100 after each federal decennial census if population change shows the need thereof to comply with the ~~((equal population requirement above))~~ criteria of RCW 29.70.100. No person shall be eligible for the position of school director in any such director district unless such person resides in the particular director district. Residents in the particular director district desiring to be a candidate for school director shall file their declarations of candidacy for such director district and for the position of director in that district and shall be voted upon, in any primary required to be held for the position under Title 29 RCW, by the registered voters of that particular director district. In the general election, each position shall be voted upon by all the registered voters in the school district. The order of the names of candidates shall appear on the primary and general election ballots as required for nonpartisan positions under Title 29 RCW. Except as provided in RCW 28A.315.680, every such director so elected in school districts divided into seven director districts shall serve for a term of four years as otherwise provided in RCW 28A.315.460.

Sec. 7. RCW 28A.315.680 and 1990 c 33 s 328 are each amended to read as follows:

~~((Within thirty days after March 25, 1969;))~~ The school boards of any school district of the first class having within its boundaries a city with a population of four hundred thousand people or more in class AA counties shall establish the director district boundaries ~~((and obtain approval thereof by the county committee on school district organization))~~. Appointment of a board member to fill any vacancy existing for a new director district prior to the next regular school election shall be by the school board. Prior to the next regular election in the school district and the filing of declarations of candidacy therefor, the incumbent school board shall designate said director districts by number. Directors appointed to fill vacancies as above provided shall be subject to election, one for a six-year term, and one for a two-year term and thereafter the term of their respective successors shall be for four years. The term of office of incumbent members of the board of such district shall not be affected by RCW 28A.315.450, 28A.315.460, 28A.315.570, 28A.315.670, 28A.315.680, 29.21.180, and 29.21.210.

Sec. 8. RCW 28A.315.680 and 1990 c 59 s 72 and 1990 c 33 s 328 are each reenacted and amended to read as follows:

~~((Within thirty days after March 25, 1969;))~~ The school boards of any school district of the first class having within its boundaries a city with a population of four hundred thousand people or more in class AA counties shall establish the director district boundaries ~~((and obtain approval thereof by the county committee on school district organization))~~. Appointment of a board member to fill any vacancy existing for a new director district prior to the next regular school election shall be by the school board. Prior to the next regular election in the school district and the filing of declarations of candidacy therefor, the incumbent school board shall designate said director districts by number. Directors appointed to fill vacancies as above provided shall be subject to election, one for a six-year term, and one for a two-year term and thereafter the term of their respective successors shall be for four years. The term of office of incumbent members of the board of such district shall not be affected by RCW 28A.315.450, 28A.315.460, 28A.315.570, 28A.315.670, 28A.315.680, and 29.21.180.

NEW SECTION. Sec. 9. A new section is added to chapter 28A.315 RCW to read as follows:

(1) Any district boundary changes, including changes in director district boundaries, shall be submitted to the county auditor by the school district board of directors within thirty days after the changes have been approved by the board. The board shall submit both legal descriptions and maps.

(2) Any boundary changes submitted to the county auditor after the fourth Monday in June of odd-numbered years shall not take effect until the following year.

NEW SECTION. Sec. 10. RCW 28A.315.685 and 1990 c 161 s 1 are each repealed.

NEW SECTION. Sec. 11. Sections 5 and 7 of this act shall expire July 1, 1992.

NEW SECTION. Sec. 12. Sections 6 and 8 of this act shall take effect July 1, 1992.

NEW SECTION. Sec. 13. Sections 1 through 5, 7, and 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 18, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 289

[Engrossed Substitute House Bill 1510]

GUARDIANSHIP

Effective Date: 7/28/91

AN ACT Relating to guardianship; amending RCW 11.88.010, 11.88.030, 11.88.040, 11.88.045, 11.88.090, 11.88.095, 11.88.120, 11.88.125, 11.88.140, 11.92.040, 11.92.043, and 11.92.180; and adding a new section to chapter 11.92 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 11.88.010 and 1990 c 122 s 2 are each amended to read as follows:

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the

principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) When a court imposes a full guardianship for an incapacitated person, the person shall be considered incompetent for purposes of rationally exercising the right to vote and shall lose the right to vote, unless the court specifically finds that the person is rationally capable of exercising the franchise. Imposition of a limited guardianship for an incapacitated person ~~((may)) shall not result in the loss of the right to vote ((when in the courts discretion;))~~ unless the court determines that the person is incompetent for purposes of rationally exercising the franchise.

Sec. 2. RCW 11.88.030 and 1990 c 122 s 4 are each amended to read as follows:

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

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

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

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

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

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

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

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

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both, and why no alternative to guardianship is appropriate;

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

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

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

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

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

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

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

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

**IMPORTANT NOTICE
PLEASE READ CAREFULLY**

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

- (1) TO MARRY OR DIVORCE;**
- (2) TO VOTE OR HOLD AN ELECTED OFFICE;**
- (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;**
- (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;**

- (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- (6) TO POSSESS A LICENSE TO DRIVE;
- (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

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

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

YOU HAVE THE RIGHT TO BE PRESENT IN COURT WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

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

Sec. 3. RCW 11.88.040 and 1990 c 122 s 5 are each amended to read as follows:

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

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

- (1) The alleged incapacitated person, or minor, if under fourteen years of age;
- (2) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse of the alleged incapacitated person if any;

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

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

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

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

Sec. 4. RCW 11.88.045 and 1990 c 122 s 6 are each amended to read as follows:

(1)(a) Alleged incapacitated individuals shall have the right to be represented by counsel at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and

long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated(~~(:)~~) shall (~~(enter a notice of appearance for appointment)~~) petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

(3) The alleged incapacitated person is further entitled upon request to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter 18.71 or 18.57 RCW or licensed or certified psychologist selected by the guardian ad litem. The physician or psychologist shall have personally examined and interviewed the alleged incapacitated person within thirty days of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

- (a) The name and address of the examining physician or psychologist;
- (b) The education and experience of the physician or psychologist pertinent to the case;
- (c) The dates of examinations of the alleged incapacitated person;
- (d) A summary of the relevant medical, functional, neurological, psychological, or psychiatric history of the alleged incapacitated person as known to the examining physician or psychologist;
- (e) The findings of the examining physician or psychologist as to the condition of the alleged incapacitated person;

- (f) Current medications;
- (g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;
- (h) Opinions on the specific assistance the alleged incapacitated person needs;
- (i) Identification of persons with whom the physician or psychologist has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or psychological report meeting the above requirements is filed.

Sec. 5. RCW 11.88.090 and 1990 c 122 s 8 are each amended to read as follows:

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

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

(a) be free of influence from anyone interested in the result of the proceeding;

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

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

(3)(a) The superior court of each county shall develop by September 1, 1991, a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardians ad litem only persons whose names appear on the registry, except in extraordinary circumstances.

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

(i) Present a written statement of qualifications describing the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons,

legal procedure, and the requirements of ~~((chapter[s])~~) chapters 11.88 and 11.92 RCW; and

(ii) Complete a training program ~~((approved))~~ adopted by the court, or, in the absence of a locally adopted program, a candidate for inclusion upon the registry shall have completed a model training program as described in (d) of this subsection.

(c) The superior court of each county shall approve training programs designed to:

(i) Train otherwise qualified human service professionals in those aspects of legal procedure and the requirements of chapters 11.88 and 11.92 RCW with which a guardian ad litem should be familiar;

(ii) Train otherwise qualified legal professionals in those aspects of medicine, social welfare, and social service delivery systems with which a guardian ad litem should be familiar.

(d) The superior court of each county ~~((shall))~~ may approve a guardian ad litem training program on or before June 1, 1991. The department of social and health services, aging and adult services administration, shall convene an advisory group to develop a model guardian ad litem training program. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, aging, legal, court administration, and other interested parties.

(e) Any superior court that has ~~((failed to adopt))~~ not adopted a guardian ad litem training program by September 1, ~~((1992))~~ 1991, shall ~~((use the))~~ require utilization of a model program developed by the advisory group ~~((convened by the department of social and health services, aging and adult services administration))~~ as described in (d) of this subsection, to assure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem.

(4) The guardian ad litem's written statement of qualifications required by RCW 11.88.090(3)(b)(i) shall be made part of the record in each matter in which the person is appointed guardian ad litem.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Within ~~((twenty))~~ forty-five days after ~~((appointment-of))~~ notice of commencement of the guardianship proceeding has been served upon the guardian ad litem, and at least ten days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her spouse, all children not residing with a notified person, those persons described in (d) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150;

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

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to RCW 11.88.090(5)(e) as now or hereafter amended.

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

(8) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: **PROVIDED**, That if no guardian or limited guardian is appointed the court may charge such fee to the petitioner or the alleged incapacitated person, or divide the fee, as it deems just; and if the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(9) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations

unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

Sec. 6. RCW 11.88.095 and 1990 c 122 s 9 are each amended to read as follows:

(1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) When the next report of the guardian is due;

(d) Whether the guardian ad litem shall continue acting as guardian ad litem;

(e) Whether a review hearing shall be required upon the filing of the inventory;

(f) The authority of the guardian, if any, for investment and expenditure of the ward's estate; and

(g) Names and addresses of those persons described in RCW ~~((11.92.090(5)(d)))~~ 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship.

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

~~((5) If a court determines that the person is incapacitated and that a guardian or limited guardian should be appointed, the court shall determine whether the incapacity is a result of a developmental disability as defined by RCW 71A.10.020, and if so, determine whether the incapacity due to the developmental disability can be expected to continue indefinitely.))~~

Sec. 7. RCW 11.88.120 and 1990 c 122 s 14 are each amended to read as follows:

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited

guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

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

(4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

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

Sec. 8. RCW 11.88.125 and 1990 c 122 s 15 are each amended to read as follows:

(1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person, shall file in writing with the court, a (~~(designated)~~) notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of

the designated standby or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(g). Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(2) Letters of guardianship shall be issued to the standby guardian or limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 as now or hereafter amended. The oath may be filed prior to the appointed guardian or limited guardian's death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 through 11.88.110 as now or hereafter amended shall apply to standby guardians and limited guardians.

(3) In addition to the powers of a standby limited guardian or guardian as noted in subsection (1) of this section, the standby limited guardian or guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in RCW 11.92.040 as now or hereafter amended, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises.

Sec. 9. RCW 11.88.140 and 1990 c 122 s 17 are each amended to read as follows:

(1) **TERMINATION WITHOUT COURT ORDER.** A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW 26.28.010 as now or hereafter amended, of any person defined as an incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding, subject to subsection (2) of this section;

(b) By an adjudication of capacity or an adjudication of termination of incapacity;

(c) By the death of the incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) **TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION.** A guardianship for the benefit of a minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

- (a) The date the minor attained legal age;
- (b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;
- (c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and
- (d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING A DECLARATION OF COMPLETION OF GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the day of, 19...; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this day of, 19...
.....
Guardian

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within thirty days of the date of termination, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW 11.92.040(2) and (b) an intermediate personal care status report under RCW 11.92.043(2).

(4) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates.

Sec. 10. RCW 11.92.040 and 1990 c 122 s 20 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of an estate:

- (1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ~~((thirty))~~ ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets((-));

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

~~((3) If the court has made a finding as provided in RCW 11.88.095(5), that the person is incapacitated as a result of a developmental disability that is expected to continue indefinitely and the incapacitated person's estate has a value, exclusive of real property, of not more than~~

~~twice the homestead exemption, the court, in its discretion, may allow reports at intervals up to thirty-six months and may modify or waive certain reporting requirements in subsection (2) of this section that the court considers unduly burdensome or inapplicable. The court may not waive the requirement that the guardian or limited guardian report any substantial change in the incapacitated person's income or assets;))~~

(4) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(5) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian ~~((during a period not exceeding one year following the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;))~~ to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

(6) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person: **PROVIDED, HOWEVER,** That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, or if the

guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof.

Sec. 11. RCW 11.92.043 and 1990 c 122 s 21 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92-.040, a report on the status of the incapacitated person, which shall include:

- (a) The address and name of the incapacitated person and all residential changes during the period;
- (b) The services or programs which the incapacitated person receives;
- (c) The medical status of the incapacitated person;
- (d) The mental status of the incapacitated person;
- (e) Changes in the functional abilities of the incapacitated person;
- (f) Activities of the guardian for the period;
- (g) Any recommended changes in the scope of the authority of the guardian;
- (h) The identity of any professionals who have assisted the incapacitated person during the period.

~~((If the court has made a finding as provided in RCW 11.88.095(5), that the person is incapacitated as a result of a developmental disability that is expected to continue indefinitely, the court in its discretion, may allow reports at intervals up to thirty-six months and may modify or waive certain reporting requirements in this subsection, that the court considers inapplicable or unduly burdensome. The court may not waive the requirement that the guardian or limited guardian report any substantial change in the incapacitated person's condition:))~~

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

- (a) Therapy or other procedure which induces convulsion;
- (b) Surgery solely for the purpose of psychosurgery;
- (c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.370.

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040.

Sec. 12. RCW 11.92.180 and 1990 c 122 s 36 are each amended to read as follows:

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at ((public)) county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian.

Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed.

NEW SECTION. Sec. 13. A new section is added to chapter 11.92 RCW to read as follows:

(1) All financial institutions as defined in RCW 30.22.040(12), all insurance companies holding a certificate of authority under chapter 48.05 RCW, or any agent who constitutes a salesperson or broker-dealer of securities under the definitions of RCW 21.20.005 (hereafter individually and collectively referenced as "institution") shall provide the guardian access and control over the asset(s) described in (a)(vii) of this subsection, including but not limited to delivery of the asset to the guardian, upon receipt of the following:

(a) An affidavit containing as an attachment a true and correct copy of the guardian's letters of guardianship and stating:

(i) That as of the date of the affidavit, the affiant is a duly appointed guardian with authority over assets held by the institution but owned or subject to withdrawal or delivery to a client or depositor of the institution;

(ii) The cause number of the guardianship;

(iii) The name of the incapacitated person and the name of the client or depositor (which names shall be the same);

(iv) The account or the safety deposit box number or numbers;

(v) The address of the client or depositor;

(vi) The name and address of the affiant-guardian being provided assets or access to assets;

(vii) A description of and the value of the asset or assets, or, where the value cannot be readily ascertained, a reasonable estimate thereof, and a statement that the guardian receives delivery or control of each asset solely in its capacity as guardian;

(viii) The date the guardian assumed control over the assets; and

(ix) That a true and correct copy of the letters of guardianship duly issued by a court to the guardian is attached to the affidavit; and

(b) An envelope, with postage prepaid, addressed to the clerk of the court issuing the letters of guardianship.

The affidavit shall be sent in the envelope by the institution to the clerk of the court together with a statement signed by an agent of the institution that the description of the asset set forth in the affidavit appears to be accurate, and confirming in the case of cash assets, the value of the asset.

(2) Any guardian provided with access to a safe deposit box pursuant to subsection (1) of this section shall make an inventory of the contents of the box and attach this inventory to the affidavit before the affidavit is sent to the clerk of the court and before the contents of the box are released to the guardian. Any inventory shall be prepared in the presence of an employee of the institution and the statement of the institution required under subsection (1) of this section shall include a statement executed by the employee that the inventory appears to be accurate. The institution may require payment by the guardian of any fees or charges then due in connection with the asset or account and of a reasonable fee for witnessing preparation of the inventory and preparing the statement required by this subsection or subsection (1) of this section.

(3) Any institution to which an affidavit complying with subsection (1) of this section is submitted may rely on the affidavit without inquiry and shall not be subject to any liability of any nature whatsoever to any person whatsoever, including but not limited to the institution's client or depositor or any other person with an ownership or other interest in or right to the asset, for the reliance or for providing the guardian access and control over the asset, including but not limited to delivery of the asset to the guardian.

Passed the House April 26, 1991.

Passed the Senate April 25, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 290

[House Bill 1757]

DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUG

Effective Date: 7/28/91

AN ACT Relating to driving under the influence of intoxicating liquor or any drug; and amending RCW 2.56.110, 3.66.070, 9.94A.030, 43.59.140, 46.61.990, and 70.96A.120.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.56.110 and 1987 c 202 s 109 are each amended to read as follows:

The administrator for the courts may assign one or more district judges from other judicial districts to serve as visiting district judges in a judicial district which the administrator determines is experiencing an increase in case filings as the result of enhanced enforcement of laws related to driving,

or being in physical control of, a motor vehicle while (~~intoxicated~~) under the influence of intoxicating liquor or any drug. The prosecuting, city, or town attorney of the county, city, or town in which a judicial district lies, or the presiding judge of the judicial district, may request the administrator for the courts to designate the district as an enhanced enforcement district and to make assignments under this section. An assignment shall be for a specified period of time not to exceed thirty days. A visiting district judge has the same powers as a district judge of the district to which he or she is assigned. A visiting district judge shall be reimbursed for expenses under RCW 2.56.070.

Sec. 2. RCW 3.66.070 and 1984 c 258 s 47 are each amended to read as follows:

All criminal actions shall be brought in the district where the alleged violation occurred: PROVIDED, That (1) the prosecuting attorney may file felony cases in the district in which the county seat is located, (2) with the consent of the defendant criminal actions other than those arising out of violations of city ordinances may be brought in or transferred to the district in which the county seat is located, and (3) if the alleged violation relates to driving, or being in actual physical control of, a motor vehicle while (~~intoxicated~~) under the influence of intoxicating liquor or any drug and the alleged violation occurred within a judicial district which has been designated an enhanced enforcement district under RCW 2.56.110, the charges may be filed in that district or in a district within the same county which is adjacent to the district in which the alleged violation occurred.

Sec. 3. RCW 9.94A.030 and 1990 c 3 s 602 are each amended to read as follows:

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

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW

13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to comply with any limitations on the inmate's movements while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.

(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention has been ordered by the court, in the residence of either the defendant or a member of the defendant's immediate family, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release and home detention as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while ((intoxicated)) under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while ((intoxicated)) under the influence of intoxicating liquor or any drug (RCW

46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

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

(30) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(31) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(32) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(33) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the

driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(34) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

(35) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program. (a) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: ((a)) (i) Successfully completing twenty-one days in a work release program, ((b)) (ii) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, ((c)) (iii) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, ((d)) (iv) having no prior charges of escape, and ((e)) (v) fulfilling the other conditions of the home detention program. (b) Participation in a home detention program shall be conditioned upon: ((a)) (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, ((b)) (ii) abiding by the rules of the home detention program, and ((c)) (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose

charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

Sec. 4. RCW 43.59.140 and 1983 c 165 s 42 are each amended to read as follows:

The Washington traffic safety commission shall produce and disseminate through all possible media, informational and educational materials explaining the extent of the problems caused by drinking drivers, the need for public involvement in their solution, and the penalties of existing and new laws against driving while (~~intoxicated~~) under the influence of intoxicating liquor or any drug.

Sec. 5. RCW 46.61.990 and 1965 ex.s. c 155 s 92 are each amended to read as follows:

Sections 1 through 52 and 54 through 86 of this amendatory act are added to chapter 12, Laws of 1961 and shall constitute a new chapter in Title 46 of the Revised Code of Washington and sections 54, 55 and 63 as herein amended and RCW 46.48.012, 46.48.014, 46.48.015, 46.48.016, 46.48.023, 46.48.025, 46.48.026, 46.48.041, 46.48.046, 46.48.050, 46.48.060, 46.48.080, 46.48.110, 46.48.120, 46.48.150, 46.48.160, 46.48.340, 46.56.030, 46.56.070, 46.56.100, 46.56.130, 46.56.135, 46.56.190, 46.56.200, 46.56.210, 46.56.220, 46.56.230, 46.56.240, 46.60.260, 46.60.270, 46.60.330, 46.60.340 shall be recodified as and be a part of said chapter. The sections of the new chapter shall be organized under the following captions: "OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS", "TRAFFIC SIGNS, SIGNALS AND MARKINGS", "DRIVING ON RIGHT SIDE OF ROADWAY—OVERTAKING AND PASSING—USE OF ROADWAY", "RIGHT OF WAY", "PEDESTRIANS' RIGHTS AND DUTIES", "TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING", "SPECIAL STOPS REQUIRED", "SPEED RESTRICTIONS", "RECKLESS DRIVING, DRIVING WHILE (~~INTOXICATED~~) UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUG, AND NEGLIGENT HOMICIDE BY VEHICLE", "STOPPING, STANDING AND PARKING", "MISCELLANEOUS RULES", and "OPERATION OF BICYCLES AND PLAY VEHICLES". Such captions shall not constitute any part of the law.

Sec. 6. RCW 70.96A.120 and 1990 c 151 s 8 are each amended to read as follows:

(1) An intoxicated person may come voluntarily to an approved treatment program for treatment. A person who appears to be intoxicated in a

public place and to be in need of help, if he or she consents to the proffered help, may be assisted to his or her home, an approved treatment program or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism, drug addiction, or intoxication and except for a person who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while ((intoxicated)) under the influence of intoxicating liquor or any drug and except for a person who may wish to avail himself or herself of the provisions of RCW 46.20-.308, a person who appears to be incapacitated or gravely disabled by alcohol or other drugs and who is in a public place or who has threatened, attempted, or inflicted physical harm on himself, herself, or another, shall be taken into protective custody by a peace officer or staff designated by the county and as soon as practicable, but in no event beyond eight hours brought to an approved treatment program for treatment. If no approved treatment program is readily available he or she shall be taken to an emergency medical service customarily used for incapacitated persons. The peace officer or staff designated by the county, in detaining the person and in taking him or her to an approved treatment program, is taking him or her into protective custody and shall make every reasonable effort to protect his or her health and safety. In taking the person into protective custody, the detaining peace officer or staff designated by the county may take reasonable steps including reasonable force if necessary to protect himself or herself or effect the custody. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved treatment program shall be examined by a qualified person. He or she may then be admitted as a patient or referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment program shall arrange for his or her transportation.

(4) A person who is found to be incapacitated or gravely disabled by alcohol or other drugs at the time of his or her admission or to have become incapacitated or gravely disabled at any time after his or her admission, may not be detained at the program for more than seventy-two hours after admission as a patient, unless a petition is filed under RCW 70.96A.140, as now or hereafter amended: PROVIDED, That the treatment personnel at an approved treatment program are authorized to use such reasonable physical restraint as may be necessary to retain an incapacitated or gravely disabled person for up to seventy-two hours from the time of admission. The seventy-two hour periods specified in this section shall be computed by excluding Saturdays, Sundays, and holidays. A person may consent to remain in the program as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment program, is not referred to another health facility, and has no funds, may be taken to his or her home, if any. If he or she has no home, the approved treatment program shall provide him or her with information and assistance to access available community shelter resources.

(6) If a patient is admitted to an approved treatment program, his or her family or next of kin shall be notified as promptly as possible by the treatment program. If an adult patient who is not incapacitated requests that there be no notification, his or her request shall be respected.

(7) The peace officer, staff designated by the county, or treatment facility personnel, who act in compliance with this chapter and are performing in the course of their official duty are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment program determines that appropriate treatment is available, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

Passed the House March 18, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 291

[House Bill 1992]

ADVANCE RIGHT OF WAY ACQUISITION

Effective Date: 7/28/91

AN ACT Relating to advance right of way acquisition; amending RCW 47.12.242, 47.12.244, 47.12.125, and 47.12.246; and adding a new section to chapter 47.12 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 47.12.242 and 1969 ex.s. c 197 s 6 are each amended to read as follows:

The term "advance right of way acquisition" means the acquisition of property and property rights, generally not ((less than two nor)) more than ((seven)) ten years in advance of programmed highway construction projects, together with the engineering costs necessary for such advance right of way acquisition. Any property or property rights purchased must be in designated highway transportation corridors and be for projects approved by the commission as part of the state's six-year plan or included in the state's route development planning effort.

Sec. 2. RCW 47.12.244 and 1984 c 7 s 125 are each amended to read as follows:

There is created the "advance right of way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation:

(1) An initial deposit of ten million dollars from the motor vehicle fund included in the department of transportation's 1991-93 budget;

(2) All moneys received by the department as rental income from real properties that are not subject to federal aid reimbursement, except moneys received from rental of capital facilities properties as defined in chapter 47.13 RCW; and

(3) Any federal moneys available for acquisition of right of way for future construction under the provisions of section 108 of Title 23, United States Code.

Sec. 3. RCW 47.12.125 and 1961 c 13 s 47.12.125 are each amended to read as follows:

All moneys paid to the state of Washington under any of the provisions of RCW 47.12.120 shall be deposited in the department's advance right of way revolving fund, except moneys that are subject to federal aid reimbursement, which shall be deposited in the motor vehicle fund, and except that moneys received from rental of capital facilities properties shall be deposited in the transportation capital facilities account as defined in chapter 47.13 RCW.

Sec. 4. RCW 47.12.246 and 1984 c 7 s 126 are each amended to read as follows:

~~(Whenever;)~~ (1) After any properties or property rights are acquired from funds in the advance right of way revolving fund, the department shall manage the properties in accordance with sound business practices. Funds received from interim management of the properties shall be deposited in the advance right of way revolving fund.

(2) When the department proceeds with the construction of a highway which will require the use of any of the property so acquired, the department shall reimburse the advance right of way revolving fund, from other funds available to it, the ~~((amount of the prior expenditures for advance right of way acquisition for))~~ current appraised value of the property or property rights required for the project together with damages caused to the remainder by the acquisition after offsetting against all such compensation and damages the special benefits, if any, accruing to the remainder by reason of the state highway being constructed. ~~((Such))~~

(3) When the department determines that any properties or property rights acquired from funds in the advance right of way revolving fund will not be required for a highway construction project the department may sell the property at fair market value in accordance with requirements of RCW 47.12.063. All proceeds of such sales shall be deposited in the advance right of way revolving fund.

(4) Deposits in the fund may be reexpended as provided in RCW 47-.12.180, 47.12.200 through 47.12.230, and 47.12.242 through 47.12.248 without further or additional appropriations.

NEW SECTION. Sec. 5. A new section is added to chapter 47.12 RCW to read as follows:

At the end of each biennium the department shall report to the legislature and the office of financial management:

- (1) Which properties were purchased and why;
- (2) Expenditures for the acquired parcels; and
- (3) Estimated savings to the state.

Passed the House March 19, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 292

[Senate Bill 5049]

DISPOSAL OF ABANDONED JUNK VEHICLES

Effective Date: 7/28/91

AN ACT Relating to disposal of abandoned junk vehicles; amending RCW 46.55.010, 46.55.230, and 46.55.240.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.55.010 and 1989 c 111 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter:

(1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for ninety-six consecutive hours.

(2) "Abandoned vehicle report" means the document prescribed by the state that the towing operator forwards to the department after a vehicle has become abandoned.

(3) "Impound" means to take and hold a vehicle in legal custody. There are two types of impounds—public and private.

(a) "Public impound" means that the vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the public property upon which the vehicle was located.

(b) "Private impound" means that the vehicle has been impounded at the direction of a person having control or possession of the private property upon which the vehicle was located.

(4) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as meeting all the following requirements:

- (a) Is three years old or older;

(b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;

(c) Is apparently inoperable;

(d) Is without a valid, current registration plate;

(e) Has ((α)) an approximate fair market value equal only to the approximate value of the scrap in it.

(5) "Master log" means the document or an electronic facsimile prescribed by the department and the Washington state patrol in which an operator records transactions involving impounded vehicles.

(6) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

(7) "Residential property" means property that has no more than four living units located on it.

(8) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing vehicles with equipment as approved by the state patrol.

(9) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

(10) "Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.

(11) "Tow truck service" means the transporting upon the public streets and highways of this state of vehicles, together with personal effects and cargo, by a tow truck of a registered operator.

(12) "Unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

Subject to removal after:

(a) Public locations:

(i) Constituting an accident or a traffic hazard as defined in RCW 46.55.113 Immediately

(ii) On a highway and tagged as described in RCW 46.55.085 24 hours

(iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 Immediately

(b) Private locations:

(i) On residential property Immediately

(ii) On private, nonresidential property, properly posted under RCW 46.55.070 Immediately

(iii) On private, nonresidential property,
not posted 24 hours

Sec. 2. RCW 46.55.230 and 1987 c 311 s 19 are each amended to read as follows:

(1) Notwithstanding any other provision of law, any law enforcement officer having jurisdiction or any person authorized by the director ((may)) shall inspect and ((certify that a vehicle meets the requirements of a)) may authorize the disposal of an abandoned junk vehicle. The person making the ((certification)) inspection shall record the make and vehicle identification number or license number of the vehicle if available, and shall also ((describe in detail the damage or missing equipment to)) verify that the approximate value of the junk vehicle is equivalent only to the approximate value of the scrap in it.

(2) The law enforcement officer or department representative shall provide information on the vehicle's registered and legal owner to the landowner.

(3) Upon receiving information on the vehicle's registered and legal owner, the landowner shall ((obtain a junk vehicle notification form from the department. The landowner shall send by certified mail, notification)) mail a notice to the registered and legal owners shown on the records of the department. The notification shall describe the redemption procedure and the right to ((contest the sale of a junk vehicle in a district court hearing)) arrange for the removal of the vehicle.

(4) If the vehicle remains unclaimed more than fifteen days after the landowner has mailed notification to the registered and legal owner, the landowner may dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(5) If no information on the vehicle's registered and legal owner is found in the records of the department, the landowner ((shall place a legal notice of custody and sale in a newspaper of general circulation in the county. The newspaper notice shall include (a) the description of the vehicle; (b) the address of the location of the junk vehicle; (c) the date by which the registered or legal owner must redeem the vehicle; and (d) a telephone number where the landowner can be reached. If the vehicle remains unclaimed more than twenty days after publication of the notice, the landowner)) may immediately dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(6) The landowner of the property upon which the junk vehicle is located is entitled to recover from the vehicle's registered owner any costs incurred in the removal of the junk vehicle.

(7) For the purposes of this section, the term "landowner" includes a legal owner of private property, a person with possession or control of private property, or a public official having jurisdiction over public property.

(8) A person complying in good faith with the requirements of this section is immune from any liability arising out of an action taken or omission made in the compliance.

Sec. 3. RCW 46.55.240 and 1989 c 111 s 17 are each amended to read as follows:

(1) A city, town, or county that adopts an ordinance or resolution concerning unauthorized, abandoned, or impounded vehicles shall include the applicable provisions of this chapter.

(a) A city, town, or county may, by ordinance, authorize other impound situations that may arise locally upon the public right-of-way or other publicly owned or controlled property.

(b) A city, town, or county ordinance shall contain language that establishes a written form of authorization to impound, which may include a law enforcement notice of infraction or citation, clearly denoting the agency's authorization to impound.

(c) A city, town, or county may, by ordinance, provide for release of an impounded vehicle by means of a promissory note in lieu of immediate payment, if at the time of redemption the legal or registered owner requests a hearing on the validity of the impoundment. If the municipal ordinance directs the release of an impounded vehicle before the payment of the impoundment charges, the municipality is responsible for the payment of those charges to the registered tow truck operator within thirty days of the hearing date.

(d) The hearing specified in RCW 46.55.120(2) and in this section may be conducted by an administrative hearings officer instead of in the district court. A decision made by an administrative hearing officer may be appealed to the district court for final judgment.

(2) A city, town, or county may adopt an ordinance establishing procedures for the abatement and removal as public nuisances of (~~unautho-~~rized) junk vehicles or parts thereof from private property. Costs of removal may be assessed against the registered owner of the vehicle if the identity of the owner can be determined, unless the owner in the transfer of ownership of the vehicle has complied with RCW 46.12.101, or the costs may be assessed against the owner of the property on which the vehicle is stored.

(3) Ordinances pertaining to public nuisances shall contain:

(a) A provision requiring notice to the last registered owner of record and the property owner of record that a hearing may be requested and that if no hearing is requested, the vehicle will be removed;

(b) A provision requiring that if a request for a hearing is received, a notice giving the time, location, and date of the hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and

to the last registered and legal owner of record unless the vehicle is in such condition that identification numbers are not available to determine ownership;

(c) A provision that the ordinance shall not apply to (i) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (ii) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130;

(d) A provision that the owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with his reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he has not subsequently acquiesced in its presence, then the local agency shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the owner;

(e) A provision that after notice has been given of the intent of the city, town, or county to dispose of the vehicle and after a hearing, if requested, has been held, the vehicle or part thereof shall be removed at the request of a law enforcement officer with notice to the Washington state patrol and the department of licensing that the vehicle has been wrecked. The city, town, or county may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or may transfer such vehicle or parts to another governmental body provided such disposal shall be only as scrap.

(4) A registered disposer under contract to a city or county for the impounding of vehicles shall comply with any administrative regulations adopted by the city or county on the handling and disposing of vehicles.

Passed the Senate April 28, 1991.

Passed the House April 27, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 293

[Substitute Senate Bill 5266]

DRIVER'S LICENSE SUSPENSION OR REVOCATION FOR HABITUAL OFFENDERS

Effective Date: 7/28/91 - Except Section 9 which becomes effective on April 1, 1992.

AN ACT Relating to motor vehicles; amending RCW 7.68.035, 46.16.710, 46.20.021, 46.20.207, 46.20.291, 46.65.020, 46.90.300, and 46.90.300; reenacting and amending RCW

46.20.342; repealing RCW 46.29.625 and 46.65.090; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 7.68.035 and 1989 c 252 s 29 are each amended to read as follows:

(1) Whenever any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and seventy-five dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, 46.61.522, 46.61.024, 46.52.090, 46.70.140, (~~46.65.090;~~) 46.61.502, 46.61.504, 46.52.100, 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, 46.10.090(2), and 46.09.120(2).

(3) Whenever any person accused of having committed a crime posts bail in superior court pursuant to the provisions of chapter 10.19 RCW and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the crime.

(4) Such penalty assessments shall be paid by the clerk of the superior court to the county treasurer who shall monthly transmit the money as provided in RCW 10.82.070. Each county shall deposit not less than one and seventy-five one-hundredths percent of the money it retains under RCW 10.82.070 and chapter 3.62 RCW and all money it receives under subsection (8) of this section into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

(b) Are administered by the county prosecuting attorney either directly through the prosecuting attorney's office or by contract between the county and agencies providing services to victims of crime;

(c) Make a reasonable effort to inform the known victim or his surviving dependents of the existence of this chapter and the procedure for making application for benefits;

(d) Assist victims in the restitution and adjudication process; and

(e) Assist victims of violent crimes in the preparation and presentation of their claims to the department of labor and industries under this chapter.

Before a program in any county west of the Cascade mountains is submitted to the department for approval, it shall be submitted for review and comment to each city within the county with a population of more than one hundred fifty thousand. The department will consider if the county's proposed comprehensive plan meets the needs of crime victims in cases adjudicated in municipal, district or superior courts and of crime victims located within the city and county.

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program, the prosecuting attorney shall retain the money deposited by the county under subsection (4) of this section until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the money deposited under subsection (4) of this section until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the county treasurer shall monthly transmit one hundred percent of the money deposited by the county under subsection (4) of this section to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

(7) Penalty assessments under this section shall also be imposed in juvenile offense dispositions under Title 13 RCW. Upon motion of a party and a showing of good cause, the court may modify the penalty assessment in the disposition of juvenile offenses under Title 13 RCW.

(8) Every city and town shall transmit monthly one and seventy-five one-hundredths percent of all money, other than money received for parking infractions, retained under RCW 3.46.120, 3.50.100, and 35.20.220 to the county treasurer for deposit as provided in subsection (4) of this section.

Sec. 2. RCW 46.16.710 and 1987 c 388 s 2 are each amended to read as follows:

(1) At the time of arrest for a violation of RCW 46.20.021, 46.20.342(1), or 46.20.420, (~~or 46.65.090;~~) the arresting officer shall confiscate the Washington state vehicle registration of the vehicle being driven by the arrested person. The officer shall mark the vehicle's Washington state license plates in accordance with procedures prescribed by the Washington state patrol. Marked license plates shall be clearly distinguishable from any other authorized plates. Upon confiscation of the vehicle registration, the arresting officer shall, on behalf of the department, serve notice in accordance with RCW 46.16.730 of the department's intention to cancel the vehicle registration in accordance with RCW 46.16.720. The officer shall immediately replace any confiscated vehicle registration with a temporary registration that expires sixty days after the arrest, or at the time the department's cancellation is sustained at a hearing conducted under RCW 46.16.740, whichever occurs first. The provisions of this subsection may be used only when the arresting officer has determined that the arrested driver is a registered owner of the vehicle.

(2) After confiscation under subsection (1) of this section, the arresting officer shall promptly transmit to the department, together with the confiscated vehicle registration, a sworn report indicating that the officer had reasonable grounds to believe that the arrested driver was driving in violation of RCW 46.20.342(1).

(3) Any officer who sees a vehicle being operated with marked license plates may stop the vehicle for the sole purpose of ascertaining whether the driver of the vehicle is operating it in violation of RCW 46.20.021, 46.20.342, or 46.20.420(~~or 46.65.090~~). Nothing in this section prohibits the arrest of a person for an offense if an officer has probable cause to believe the person has committed the offense.

Sec. 3. RCW 46.20.021 and 1990 c 250 s 33 are each amended to read as follows:

(1) No person, except as expressly exempted by this chapter, may drive any motor vehicle upon a highway in this state unless the person has a valid driver's license issued under the provisions of this chapter. A violation of this subsection is a misdemeanor and is a lesser included offense within the offenses described in RCW 46.20.342(1)(~~;~~) or 46.20.420(~~;~~ ~~and 46.65.090~~).

(2) No person shall receive a driver's license unless and until he or she surrenders to the department all valid driver's licenses in his or her possession issued to him or her by any other jurisdiction. The department shall establish a procedure to invalidate the surrendered photograph license and return it to the person. The invalidated license, along with the valid temporary Washington driver's license provided for in RCW 46.20.055(3), shall be accepted as proper identification. The department shall notify the issuing

department that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid driver's license at any time.

(3) Any person licensed as a driver under this chapter may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipal or local board, or body having authority to adopt local police regulations.

Sec. 4. RCW 46.20.207 and 1965 ex.s. c 121 s 20 are each amended to read as follows:

(1) The department is ~~((hereby))~~ authorized to cancel any driver's license upon determining that the licensee was not entitled to the issuance ~~((thereof hereunder))~~ of the license, or that ~~((said))~~ the licensee failed to give the required or correct information in his or her application, or that the licensee is incompetent to drive a motor vehicle for any of the reasons under RCW 46.20.031 (5) and (8).

(2) Upon such cancellation, the licensee must surrender the license so canceled to the department.

Sec. 5. RCW 46.20.291 and 1980 c 128 s 12 are each amended to read as follows:

~~((t))~~ The department is ~~((hereby))~~ authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

~~((a))~~ (1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

~~((b))~~ (2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

~~((c))~~ (3) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

~~((d))~~ (4) Is incompetent to drive a motor vehicle for any of the reasons enumerated in subsection ~~((s))~~ (4) ~~((; (5) and (8)))~~ of RCW 46.20.031; or

~~((e))~~ (5) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.336.

Sec. 6. RCW 46.20.342 and 1990 c 250 s 47 and 1990 c 210 s 5 are each reenacted and amended to read as follows:

(1) It is unlawful for any person ~~((who))~~ to drive ~~((s))~~ a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege ~~((so))~~ to ~~((do))~~ drive is suspended or revoked in this or

any other state (~~(or when his or her policy of insurance or bond, when required under this title, has been canceled or terminated, is guilty of a gross misdemeanor, except that)).~~ Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one year. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational driver's license;

(v) A conviction of RCW 46.20.420, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xiii) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xiv) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes; or

(xv) An administrative action taken by the department under chapter 46.20 RCW.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, or (iv) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, or any combination of (i) through (iv), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) (~~Except as otherwise provided in this subsection,~~) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section (~~(upon a charge of driving a vehicle while the license or privilege of the person is under suspension, the department shall extend the period of the suspension for an additional like period and if the conviction was upon a charge of driving while a license was revoked)~~), the department shall:

(a) For a conviction of driving while revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored(~~(The department shall)~~); or

(c) Not (~~so~~) extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was

under subsection (1)(a) or (b) of this section and the court recommends against the extension and((:

~~(a)) the convicted person has obtained a valid driver's license((; or
(b) The department determines that the convicted person has demonstrated proof of future financial responsibility as provided for in chapter 46.29 RCW, and, if the suspension or revocation was the result of a violation of RCW 46.61.502 or 46.61.504, that the person is making satisfactory progress in any required alcoholism treatment program)), the period of suspension shall not be extended.~~

Sec. 7. RCW 46.65.020 and 1983 c 164 s 7 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context, an habitual offender means any person, resident or nonresident, who has accumulated convictions or findings that the person committed a traffic infraction as defined in RCW 46.20.270, or, if a minor, has violations recorded with the department of licensing, for separate and distinct offenses as described in either subsection (1) or (2) below committed within a five-year period, as evidenced by the records maintained in the department of licensing: PROVIDED, That where more than one described offense is committed within a six-hour period such multiple offenses shall, on the first such occasion, be treated as one offense for the purposes of this chapter:

(1) Three or more convictions, singularly or in combination, of the following offenses:

- (a) Vehicular homicide as defined in RCW 46.61.520;
- (b) Vehicular assault as defined in RCW 46.61.522;
- (c) Driving or operating a motor vehicle while under the influence of intoxicants or drugs;
- (d) Driving a motor vehicle while his or her license, permit, or privilege to drive has been suspended or revoked as defined in RCW 46.20.342(1)(b);
- (e) Failure of the driver of any vehicle involved in an accident resulting in the injury or death of any person or damage to any vehicle which is driven or attended by any person to immediately stop such vehicle at the scene of such accident or as close thereto as possible and to forthwith return to and in every event remain at, the scene of such accident until he has fulfilled the requirements of RCW 46.52.020;
- (f) Reckless driving as defined in RCW 46.61.500;
- (g) Being in physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504; or
- (h) Attempting to elude a pursuing police vehicle as defined in RCW 46.61.024;

(2) Twenty or more convictions or findings that the person committed a traffic infraction for separate and distinct offenses, singularly or in combination, in the operation of a motor vehicle that are required to be reported

to the department of licensing other than the offenses of driving with an expired driver's license and not having a driver's license in the operator's immediate possession. Such convictions or findings shall include those for offenses enumerated in subsection (1) of this section when taken with and added to those offenses described herein but shall not include convictions or findings for any nonmoving violation. No person may be considered an habitual offender under this subsection unless at least three convictions have occurred within the three hundred sixty-five days immediately preceding the last conviction.

The offenses included in subsections (1) and (2) of this section are deemed to include offenses under any valid town, city, or county ordinance substantially conforming to the provisions cited in subsections (1) and (2) or amendments thereto, and any federal law, or any law of another state, including subdivisions thereof, substantially conforming to the aforesaid state statutory provisions.

Sec. 8. RCW 46.90.300 and 1990 c 250 s 78 are each amended to read as follows:

The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.260, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, 46.12.380, 46.16.010, 46.16.011, 46.16.025, 46.16.028, 46.16.030, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.381, 46.16.390, 46.16.500, 46.16.505, 46.16.710, 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, 46.20.336, 46.20.342, 46.20.343, 46.20.344, 46.20.391, 46.20.394, 46.20.410, 46.20.420, 46.20.430, 46.20.435, 46.20.440, 46.20.500, 46.20.510, 46.20.550, 46.20.750, 46.29.605, ((46.29.625,)) 46.32.060, 46.32.070, 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.425, 46.37.430, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.100,

46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, 46.48.170, 46.52.010, 46.52.020, 46.52.030, 46.52.040, 46.52.070, 46.52.080, 46.52.088, 46.52.090, 46.52.100, ((46.65.090;)) 46.79.120, and 46.80.010.

Sec. 9. RCW 46.90.300 and 1989 c 178 s 28 are each amended to read as follows:

The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.260, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, 46.12.380, 46.16.010, 46.16.011, 46.16.025, 46.16.028, 46.16.030, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.381, 46.16.390, 46.16.500, 46.16.505, 46.16.710, 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, 46.20.336, 46.20.342, 46.20.343, 46.20.344, 46.20.391, 46.20.394, 46.20.410, ((46.20.416;)) 46.20.420, 46.20.430, 46.20.435, 46.20.500, 46.20.510, 46.20.550, ((46.20.599;)) 46.20.750, 46.29.605, ((46.29.625;)) 46.32.060, 46.32.070, 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080; 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.425, 46.37.430, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.100, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, 46.48.170, 46.52.010, 46.52.020, 46.52.030, 46.52.040, 46.52.070, 46.52.080, 46.52.088, 46.52.090, 46.52.100, ((46.65.090;)) 46.79.120, and 46.80.010.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

- (1) RCW 46.29.625 and 1969 ex.s. c 281 s 21; and
- (2) RCW 46.65.090 and 1990 c 210 s 7, 1985 c 302 s 8, 1979 c 62 s 6, 1977 ex.s. c 138 s 1, & 1971 ex.s. c 284 s 11.

NEW SECTION. Sec. 11. Section 9 of this act shall take effect April 1, 1992.

Passed the Senate March 12, 1991.

Passed the House April 24, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 294

[Substitute Senate Bill 5456]

COLLEGES AND UNIVERSITIES—FACULTY TENURE—REVISED PROVISIONS

Effective Date: 7/1/91

AN ACT Relating to tenure modification; amending RCW 28B.50.851, 28B.50.852, and 28B.50.857; adding a new section to chapter 28B.50 RCW; creating new sections; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Improving the quality of instruction at our state institutions of higher education is a priority of the legislature. Recently, many efforts have been made by the legislature, the colleges, and the higher education coordinating board to assess and improve the quality of instruction received by students at our state institutions. It is the intent of the legislature that, in conjunction with these various efforts, the process for the award of faculty tenure at community colleges should allow for a thorough review of the performance of faculty appointees prior to the granting of tenure.

Sec. 2. RCW 28B.50.851 and 1988 c 32 s 2 are each amended to read as follows:

As used in RCW 28B.50.850 through 28B.50.869:

(1) "Tenure" shall mean a faculty appointment for an indefinite period of time which may be revoked only for adequate cause and by due process;

(2) (a) "Faculty appointment", except as otherwise provided in subsection (2)(b) below, shall mean full time employment as a teacher, counselor, librarian or other position for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments; "faculty appointment" shall also mean department heads, division heads and administrators to the extent that such department heads, division heads or administrators have had or do have status as a teacher, counselor, or librarian; faculty appointment shall also mean employment on a reduced work load basis when a faculty member has retained tenure under RCW 28B.50.859;

(b) "Faculty appointment" shall not mean special faculty appointment as a teacher, counselor, librarian, or other position as enumerated in subsection (2)(a) of this section, when such employment results from special funds provided to a community college district from federal moneys or other

special funds which other funds are designated as "special funds" by the state board for community college education: PROVIDED, That such "special funds" so designated by the state board for purposes of this section shall apply only to teachers, counselors and librarians hired from grants and service agreements and teachers, counselors and librarians hired in nonformula positions. A special faculty appointment resulting from such special financing may be terminated upon a reduction or elimination of funding or a reduction or elimination of program: PROVIDED FURTHER, That "faculty appointees" holding faculty appointments pursuant to subsections (1) or (2) (a) who have been subsequently transferred to positions financed from "special funds" pursuant to subsection (2) (b) and who thereafter lose their positions upon reduction or elimination of such "special funding" shall be entitled to be returned to previous status as faculty appointees pursuant to subsection (1) or (2) (a) depending upon their status prior to the "special funding" transfer. Notwithstanding the fact that tenure shall not be granted to anyone holding a special faculty appointment, the termination of any such faculty appointment prior to the expiration of the term of such faculty member's individual contract for any cause which is not related to elimination or reduction of financing or the elimination or reduction of program shall be considered a termination for cause subject to the provisions of this chapter;

(3) "Probationary faculty appointment" shall mean a faculty appointment for a designated period of time which may be terminated without cause upon expiration of the probationer's terms of employment;

(4) "Probationer" shall mean an individual holding a probationary faculty appointment;

(5) "Administrative appointment" shall mean employment in a specific administrative position as determined by the appointing authority;

(6) "Appointing authority" shall mean the board of trustees of a community college district;

(7) "Review committee" shall mean a committee composed of the probationer's faculty peers or tenured faculty member's peers, a student representative, and the administrative staff of the community college: PROVIDED, That the majority of the committee shall consist of the probationer's faculty peers or tenured faculty member's peers.

Sec. 3. RCW 28B.50.852 and 1969 ex.s. c 283 s 34 are each amended to read as follows:

The appointing authority shall promulgate rules and regulations implementing RCW 28B.50.850 through 28B.50.869 and shall provide for the award of faculty tenure following a probationary period not to exceed (~~three consecutive regular college years~~) nine consecutive college quarters, excluding summer quarter and approved leaves of absence: PROVIDED,

That tenure may be awarded at any time as may be determined by the appointing authority after it has given reasonable consideration to the recommendations of the review committee. Upon formal recommendation of the review committee and with the written consent of the probationary faculty member, the appointing authority may extend its probationary period for one, two, or three quarters, excluding summer quarter, beyond the maximum probationary period established herein. No such extension shall be made, however, unless the review committee's recommendation is based on its belief that the probationary faculty member needs additional time to complete satisfactorily a professional improvement plan already in progress and in the committee's further belief that the probationary faculty member will complete the plan satisfactorily. At the conclusion of any such extension, the appointing authority may award tenure unless the probationary faculty member has, in the judgment of the committee, failed to complete the professional improvement plan satisfactorily.

Sec. 4. RCW 28B.50.857 and 1969 ex.s. c 283 s 37 are each amended to read as follows:

Upon the decision not to renew a probationary faculty appointment, the appointing authority shall notify the probationer of such decision as soon as possible during the regular college year: **PROVIDED**, That such notice may not be given (~~subsequent to the last day of the winter quarter~~) later than one complete quarter, except summer quarter, before the expiration of the probationary faculty appointment.

NEW SECTION. Sec. 5. A new section is added to chapter 28B.50 RCW to read as follows:

(1) The effectiveness and performance of each tenured faculty member of a community college shall be reviewed and formally evaluated by a review committee at least once every fifteen regular college quarters in which the tenured faculty [faculty] member is employed by the community college. The size, composition, and duties of the review committee defined in RCW 28B.50.851(7) may be altered for the purposes of this section with the mutual consent of the exclusive bargaining agent and the appointing authority.

(2) If, after the review conducted pursuant to subsection (1) of this section, the performance of the tenured faculty member is judged to be unsatisfactory by the review committee, the tenured faculty member may be required by the appointing authority to implement a performance improvement plan for a period of no more than three regular college quarters, not including summer quarter.

(3) If, after the three quarter period in subsection (2) of this section, the tenured faculty member's performance is deemed to be unsatisfactory by the review committee, the appointing authority may revoke tenure and return the faculty member to a probationary faculty appointment. The appointing authority shall ensure due process for tenured faculty members in the decision to return any member to a probationary faculty appointment.

(4) The provisions of subsections (2) and (3) of this section are in addition to any tenure revocation procedures established pursuant to chapter 28B.52 RCW.

(5) The procedures, criteria, and conditions implementing this section are subject to negotiations between the appointing authority and the faculty's exclusive bargaining representative.

NEW SECTION. Sec. 6. Nothing contained in this act shall be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

NEW SECTION. Sec. 7. 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 shall take effect July 1, 1991, and shall apply to all faculty appointments made by community colleges after June 30, 1991, but shall not apply to employees of community colleges who hold faculty appointments prior to July 1, 1991.

NEW SECTION. Sec. 8. 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.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 295

[Substitute Senate Bill 5669]

HOUSING TRUST FUND—PRIORITY FOR PROJECTS SUBMITTED BY REGIONAL SUPPORT NETWORKS

Effective Date: 7/28/91

AN ACT Relating to housing trust fund priorities for projects submitted by regional support networks; and amending RCW 43.185.060, 43.185.070, and 71.24.300.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.185.060 and 1986 c 298 s 7 are each amended to read as follows:

Organizations that may receive assistance from the department under this chapter are local governments, local housing authorities, regional support networks established under chapter 71.24 RCW, nonprofit community or neighborhood-based organizations, and regional or state-wide nonprofit housing assistance organizations.

Sec. 2. RCW 43.185.070 and 1988 c 286 s 1 are each amended to read as follows:

(1) During each calendar year in which funds are available for use by the department from the housing trust fund, as prescribed in RCW 43.185-.030, the department shall announce to all known interested parties, and through major media throughout the state, a grant and loan application period of at least ninety days' duration. This announcement shall be made as often as the director deems appropriate for proper utilization of resources, but at least twice annually. The department shall then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department (~~(, not to)~~). Administrative costs paid out of the housing trust fund may not exceed ((thirty-seven thousand five hundred dollars in the fiscal year ending June 30, 1988, and seventy-five thousand dollars in the fiscal year ending June 30, 1989, and not to exceed)) five percent of annual revenues ((to the fund thereafter)) available for distribution to housing trust fund projects. In awarding funds under this chapter, the department shall provide for a geographic distribution on a state-wide basis.

(2) The department shall give first priority to applications for projects and activities which utilize existing privately owned housing stock including privately owned housing stock purchased by nonprofit public development authorities. Such projects and activities shall be evaluated under subsection (3) of this section. Second priority shall be given to activities and projects which utilize existing publicly owned housing stock. Such projects and activities shall be evaluated under subsection (3) of this section.

(3) The department shall give preference for applications based on some or all of the ((following)) criteria under this subsection, and similar projects and activities shall be evaluated under the same criteria:

(a) The degree of leveraging of other funds that will occur;

(b) The degree of commitment from programs to provide necessary habilitation and support services for projects focusing on special needs populations;

(c) Recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

~~((c))~~ (d) Local government project contributions in the form of infrastructure improvements, and others;

~~((d))~~ (e) Projects that encourage ownership, management, and other project-related responsibility opportunities;

~~((e))~~ (f) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least ~~((fifteen))~~ twenty-five years;

~~((f))~~ (g) The applicant has the demonstrated ability, stability and resources to implement the project;

~~((g))~~ (h) Projects which demonstrate serving the greatest need; ~~((and~~

~~(h))~~ (i) Projects that provide housing for persons and families with the lowest incomes;

(j) Projects serving special needs populations which are under statutory mandate to develop community housing;

(k) Project location and access to employment centers in the region or area; and

(l) Project location and access to available public transportation services.

(4) The department shall only approve applications for projects for mentally ill persons that are consistent with a regional support network six-year capital and operating plan.

Sec. 3. RCW 71.24.300 and 1989 c 205 s 5 are each amended to read as follows:

A county authority or a group of county authorities whose combined population is no less than forty thousand may enter into a joint operating agreement to form a regional support network. The roles and responsibilities of county authorities shall be determined by the terms of that agreement and the provisions of law. The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(1) Regional support networks shall within three months of recognition submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties by July 1, 1995, instead of those presently assigned to counties under RCW 71.24.045(1):

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) By July 1, 1993, provide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks with populations of less than one hundred fifty thousand may contract to purchase evaluation and treatment services from other networks. For regional support networks that are created after June 30, 1991, the requirements of (c) of this subsection must be met by July 1, 1995.

(d) By July 1, 1993, administer a portion of funds appropriated by the legislature to house mentally ill persons in state institutions from counties

within the boundaries of any regional support network, with the exception of mentally ill offenders, and provide for the care of all persons needing evaluation and treatment services for periods up to seventeen days according to chapter 71.05 RCW in appropriate residential services, which may include state institutions. The regional support networks shall reimburse the state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium when reimbursement occurs. The duty of a state hospital to accept persons for evaluation and treatment under chapter 71.05 RCW is limited by the responsibilities assigned to regional support networks under this section. For regional support networks that are created after June 30, 1991, the requirements of (d) of this subsection must be met by July 1, 1995.

(e) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, and mental health services to children as provided in this chapter.

(f) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(2) Regional support networks shall assume all duties assigned to county authorities by this chapter and chapter 71.05 RCW.

(3) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the mentally ill and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(4) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter. The composition of the board shall be broadly representative of the demographic character of the region and the mentally ill persons served therein. Length of terms of board members shall be determined by the regional support network.

(5) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary.

(6) Counties or groups of counties participating in a regional support network are not subject to RCW 71.24.045(7). The office of financial management shall consider information gathered in studies required in this chapter and information about the experience of other states to propose a mental health services administrative cost lid to the 1991 legislature which

shall include administrative costs of licensed service providers, the state psychiatric hospitals and the department.

(7) The first regional support network contract may include a pilot project to: Establish standards and procedures for (a) making referrals for comprehensive medical examinations and treatment programs for those whose mental illness is caused or exacerbated by organic disease, and (b) training staff in recognizing the relationship between mental illness and organic disease.

(8) Regional support networks may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the regional support network six-year operating and capital plan, timeline, and budget required by subsection (1) of this section.

Passed the Senate April 22, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 296

[Second Substitute Senate Bill 5830]

YOUTH GANG VIOLENCE REDUCTION

Effective Date: 7/28/91

AN ACT Relating to youth gang violence reduction; adding a new chapter to Title 43 RCW; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds and declares that:

(1) The number of youth who are members and associates of gangs and commit gang violence has significantly increased throughout the entire greater Puget Sound, Spokane, and other areas of the state;

(2) Youth gang violence has caused a tremendous strain on the progress of the communities impacted. The loss of life, property, and positive opportunity for growth caused by youth gang violence has reached intolerable levels. Increased youth gang activity has seriously strained the budgets of many local jurisdictions, as well as threatened the ability of the educational system to educate our youth;

(3) Among youth gang members the high school drop-out rate is significantly higher than among nongang members. Since the economic future of our state depends on a highly educated and skilled work force, this high school drop-out rate threatens the economic welfare of our future work force, as well as the future economic growth of our state;

(4) The unemployment rate among youth gang members is higher than that among the general youth population. The unusual unemployment rate, lack of education and skills, and the increased criminal activity could significantly impact our future prison population;

(5) Most youth gangs are subcultural. This implies that gangs provide the nurturing, discipline, and guidance to gang youth and potential gang youth that is generally provided by communities and other social systems. The subcultural designation means that youth gang participation and violence can be effectively reduced in Washington communities and schools through the involvement of community, educational, criminal justice, and employment systems working in a unified manner with parents and individuals who have a firsthand knowledge of youth gangs and at-risk youth; and

(6) A strong unified effort among parents and community, educational, criminal justice, and employment systems would facilitate: (a) The learning process; (b) the control and reduction of gang violence; (c) the prevention of youth joining negative gangs; and (d) the intervention into youth gangs.

NEW SECTION. Sec. 2. It is the intent of the legislature to cause the development of positive prevention and intervention pilot programs for elementary and secondary age youth through cooperation between individual schools, local organizations, and government. It is also the intent of the legislature that if the prevention and intervention pilot programs are determined to be effective in reducing problems associated with youth gang violence, that other counties in the state be eligible to receive special state funding to establish similar positive prevention and intervention programs.

NEW SECTION. Sec. 3. Unless the context otherwise requires, the following definitions shall apply throughout sections 1 through 12 of this act:

(1) "School" means any public school within a school district any portion of which is in a county with a population of over three hundred fifty thousand.

(2) "Community organization" means any organization recognized by a city or county as such, as well as private, nonprofit organizations registered with the secretary of state.

(3) "Gang risk prevention and intervention pilot program" means a community-based positive prevention and intervention program for gang members, potential gang members, at-risk youth, and elementary through high school-aged youth directed at all of the following:

(a) Reducing the probability of youth involvement in gang activities and consequent violence.

(b) Establishing ties, at an early age, between youth and community organizations.

(c) Committing local business and community resources to positive programming for youth.

(d) Committing state resources to assist in creating the gang risk prevention and intervention pilot programs.

(4) "Cultural awareness retreat" means a program that temporarily relocates at-risk youth or gang members from their usual social environment to a different social environment, with the specific purpose of having them performing activities which will enhance or increase their positive behavior and potential life successes.

NEW SECTION. Sec. 4. (1) The department of community development may contract with school districts for the development, administration, and implementation in the county of community-based gang risk prevention and intervention pilot programs.

(2) Proposals by the school district for gang risk prevention and intervention pilot program grant funding shall begin with school years no sooner than the 1992-93 session, and last for a duration of two years.

(3) The school district proposal shall include:

(a) A description of the program goals, activities, and curriculum. The description of the program goals shall include a list of measurable objectives for the purpose of evaluation by the school district. To the extent possible, proposals shall contain empirical data on current problems, such as dropout rates and occurrences of violence on and off campus by school-age individuals.

(b) A description of the individual school or schools and the geographic area to be affected by the program.

(c) A demonstration of broad-based support for the program from business and community organizations.

(d) A clear description of the experience, expertise, and other qualifications of the community organizations to conduct an effective prevention and intervention program in cooperation with a school or a group of schools.

(e) A proposed budget for expenditure of the grant.

NEW SECTION. Sec. 5. (1) A school district in a county with a population of over three hundred fifty thousand may request proposals for establishing gang risk prevention and intervention pilot programs from either public entities that apply jointly with individual schools or community organizations. The proposals shall be reviewed and recommendations for awarding grants shall be made by a committee made up of: (a) A representative from the school district taking the proposal, appointed by the school district's board of directors; (b) a representative appointed by the director of the department of community development or designate; and (c) a representative from the local juvenile court administration.

(2) A school district, upon its election to enter into a contract pursuant to section 4 of this act, shall, no later than March 1, 1992, distribute a standard request for proposals.

(3) Proposals made to the school district must comply with the conditions of the grant.

(4) The school district shall additionally monitor and evaluate the gang risk prevention and intervention pilot programs pursuant to the following criteria:

- (a) Success in obtaining stated goals.
- (b) Reduction in drop-out rates.
- (c) Reduction in violence among students, on and off campus.
- (d) Development of techniques for early identification of at-risk youth.
- (5) The school district shall report to the department of community development the results of the program.

NEW SECTION. Sec. 6. Gang risk prevention and intervention pilot programs shall include, but are not limited to:

- (1) Counseling for targeted at-risk students, parents, and families, individually and collectively.
- (2) Exposure to positive sports and cultural activities, promoting affiliations between youth and the local community.
- (3) Job training, which may include apprentice programs in coordination with local businesses, job skills development at the school, or information about vocational opportunities in the community.
- (4) Positive interaction with local law enforcement personnel.
- (5) The use of local organizations to provide job search training skills.
- (6) Cultural awareness retreats.
- (7) The use of specified state resources, as requested.
- (8) Full service schools under section 9 of this act.
- (9) Community service such as volunteerism and citizenship.

NEW SECTION. Sec. 7. (1) Upon request from the local community organization receiving an award under section 5 of this act or the granting local school district, or both, the employment security department shall provide a job counselor or counselors to assist at cultural awareness retreats. The counselor shall provide assistance with the following:

- (a) Testing for job occupation preferences.
- (b) Information on the skills needed for different occupations.
- (c) Coordinating the personal appearance of small business owners or corporate managers to explain the type of skills and characteristics businesses currently need in prospective employees, as well as those of prospective future employees.
- (d) Establishing a business mentor program between the small business owners or corporate managers and the youth who are willing to participate.
- (e) Establishing a specific program that provides help with employment opportunities for youth who attend cultural awareness retreats.

The department may provide other services than those specified.

- (2) Upon request from the local community organization awarded the grant, the local school district, or both, the department may provide those services specified in subsection (1) of this section for the youth who are receiving services from the local community organization.

NEW SECTION. Sec. 8. Upon request from the local community organization receiving an award under section 5 of this act or the granting local school district, or both, the department of labor and industries shall:

(1) Provide information and assistance with regards to the skills and educational backgrounds needed to apply for apprenticeship programs.

(2) Provide direction and assistance with applications for apprenticeship programs.

(3) Explore and examine the feasibility of establishing preapprenticeship programs for those youth who cannot qualify for apprenticeships because of age or educational deficiencies, and are participating or have participated in the retreat.

(4) Provide assistance for and coordination of the personal appearance of representatives of the joint apprenticeship committee with the specific purpose of discussing the skills needed to perform different occupations.

(5) Provide assistance for and coordination of the establishment of a joint apprenticeship mentor program with those youth who are participating or have participated in the retreat program.

The department may provide other services.

Upon request from the local community organization receiving the award under section 5 of this act or the local school district, or both, the department shall provide the services in this section either at the grant-receiving school or at the cultural awareness retreat, or both.

NEW SECTION. Sec. 9. (1) The purpose of a full service school shall be to increase the interaction between youth and the community at large. A full service school shall provide a wide range of opportunities for all citizens, including goals under RCW 28A.620.010 (1), (2), (3), and (6), and subsection (2) of this section.

(2) The local school district and the local community organization that received a grant under section 5 of this act shall work with other community organizations, the superintendent of public instruction, and school personnel in the selected school to determine the services needed by the community that shall be offered at the full service school.

NEW SECTION. Sec. 10. (1) Upon request, the division of juvenile rehabilitation shall through cooperation with private business or through interagency agreement with the state parks and recreation commission or department of natural resources, or both, provide facilities for cultural awareness retreats. The requests for facilities must be made by one of the following: (a) The community organization receiving the grant, or (b) the local school district that assisted in awarding the grant. The division may provide other services as requested.

(2) The services may be, but are not limited to, persons knowledgeable of juvenile gang behavior.

(3) Upon receiving a request for cultural awareness retreat facilities, the division shall notify the departments of employment security and labor

and industries of the organization requesting the retreat, and the time, place, and date of the retreat.

NEW SECTION. Sec. 11. Cultural awareness retreats shall include but are not limited to the following programs:

- (1) To develop positive attitudes and self-esteem.
- (2) To develop youth decision-making ability.
- (3) To assist with career development and educational development.
- (4) To help develop respect for the community, and ethnic origin.

NEW SECTION. Sec. 12. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 13. Sections 2 through 11 of this act shall constitute a new chapter in Title 43 RCW.

Passed the Senate March 18, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 297

[Second Substitute Senate Bill 5143]

RECYCLED PRODUCTS—STATE AND LOCAL GOVERNMENT PROCUREMENT REQUIREMENTS

Effective Date: 7/28/91

AN ACT Relating to recycling; amending RCW 43.19.538; adding a new section to chapter 43.78 RCW; adding a new section to chapter 47.28 RCW; adding a new section to chapter 19.27 RCW; adding a new section to Title 28A RCW; adding a new chapter to Title 43 RCW; creating new sections; and repealing RCW 43.19.537.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. FINDINGS AND INTENT. It is the purpose of this chapter to:

(1) Substantially increase the procurement of recycled content products by all local and state governmental agencies and public schools, and provide a model to encourage a comparable commitment by Washington state citizens and businesses in their purchasing practices;

(2) Target government procurement policies and goals toward those recycled products for which there are significant market development needs or that may substantially contribute to solutions to the state's waste management problem;

(3) Provide standards for recycled products for use in procurement programs by all governmental agencies;

(4) Provide the authority for all governmental agencies to adopt preferential purchasing policies for recycled products;

(5) Direct state agencies to develop strategies to increase recycled product purchases, and to provide specific goals for procurement of recycled paper products and organic recovered materials; and

(6) Provide guidance and direction for local governments and other public agencies to develop plans for increasing the procurement of recycled content products.

NEW SECTION. Sec. 2. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Compost products" means mulch, soil amendments, ground cover, or other landscaping material derived from the biological or mechanical conversion of cellulose-containing waste materials.

(2) "Department" means the department of general administration.

(3) "Director" means the director of the department of general administration.

(4) "Local government" means a city, town, county, special purpose district, school district, or other municipal corporation.

(5) "Lubricating oil" means petroleum-based oils for reducing friction in engine parts and other mechanical parts.

(6) "Mixed waste paper" means assorted low-value grades of paper that have not been separated into individual grades of paper at the point of collection.

(7) "Paper and paper products" means all items manufactured from paper or paperboard.

(8) "Postconsumer waste" means a material or product that has served its intended use and has been discarded for disposal or recovery by a final consumer.

(9) "Procurement officer" means the person that has the primary responsibility for procurement of materials or products.

(10) "State agency" means all units of state government, including divisions of the governor's office, the legislature, the judiciary, state agencies and departments, correctional institutions, vocational technical institutions, and universities and colleges.

(11) "Recycled content product" or "recycled product" means a product containing recycled materials.

(12) "Recycled materials" means waste materials and by-products that have been recovered or diverted from solid waste and that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from postconsumer waste, manufacturing waste, industrial scrap, agricultural wastes, and other items, all of which can be used in the manufacture of new or recycled products.

(13) "Re-refined oils" means used lubricating oils from which the physical and chemical contaminants acquired through previous use have

been removed through a refining process. Re-refining may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(14) "USEPA product standards" means the product standards of the United States environmental protection agency for recycled content published in the code of federal regulations.

NEW SECTION. Sec. 3. STANDARDS FOR RECYCLED CONTENT. (1) The director shall adopt standards specifying the minimum content of recycled materials in products or product categories. The standards shall:

(a) Be consistent with the USEPA product standards, unless the director finds that a different standard would significantly increase recycled product availability or competition;

(b) Consider the standards of other states, to encourage consistency of manufacturing standards;

(c) Consider regional product manufacturing capability;

(d) Address specific products or classes of products; and

(e) Consider postconsumer waste content and the recyclability of the product.

(2) The director shall consult with the supply management board and department of ecology prior to adopting the recycled content standards.

(3) The director shall adopt recycled content standards for at least the following products by the dates indicated:

(a) By July 1, 1992:

(i) Paper and paper products;

(ii) Organic recovered materials; and

(iii) Latex paint products;

(b) By July 1, 1993:

(i) Products for lower value uses containing recycled plastics;

(ii) Retread and remanufactured tires;

(iii) Lubricating oils;

(iv) Automotive batteries; and

(v) Building insulation.

(4) The standards required by this section shall be applied to recycled product purchasing by the department and other state agencies. The standards may be adopted or applied by any other local government in product procurement. The standards shall provide for exceptions under appropriate circumstances to allow purchases of recycled products that do not meet the minimum content requirements of the standards.

NEW SECTION. Sec. 4. LOCAL GOVERNMENT PROCUREMENT PROGRAMS. (1) By January 1, 1993, each local government shall review its existing procurement policies and specifications to determine whether recycled products are intentionally or unintentionally excluded. The

policies and specifications shall be revised to include such products unless a recycled content product does not meet an established performance standard of the agency.

(2) By fiscal year 1994, each local government shall adopt a minimum purchasing goal for recycled content as a percentage of the total dollar value of supplies purchased. To assist in achieving this goal each local government shall adopt a strategy by January 1, 1993, and shall submit a description of the strategy to the department. The department shall report to the appropriate standing committees of the legislature by October 1, 1993, on the progress of implementation by local governments, and shall thereafter periodically report on the progress of recycled product purchasing by state and other public agencies. All public agencies shall respond to requests for information from the department for the purpose of its reporting requirements under this section.

(3) Each local government shall designate a procurement officer who shall serve as the primary contact with the department for compliance with the requirements of this chapter.

(4) This section shall apply only to local governments with expenditures for supplies exceeding five hundred thousand dollars for fiscal year 1989. Expenditures for capital goods and for electricity, water, or gas for resale shall not be considered a supply expenditure.

Sec. 5. RCW 43.19.538 and 1988 c 175 s 2 are each amended to read as follows:

(1) The director of general administration, through the state purchasing director, shall develop specifications and adopt rules for the purchase of products which will provide for preferential purchase of products containing ~~((recovered))~~ recycled material by:

(a) The use of a weighting factor determined by the amount of ~~((recovered))~~ recycled material in a product, where appropriate and known in advance to potential bidders, to determine the lowest responsible bidder. The actual dollars bid shall be the contracted amount. If the department determines, according to criteria established by rule that the use of this weighting factor does not encourage the use of more ~~((recovered))~~ recycled material, the department shall consider and award bids without regard to the weighting factor. In making this determination, the department shall consider but not be limited to such factors as adequate competition, economics or environmental constraints, quality, and availability.

(b) Requiring a written statement of the percentage range of ~~((recovered-material))~~ recycled content from the bidder providing products containing ~~((recovered-material))~~ recycled. The range may be stated in ~~((fifteen))~~ five percent increments.

(2) The director shall develop a directory of businesses that supply products containing significant quantities of ~~((recovered))~~ recycled materials. This directory may be combined with and made accessible through the

data base of recycled content products to be developed under section 8 of this act.

(3) The director shall encourage all parties using the state purchasing office to purchase products containing (~~recovered~~) recycled materials.

(4) The rules, specifications, and bid evaluation shall be consistent with recycled content standards adopted under section 3 of this act.

NEW SECTION. Sec. 6. (1) Each local government shall consider the adoption of policies, rules, or ordinances to provide for the preferential purchase of recycled content products. Any local government may adopt the preferential purchasing policy of the department of general administration, or portions of such policy, or another policy that provides a preference for recycled content products.

(2) The department of general administration shall prepare one or more model recycled content preferential purchase policies suitable for adoption by local governments. The model policy shall be widely distributed and provided through the technical assistance and workshops under section 9 of this act.

(3) A local government that is not subject to the purchasing authority of the department of general administration, and that adopts the preferential purchase policy or rules of the department, shall not be limited by the percentage price preference included in such policy or rules.

NEW SECTION. Sec. 7. STATE AGENCY PROCUREMENT. The department shall prepare a mandatory state plan to increase purchases of recycled-content products by the department and all state agencies, including higher education institutions. The plan shall include purchases from public works contracts. The plan shall address the purchase of plastic products, retread and remanufactured tires, motor vehicle lubricants, latex paint, and lead acid batteries having recycled content. In addition, the plan shall incorporate actions to achieve the following purchase level goals of recycled content paper and compost products:

(1) Paper products as a percentage of the total dollar amount purchased on an annual basis:

- (a) At least forty percent by 1993;
- (b) At least fifty percent by 1994;
- (c) At least sixty percent by 1995.

(2) Compost products as a percentage of the total dollar amount on an annual basis:

- (a) At least twenty-five percent by 1993;
- (b) At least forty percent by 1995;
- (c) At least sixty percent by 1997.

NEW SECTION. Sec. 8. DATA BASE. (1) The department shall develop a data base of available products with recycled-content products, and

vendors supplying such products. The data base shall incorporate information regarding product consistency with the content standards adopted under section 3 of this act. The data base shall incorporate information developed through state and local government procurement of recycled-content products.

(2) By December 1, 1992, the department shall report to the appropriate standing committees of the legislature on the cost of making the data base accessible to all state and local governments and to the private sector.

(3) The department shall compile information on purchases made by the department or pursuant to the department's purchasing authority, and information provided by local governments, regarding:

(a) The percentage of recycled content and, if known, the amount of postconsumer waste in the products purchased;

(b) Price;

(c) Agency experience with the performance of recycled products and the supplier under the terms of the purchase; and

(d) Any other information deemed appropriate by the department.

NEW SECTION. Sec. 9. **PROCUREMENT EDUCATION PROGRAM.** (1) The department shall implement an education program to encourage maximum procurement of recycled products by state and local government entities. The program shall include at least the following:

(a) Technical assistance to all state and local governments and their designated procurement officers on the requirements of this chapter, including preparation of model purchase contracts, the preparation of procurement plans, and the availability of recycled products;

(b) Two or more workshops annually in which all state and local government entities are invited;

(c) Information on intergovernmental agreements to facilitate procurement of recycled products.

(2) The director shall, in consultation with the department of ecology, make available to the public, local jurisdictions, and the private sector, a comprehensive list of substitutes for extremely hazardous, hazardous, toxic, and nonrecyclable products, and disposable products intended for a single use. The department and all state agencies exercising the purchasing authorities of the department shall include the substitute products on bid notifications, except where the department allows an exception based upon product availability, price, suitability for intended use, or similar reasons.

(3) The department shall prepare model procurement guidelines for use by local governments.

NEW SECTION. Sec. 10. A new section is added to chapter 43.78 RCW to read as follows:

PUBLIC PRINTER. The public printer shall take all actions consistent with the plan under section 7 of this act to ensure that seventy-five

percent or more of the total dollar amount of printing paper stock used by the printer is recycled content paper by January 1, 1995.

NEW SECTION. Sec. 11. BID NOTIFICATION. A notification regarding a state or local government's intent to procure products with recycled content must be prominently displayed in the procurement solicitation or invitation to bid including:

(1) A description of the postconsumer waste content or recycled content requirements; and

(2) A description of the agency's recycled content preference program.

NEW SECTION. Sec. 12. VENDOR CERTIFICATION. (1) After July 1, 1992, vendors shall certify the percentage of recycled content in products sold to state and local governments, including the percentage of postconsumer waste that is in the product. The certification shall be in the form of a label on the product or a statement by the vendor attached to the bid documents.

(2) The certification on multicomponent or multimaterial products shall verify the percentage and type of postconsumer waste and recycled content by volume contained in the major constituents of the product.

(3) The procuring agency may state in bid solicitations that permission to verify the certification by review of the bidder or manufacturer's records must be granted as a condition of the bid award, in the event of a bidder's protest or other challenge to the bid accepted.

(4) The department shall adopt rules by May 1, 1992, describing the contents of the certification required by this section.

NEW SECTION. Sec. 13. PROCUREMENT OF COMPOST PRODUCTS. (1) The department shall increase the procurement of compost products for all state facilities and grounds that require landscaping or similar work. The department shall survey available vendors and state facilities for which such products are suitable, and attempt to match such supplies and need to lower transportation and other costs. The department shall consider and implement modification of performance standards where appropriate to achieve greater procurement of compost products.

(2) Beginning July 1, 1992, the total of department contracts awarded in whole or in part for the purchase of landscaping materials or soil amendments shall include compost products as follows:

(a) For the period July 1, 1992, through June 30, 1994, twenty-five percent of the total dollar amount of purchases; and

(b) On and after July 1, 1994, fifty percent of the total annual dollar amount of purchases.

NEW SECTION. Sec. 14. A new section is added to chapter 47.28 RCW to read as follows:

COMPOST PRODUCTS IN TRANSPORTATION PROJECTS. (1)

A contract awarded in whole or in part for the purchase of compost products as a soil cover or soil amendment to state highway rights of way shall specify that compost products be purchased in accordance with the following schedule:

(a) For the period July 1, 1991, through June 30, 1993, twenty-five percent of the total dollar amount purchased;

(b) For the period July 1, 1993, through June 30, 1995, fifty percent of the total dollar amount purchased. The percentages in this subsection apply only to the materials' value, and do not include services or other materials.

(2) In order to carry out the provisions of this section, the department of transportation shall develop and adopt bid specifications for compost products used in state highway construction projects.

NEW SECTION. Sec. 15. A new section is added to chapter 19.27 RCW to read as follows:

STATE BUILDING CODE STUDY. The state building code council, in consultation with the department of ecology and local governments, shall conduct a study of the state building code, and adopt changes as necessary to encourage greater use of recycled building materials from construction and building demolition debris, mixed waste paper, waste paint, waste plastics, and other waste materials.

NEW SECTION. Sec. 16. **USE OF RECYCLED MATERIALS IN ROAD CONSTRUCTION.** The department of transportation, in consultation with the department of trade and economic development, shall prepare and forward to the legislature on or before January 1, 1992, a study of the use of recycled materials for public highways, roads, bicycle routes, trails, and paths. The study shall include, but not be limited to:

(1) An analysis of the types of recycled materials appropriate and feasible as alternative paving material such as glass, tires, or incinerator ash;

(2) An analysis of uses for waste tires, including, but not limited to, erosion control mats, highway stabilization mats, ferry bumpers, highway crash attenuation barriers, road subbase materials, or backfill;

(3) An analysis of using recycled mixed-plastic materials for guard rail posts, right of way fence posts, and sign supports;

(4) Strategies to test and monitor the use of recycled content materials in road construction;

(5) Product specifications for recycled materials;

(6) Programs to demonstrate the feasibility of using recycled materials; and

(7) Identification of recycled material sources and vendors to ensure competitive product pricing and material availability.

NEW SECTION. Sec. 17. **USE OF COMPOST PRODUCTS IN LOCAL ROAD PROJECTS.** (1) Each county and city required to prepare

a strategy under section 4of this act shall adopt specifications for compost products to be used in road projects. The specifications developed by the department of transportation under section 14 of this act may be adopted by the city or county in lieu of developing specifications.

(2) After July 1, 1992, any contract awarded in whole or in part for applying soils, soil covers, or soil amendments to road rights of way shall specify that compost materials be purchased in accordance with the following schedule:

(a) For the period July 1, 1992, through June 30, 1994, at least twenty-five percent of the total dollar amount of purchases by the city or county;

(b) On and after July 1, 1994, at least fifty percent of the annual total dollar amount of purchases by the city or county.

(3) The city or county may depart from the schedule in subsection (2) of this section where it determines that no suitable product is available at a reasonable price.

NEW SECTION. Sec. 18. A new section is added to Title 28A RCW to read as follows:

Every school board of directors shall consider the purchase of playground matting manufactured from shredded waste tires in undertaking construction or maintenance of playgrounds. The department of general administration shall upon request assist in the development of product specifications and vendor identification.

NEW SECTION. Sec. 19. RCW 43.19.537 and 1988 c 175 s 1 & 1982 c 61 s 1 are each repealed.

NEW SECTION. Sec. 20. CODIFICATION. Sections 1 through 4, 6 through 9, 11 through 13, 16, and 17 of this act shall constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 21. CAPTIONS NOT LAW. Captions as used in this act constitute no part of the law.

NEW SECTION. Sec. 22. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the Senate April 22, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 298

[Substitute Senate Bill 5478]

CURBSIDE RECYCLING FOR MULTIFAMILY RESIDENCES

Effective Date: 7/28/91

AN ACT Relating to curbside recycling; amending RCW 70.95.030, 70.95.090, and 70.95.110; adding new sections to chapter 19.27 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that curbside recycling services should be provided in multiple family residences. The county and city comprehensive solid waste management plans should include provisions for such service.

Sec. 2. RCW 70.95.030 and 1989 c 431 s 2 are each amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

- (1) "City" means every incorporated city and town.
- (2) "Commission" means the utilities and transportation commission.
- (3) "Committee" means the state solid waste advisory committee.
- (4) "Department" means the department of ecology.
- (5) "Director" means the director of the department of ecology.
- (6) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.
- (7) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.
- (8) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.
- (9) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.
- (10) "Jurisdictional health department" means city, county, city-county, or district public health department.
- (11) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.
- (12) "Local government" means a city, town, or county.
- (13) "Multiple family residence" means any structure housing two or more dwelling units.
- (14) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
- ~~((14))~~ (15) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are

identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

~~((15))~~ (16) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

~~((16))~~ (17) "Residence" means the regular dwelling place of an individual or individuals.

(18) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

~~((17))~~ (19) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

~~((18))~~ (20) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

~~((19))~~ (21) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

~~((20))~~ (22) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

Sec. 3. RCW 70.95.090 and 1989 c 431 s 3 are each amended to read as follows:

Each county and city comprehensive solid waste management plan shall include the following:

(1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.

(2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.

(3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:

(a) Meet the minimum functional standards for solid waste handling adopted by the department and all laws and regulations relating to air and

water pollution, fire prevention, flood control, and protection of public health;

(b) Take into account the comprehensive land use plan of each jurisdiction;

(c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and

(d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.

(4) A program for surveillance and control.

(5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:

(a) Any franchise for solid waste collection granted by the utilities and transportation commission in the respective jurisdictions including the name of the holder of the franchise and the address of his or her place of business and the area covered by the franchise;

(b) Any city solid waste operation within the county and the boundaries of such operation;

(c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;

(d) The projected solid waste collection needs for the respective jurisdictions for the next six years.

(6) A comprehensive waste reduction and recycling element that, in accordance with the priorities established in RCW 70.95.010, provides programs that (a) reduce the amount of waste generated, (b) provide incentives and mechanisms for source separation, and (c) establish recycling opportunities for the source separated waste.

(7) The waste reduction and recycling element shall include the following:

(a) Waste reduction strategies;

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences in urban and rural areas. In urban areas, these programs shall include collection of source separated recyclable materials from ~~((residential dwellings))~~ single and multiple family residences, unless the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. In rural areas, these programs shall include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations

convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons;

(ii) Programs to monitor the collection of source separated waste at nonresidential sites where there is sufficient density to sustain a program;

(iii) Programs to collect yard waste, if the county or city submitting the plan finds that there are adequate markets or capacity for composted yard waste within or near the service area to consume the majority of the material collected; and

(iv) Programs to educate and promote the concepts of waste reduction and recycling;

(c) Recycling strategies, including a description of markets for recyclables, a review of waste generation trends, a description of waste composition, a discussion and description of existing programs and any additional programs needed to assist public and private sector recycling, and an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection services;

(d) Other information the county or city submitting the plan determines is necessary.

(8) An assessment of the plan's impact on the costs of solid waste collection. The assessment shall be prepared in conformance with guidelines established by the utilities and transportation commission. The commission shall cooperate with the Washington state association of counties and the association of Washington cities in establishing such guidelines.

(9) A review of potential areas that meet the criteria as outlined in RCW 70.95.165.

Sec. 4. RCW 70.95.110 and 1989 c 431 s 5 are each amended to read as follows:

(1) The comprehensive county solid waste management plans and any comprehensive city solid waste management plans prepared in accordance with RCW 70.95.080 shall be maintained in a current condition and reviewed and revised periodically by counties and cities as may be required by the department. Upon each review such plans shall be extended to show long-range needs for solid waste handling facilities for twenty years in the future, and a revised construction and capital acquisition program for six years in the future. Each revised solid waste management plan shall be submitted to the department.

Each plan shall be reviewed and revised within five years of July 1, 1984, and thereafter shall be reviewed, and revised if necessary according to the schedule provided in subsection (2) of this section.

(2) Cities and counties preparing solid waste management plans shall submit the waste reduction and recycling element required in RCW 70.95.090 and any revisions to other elements of its comprehensive solid waste management plan to the department no later than:

(a) July 1, 1991, for class one areas: PROVIDED, That portions relating to multiple family residences shall be submitted no later than July 1, 1992;

(b) July 1, 1992, for class two areas; and

(c) July 1, 1994, for class three areas.

Thereafter, each plan shall be reviewed and revised, if necessary, at least every five years. Nothing in this act shall prohibit local governments from submitting a plan prior to the dates listed in this subsection.

(3) The classes of areas are defined as follows:

(a) Class one areas are the counties of Spokane, Snohomish, King, Pierce, and Kitsap and all the cities therein.

(b) Class two areas are all other counties located west of the crest of the Cascade mountains and all the cities therein.

(c) Class three areas are the counties east of the crest of the Cascade mountains and all the cities therein, except for Spokane county.

(4) Cities and counties shall begin implementing the programs to collect source separated materials no later than one year following the adoption and approval of the waste reduction and recycling element and these programs shall be fully implemented within two years of approval.

NEW SECTION. Sec. 5. A new section is added to chapter 19.27 RCW to read as follows:

By July 1, 1992, the state building code council shall adopt rules to ensure that new multifamily residences have adequate and conveniently located space to store and dispose of recyclable materials and solid waste.

NEW SECTION. Sec. 6. A new section is added to chapter 19.27 RCW to read as follows:

By July 1, 1992, the state building code council shall adopt rules to ensure that new commercial facilities have adequate and conveniently located space to store and dispose of recyclable materials and solid waste.

Passed the Senate April 22, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 299

[Engrossed Substitute House Bill 1127]

SUPERIOR COURT JUDGES—NEW POSITIONS

Effective Date: 7/28/91 – Except Section 2 which becomes effective on 1/1/92; Section 4 which becomes effective on 7/1/92; & Sections 1, 3, & 5 which become effective on 7/1/91.

AN ACT Relating to superior courts; amending RCW 2.08.061, 2.08.062, 2.08.063, 2.08.064, 2.08.065, and 2.32.180; creating new sections; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.08.061 and 1989 c 328 s 2 are each amended to read as follows:

There shall be in the county of King no more than (~~forty-six~~) fifty-eight judges of the superior court; in the county of Spokane ten judges of the superior court; and in the county of Pierce nineteen judges of the superior court. The King county legislative authority may phase in the additional twelve judges, as authorized by the 1991 amendments to this section, over a period of time not to extend beyond July 1, 1995.

Sec. 2. RCW 2.08.062 and 1990 c 186 s 1 are each amended to read as follows:

There shall be in the counties of Chelan and Douglas jointly, three judges of the superior court; in the county of Clark six judges of the superior court; in the county of Grays Harbor (~~two~~) three judges of the superior court; in the county of Kitsap seven judges of the superior court; in the county of Kittitas one judge of the superior court; in the county of Lewis two judges of the superior court.

Sec. 3. RCW 2.08.063 and 1988 c 66 s 1 are each amended to read as follows:

There shall be in the county of Lincoln one judge of the superior court; in the county of Skagit, (~~two~~) three judges of the superior court; in the county of Walla Walla, two judges of the superior court; in the county of Whitman, one judge of the superior court; in the county of Yakima six judges of the superior court; in the county of Adams, one judge of the superior court; in the county of Whatcom, three judges of the superior court.

Sec. 4. RCW 2.08.064 and 1989 c 328 s 3 are each amended to read as follows:

There shall be in the counties of Benton and Franklin jointly, five judges of the superior court; in the county of Clallam, two judges of the superior court; in the county of Jefferson, one judge of the superior court; in the county of Snohomish, (~~eleven~~) thirteen judges of the superior court; in the counties of Asotin, Columbia and Garfield jointly, one judge of the superior court; in the county of Cowlitz, three judges of the superior court; in the counties of Klickitat and Skamania jointly, one judge of the superior court.

Sec. 5. RCW 2.08.065 and 1990 c 186 s 2 are each amended to read as follows:

There shall be in the county of Grant, two judges of the superior court; in the county of Okanogan, one judge of the superior court; in the county of Mason, (~~one~~) two judges of the superior court; in the county of Thurston, six judges of the superior court; in the counties of Pacific and Wahkiakum jointly, one judge of the superior court; in the counties of Ferry, Pend

Oreille, and Stevens jointly, two judges of the superior court; and in the counties of San Juan and Island jointly, two judges of the superior court.

Sec. 6. RCW 2.32.180 and 1990 c 186 s 3 are each amended to read as follows:

It shall be and is the duty of each and every superior court judge in counties or judicial districts in the state of Washington having a population of over thirty-five thousand inhabitants to appoint, or said judge may, in any county or judicial district having a population of over twenty-five thousand and less than thirty-five thousand, appoint a stenographic reporter to be attached to the court holden by ~~((him))~~ such judge who shall have had at least three years' experience as a skilled, practical reporter, or who upon examination shall be able to report and transcribe accurately one hundred and seventy-five words per minute of the judge's charge or two hundred words per minute of testimony each for five consecutive minutes; said test of proficiency, in event of inability to meet qualifications as to length of time of experience, to be given by an examining committee composed of one judge of the superior court and two official reporters of the superior court of the state of Washington, appointed by the president judge of the superior court judges association of the state of Washington: PROVIDED, That a stenographic reporter shall not be required to be appointed for the seven additional judges of the superior court authorized for appointment by section 1, chapter 323, Laws of 1987, the additional superior court judge authorized by section 1, chapter 66, Laws of 1988, the additional superior court judges authorized by sections 2 and 3, chapter 328, Laws of 1989, ~~((or))~~ the additional superior court judges authorized by sections 1 and 2, chapter 186, Laws of 1990, or the additional superior court judges authorized by sections 1 through 5 of this 1991 act. Appointment of a stenographic reporter is not required for any additional superior court judge authorized after July 1, 1991. The initial judicial appointee shall serve for a period of six years; the two initial reporter appointees shall serve for a period of four years and two years, respectively, from September 1, 1957; thereafter on expiration of the first terms of service, each newly appointed member of said examining committee to serve for a period of six years. In the event of death or inability of a member to serve, the president judge shall appoint a reporter or judge, as the case may be, to serve for the balance of the unexpired term of the member whose inability to serve caused such vacancy. The examining committee shall grant certificates to qualified applicants. Administrative and procedural rules and regulations shall be promulgated by said examining committee, subject to approval by the said president judge.

The stenographic reporter upon appointment shall thereupon become an officer of the court and shall be designated and known as the official reporter for the court or judicial district for which he is appointed: PROVIDED, That in no event shall there be appointed more official reporters in any

one county or judicial district than there are superior court judges in such county or judicial district; the appointments in each class AA county shall be made by the majority vote of the judges in said county acting en banc; the appointments in class A counties and counties of the first class may be made by each individual judge therein or by the judges in said county acting en banc. Each official reporter so appointed shall hold office during the term of office of the judge or judges appointing him, but may be removed for incompetency, misconduct or neglect of duty, and before entering upon the discharge of his duties shall take an oath to perform faithfully the duties of his office, and file a bond in the sum of two thousand dollars for the faithful discharge of his duties. Such reporter in each court is hereby declared to be a necessary part of the judicial system of the state of Washington.

NEW SECTION. Sec. 7. Section 2 of this act shall take effect January 1, 1992. Section 4 of this act shall take effect July 1, 1992. Sections 1, 3, and 5 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991.

NEW SECTION. Sec. 8. The additional judicial positions created by sections 1, 2, 3, 4, and 5 of this act shall be effective only if each county through its duly constituted legislative authority documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute.

NEW SECTION. Sec. 9. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.

Passed the House March 14, 1991.

Passed the Senate April 15, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 300

[Substitute House Bill 1782]

COUNTY COURT COMMISSIONERS

Effective Date: 12/5/91

AN ACT Relating to county court commissioners; amending RCW 2.24.010, 4.12.040, 4.12.050, 26.12.050, 26.12.060, 71.05.135, and 71.05.137; and providing a contingent effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.24.010 and 1990 c 191 s 1 are each amended to read as follows:

There may be appointed in each county or judicial district, by the judges of the superior court having jurisdiction therein, one or more court commissioners for said county or judicial district. Each such commissioner shall be a citizen of the United States and shall hold the office during the pleasure of the judges making the appointment. The number of court commissioners in each county shall be determined by the legislative authority of that county.

Sec. 2. RCW 4.12.040 and 1989 c 15 s 1 are each amended to read as follows:

(1) No judge or court commissioner of a superior court of the state of Washington shall sit to hear or try any action or proceeding when it shall be established as hereinafter provided that said judge or commissioner is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause. In such case the presiding judge in judicial districts where there is more than one judge shall forthwith transfer the action to another department of the same court, or call in a judge from some other court. In all judicial districts where there is only one judge, a certified copy of the motion and affidavit filed in the cause shall be transmitted by the clerk of the superior court to the clerk of the superior court designated by the chief justice of the supreme court. Upon receipt the clerk of said superior court shall transmit the forwarded affidavit to the presiding judge who shall direct a visiting judge to hear and try such action as soon as convenient and practical.

(2) The presiding judge in judicial districts where there is more than one judge, or the presiding judge of judicial districts where there is only one judge, may send a case for trial to another court if the convenience of witnesses or the ends of justice will not be interfered with by such a course and the action is of such a character that a change of venue may be ordered: PROVIDED, That in criminal prosecutions the case shall not be sent for trial to any court outside the county unless the accused shall waive his right to a trial by a jury of the county in which the offense is alleged to have been committed.

Sec. 3. RCW 4.12.050 and 1941 c 148 s 1 are each amended to read as follows:

Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion, supported by affidavit that the judge or court commissioner before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he or she cannot, have a fair and impartial trial before such judge or court commissioner: PROVIDED, That such motion and affidavit is filed and called to the attention of the judge or court commissioner before he or she shall have made any ruling whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, of the hearing of which the party

making the affidavit has been given notice, and before the judge or court commissioner presiding has made any order or ruling involving discretion, but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this proviso; and in any event, in counties where there is but one resident judge, such motion and affidavit shall be filed not later than the day on which the case is called to be set for trial: AND PROVIDED FURTHER, That notwithstanding the filing of such motion and affidavit, if the parties shall, by stipulation in writing agree, such judge or commissioner may hear argument and rule upon any preliminary motions, demurrers, or other matter thereafter presented: AND PROVIDED FURTHER, That no party or attorney shall be permitted to make more than one such application in any action or proceeding under this section and RCW 4.12.040.

Sec. 4. RCW 26.12.050 and 1989 c 199 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in class "A" counties and counties of the first through ninth classes, the superior court may appoint the following persons to assist the family court in disposing of its business:

(a) One or more ~~((attorneys to act as family))~~ court commissioners as authorized pursuant to chapter 2.24 RCW, and

(b) Such investigators, stenographers and clerks as the court shall find necessary to carry on the work of the family court.

(2) ~~((The county legislative authority must approve the creation of family court commissioner positions:~~

~~(3))~~ The appointment of commissioners shall be in accordance with chapter 2.24 RCW, and other appointments provided for in this section shall be made by majority vote of the judges of the superior court of the county and may be made in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. ((Family court commissioners and)) Investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. ~~((A person appointed as a family court commissioner may also be appointed to any other commissioner position authorized by law.))~~

Sec. 5. RCW 26.12.060 and 1988 c 232 s 4 are each amended to read as follows:

The ~~((family))~~ court commissioners shall: (1) Receive all applications and complaints filed in the family court for the purpose of disposing of them pursuant to this chapter; (2) investigate the facts upon which to base warrants, subpoenas, orders or directions in actions or proceedings filed in or

transferred to the family court pursuant to this chapter; (3) ~~((for the purpose of this chapter;))~~ exercise all the powers and perform all the duties of ~~((regular))~~ court commissioners; (4) hold conciliation conferences with parties to and hearings in proceedings under this chapter and make written reports of all proceedings had which shall become a part of the record of the family court; (5) provide such supervision in connection with the exercise of its jurisdiction as the judge of the family court may order; (6) cause the orders and findings of the family court to be entered in the same manner as orders and findings are entered in cases in the superior court; (7) cause such other reports to be made and records kept as will indicate the value and extent of such conciliation service; and (8) conduct hearings under chapter 13.34 RCW as provided in RCW 13.04.021.

Sec. 6. RCW 71.05.135 and 1989 c 174 s 1 are each amended to read as follows:

In class A counties and counties of the first through ninth classes, the superior court may appoint court commissioners in accordance with chapter 2.24 RCW and may appoint the following additional persons to assist the superior court in disposing of its business: PROVIDED, That such positions may not be created without prior consent of the county legislative authority:

~~((1) One or more attorneys to act as mental health commissioners; and~~

~~(2))~~ Such investigators, stenographers, and clerks as the court shall find necessary to carry on the work of the ~~((mental health))~~ court commissioners.

The additional appointments provided for in this section shall be made by a majority vote of the judges of the superior court of the county and may be in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. ~~((Mental health commissioners and))~~ Investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. ~~((A person appointed as a mental health commissioner may also be appointed to any other commissioner position authorized by law.))~~

Sec. 7. RCW 71.05.137 and 1989 c 174 s 2 are each amended to read as follows:

The judges of the superior court of the county by majority vote may authorize ~~((mental health))~~ court commissioners, appointed pursuant to chapter 2.24 RCW ((71.05.135)), to perform any or all of the following duties:

- (1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;
- (2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court.

NEW SECTION. Sec. 8. This act shall take effect if the proposed amendment to Article IV, section 23 of the state Constitution affecting the number of county court commissioners is validly submitted to and is approved and ratified by the voters at the next general election held. If the proposed amendment is not so approved and ratified, this act is void in its entirety.

Passed the House March 18, 1991.

Passed the Senate April 12, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 301

[Engrossed Substitute House Bill 1884]

DOMESTIC VIOLENCE PREVENTION AND TREATMENT

Effective Date: 7/28/91 – Except Section 14 which becomes effective on 5/20/91.

AN ACT Relating to domestic violence; amending RCW 7.68.070, 10.99.020, 10.99.040, 10.99.050, 26.50.110, 26.50.010, 70.123.020, 42.17.310, 26.44.140, and 82.14.340; adding a new section to chapter 26.50 RCW; adding new sections to chapter 70.123 RCW; creating new sections; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

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

The collective costs to the community for domestic violence include the systematic destruction of individuals and their families, lost lives, lost productivity, and increased health care, criminal justice, and social service costs.

Children growing up in violent homes are deeply affected by the violence as it happens and could be the next generation of batterers and victims.

Many communities have made headway in addressing the effects of domestic violence and have devoted energy and resources to stopping this violence. However, the process for breaking the cycle of abuse is lengthy. No single system intervention is enough in itself.

An integrated system has not been adequately funded and structured to assure access to a wide range of services, including those of the

law/safety/justice system, human service system, and health care system. These services need to be coordinated and multidisciplinary in approach and address the needs of victims, batterers, and children from violent homes.

Given the lethal nature of domestic violence and its effect on all within its range, the community has a vested interest in the methods used to stop and prevent future violence. Clear standards of quality are needed so that perpetrator treatment programs receiving public funds or court-ordered referrals can be required to comply with these standards.

While incidents of domestic violence are not caused by perpetrator's use of alcohol and illegal substances, substance abuse may be a contributing factor to domestic violence and the injuries and deaths that result from it.

There is a need for consistent training of professionals who deal frequently with domestic violence or are in a position to identify domestic violence and provide support and information.

Much has been learned about effective interventions in domestic violence situations; however, much is not yet known and further study is required to know how to best stop this violence.

Sec. 2. RCW 7.68.070 and 1990 c 3 s 502 are each amended to read as follows:

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW as now or hereafter amended except as provided in this section:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 as now or hereafter amended are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 as now or hereafter amended are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 as now or hereafter amended are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim, as determined by a reasonable review of the police report and, in cases of domestic violence, an assessment that takes into consideration the primary physical aggressor criteria set forth in RCW 10.31.100(2)(b);

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 as now or hereafter amended shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: PROVIDED, That benefits for burial expenses shall not exceed the maximum cost used by the department of social and health services for the funeral and burial of a deceased indigent person under chapter 74.08 RCW in any claim: PROVIDED FURTHER, That if the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;

(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.

No other benefits may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 as now or hereafter amended for permanent total disability proximately caused by the criminal

act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: **PROVIDED**, That if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018 as now or hereafter amended:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 as now or hereafter amended for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 as now or hereafter amended for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: **PROVIDED**, That no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 as now or hereafter amended for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 as now or hereafter amended apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 as now or hereafter amended are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Except for medical benefits authorized under RCW 7.68.080, no more than thirty thousand dollars shall be granted as a result of a single injury or death, except that benefits granted as the result of total permanent disability or death shall not exceed forty thousand dollars.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars.

(15) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

(16) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act, except to the extent that the costs for such services exceed service limits established by the department of social and health services.

(17) In addition to other benefits provided under this chapter, victims of domestic violence as defined in RCW 10.99.020 are entitled to receive appropriate counseling. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Benefits for victims of domestic violence shall be based on

the entire history of domestic violence experienced by the victim in the specific relationship for which benefits are claimed.

Sec. 3. RCW 10.99.020 and 1986 c 257 s 8 are each amended to read as follows:

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

(1) "Family or household members" means spouses, former spouses, ~~((adult persons related by blood or marriage, persons who are presently residing together or who have resided together in the past, and))~~ persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, and adult persons who are presently residing together or who have resided together in the past.

(2) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

- (a) Assault in the first degree (RCW 9A.36.011);
 - (b) Assault in the second degree (RCW 9A.36.021);
 - (c) Assault in the third degree (RCW 9A.36.031);
 - (d) Assault in the fourth degree (RCW 9A.36.041);
 - (e) Reckless endangerment in the first degree (RCW 9A.36.045);
 - (f) Reckless endangerment (~~((in the second degree))~~) in the second degree (RCW 9A.36.050);
 - ~~((g))~~ (g) Coercion (RCW 9A.36.070);
 - ~~((h))~~ (h) Burglary in the first degree (RCW 9A.52.020);
 - ~~((i))~~ (i) Burglary in the second degree (RCW 9A.52.030);
 - ~~((j))~~ (j) Criminal trespass in the first degree (RCW 9A.52.070);
 - ~~((k))~~ (k) Criminal trespass in the second degree (RCW 9A.52.080);
 - ~~((l))~~ (l) Malicious mischief in the first degree (RCW 9A.48.070);
 - ~~((m))~~ (m) Malicious mischief in the second degree (RCW 9A.48.080);
 - ~~((n))~~ (n) Malicious mischief in the third degree (RCW 9A.48.090);
 - ~~((o))~~ (o) Kidnapping in the first degree (RCW 9A.40.020);
 - ~~((p))~~ (p) Kidnapping in the second degree (RCW 9A.40.030);
 - ~~((q))~~ (q) Unlawful imprisonment (RCW 9A.40.040);
 - ~~((r))~~ (r) Violation of the provisions of a restraining order restraining the person or excluding the person from a residence (RCW 26.09.300);
 - ~~((s))~~ (s) Violation of the provisions of a protection order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, or 26.50.130);
 - ~~((t))~~ (t) Rape in the first degree (RCW 9A.44.040); and
 - ~~((u))~~ (u) Rape in the second degree (RCW 9A.44.050).
- (3) "Victim" means a family or household member who has been subjected to domestic violence.

Sec. 4. RCW 10.99.040 and 1985 c 303 s 10 are each amended to read as follows:

(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim. The no-contact order shall also be issued in writing as soon as possible. If the court has probable cause to believe that the person charged or arrested is likely to use or display or threaten to use a deadly weapon as defined in RCW 9A.04.110 in any further acts of violence, the court may also require that person to surrender any deadly weapon in that person's immediate possession or control, or subject to that person's immediate possession or control, to the sheriff of the county or chief of police of the municipality in which that person resides or to the defendant's counsel for safekeeping.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended.

(4) Willful violation of a court order issued under subsection (2) or (3) of this section is a misdemeanor. Any assault that is a violation of an order issued under this section and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of a protective order issued under this section that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. The written order releasing the person charged or arrested shall contain the court's directives and shall bear the

legend: Violation of this order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony. A certified copy of the order shall be provided to the victim. If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed. Such orders need not be entered into the computer information system in this state which is used by law enforcement agencies to list outstanding warrants.

(5) Whenever an order prohibiting contact is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall forthwith enter the order for one year or until the expiration date specified on the order into any computer information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.

Sec. 5. RCW 10.99.050 and 1985 c 303 s 12 are each amended to read as follows:

(1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

(2) Willful violation of a court order issued under this section is a misdemeanor. Any assault that is a violation of an order issued under this section and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of a protective order issued under this section that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.

(3) Whenever an order prohibiting contact is issued pursuant to this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall forthwith enter the order for one year into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement

agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.

Sec. 6. RCW 26.50.110 and 1984 c 263 s 12 are each amended to read as follows:

(1) Whenever an order for protection is granted under this chapter and the respondent or person to be restrained knows of the order, a violation of the restraint provisions or of a provision excluding the person from a residence is a misdemeanor.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter that restrains the person or excludes the person from a residence, if the person restrained knows of the order.

(3) A violation of an order for protection shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of a protective order issued under this chapter that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order for protection granted under this chapter, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

NEW SECTION. Sec. 7. The department of social and health services shall adopt rules for standards of approval of domestic violence perpetrator programs that accept perpetrators of domestic violence into treatment to satisfy court orders or that represent the programs as ones that treat domestic violence perpetrators. The treatment must meet the following minimum qualifications:

(1) All treatment must be based upon a full, complete clinical intake including: Current and past violence history; a lethality risk assessment; a complete diagnostic evaluation; a substance abuse assessment; criminal history; assessment of cultural issues, learning disabilities, literacy, and special language needs; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual.

(2) To facilitate communication necessary for periodic safety checks and case monitoring, the program must require the perpetrator to sign the following releases:

(a) A release for the program to inform the victim and victim's community and legal advocates that the perpetrator is in treatment with the program, and to provide information, for safety purposes, to the victim and victim's community and legal advocates;

(b) A release to prior and current treatment agencies to provide information on the perpetrator to the program; and

(c) A release for the program to provide information on the perpetrator to relevant legal entities including: Lawyers, courts, parole, probation, child protective services, and child welfare services.

(3) Treatment must be for a minimum treatment period defined by the secretary of the department by rule. The weekly treatment sessions must be in a group unless there is a documented, clinical reason for another modality. Any other therapies, such as individual, marital, or family therapy, substance abuse evaluations or therapy, medication reviews, or psychiatric interviews, may be concomitant with the weekly group treatment sessions described in this section but not a substitute for it.

(4) The treatment must focus primarily on ending the violence, holding the perpetrator accountable for his or her violence, and changing his or her behavior. The treatment must be based on nonvictim-blaming strategies and philosophies and shall include education about the individual, family, and cultural dynamics of domestic violence.

(5) Satisfactory completion of treatment must be contingent upon the perpetrator meeting specific criteria, defined by rule by the secretary of the department, and not just upon the end of a certain period of time or a certain number of sessions.

(6) The program must have policies and procedures for dealing with reoffenses and noncompliance.

(7) All evaluation and treatment services must be provided by, or under the supervision of, qualified personnel.

(8) The secretary of the department may adopt rules and establish fees as necessary to implement this section.

Sec. 8. RCW 26.50.010 and 1984 c 263 s 2 are each amended to read as follows:

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or (b) sexual assault of one family or household member by another.

(2) "Family or household members" means spouses, former spouses, ~~((adult persons related by blood or marriage, persons who are presently residing together, or who have resided together in the past, and))~~ persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage,

and adult persons who are presently residing together or who have resided together in the past.

(3) "Court" includes the superior, district, and municipal courts of the state of Washington.

(4) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

Sec. 9, RCW 70.123.020 and 1979 ex.s. c 245 s 2 are each amended to read as follows:

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

(1) "Shelter" means a place of temporary refuge, offered on a twenty-four hour, seven day per week basis to victims of domestic violence and their children.

(2) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one cohabitant against another.

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

(4) "Victim" means a cohabitant who has been subjected to domestic violence.

(5) "Cohabitant" means a person who is married or who is cohabiting with a person of the opposite sex like husband and wife at the present or at sometime in the past. Any person who has one or more children in common with another person, regardless of whether they have been married or lived together at any time, shall be treated as a cohabitant.

(6) "Community advocate" means a person employed by a local domestic violence program to provide ongoing assistance to victims of domestic violence in assessing safety needs, documenting the incidents and the extent of violence for possible use in the legal system, making appropriate social service referrals, and developing protocols and maintaining ongoing contacts necessary for local systems coordination.

(7) "Domestic violence program" means an agency that provides shelter, advocacy, and counseling for domestic violence victims in a supportive environment.

(8) "Legal advocate" means a person employed by a domestic violence program or court system to advocate for victims of domestic violence, within the criminal and civil justice systems, by attending court proceedings, assisting in document and case preparation, and ensuring linkage with the community advocate.

(9) "Secretary" means the secretary of the department of social and health services or the secretary's designee.

NEW SECTION. Sec. 10. Client records maintained by domestic violence programs shall not be subject to discovery in any judicial proceeding unless:

(1) A written pretrial motion is made to a court stating that discovery is requested of the client's domestic violence records;

(2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why discovery is requested of the domestic violence program's records;

(3) The court reviews the domestic violence program's records in camera to determine whether the domestic violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records; and

(4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

NEW SECTION. Sec. 11. The department of social and health services shall establish a technical assistance grant program to assist local communities in determining how to respond to domestic violence. The goals of the program shall be to coordinate and expand existing services to:

(1) Serve any individual affected by domestic violence with the primary focus being the safety of the victim;

(2) Assure an integrated, comprehensive, accountable community response that is adequately funded and sensitive to the diverse needs of the community;

(3) Create a continuum of services that range from prevention, crisis intervention, and counseling through shelter, advocacy, legal intervention, and representation to longer term support, counseling, and training; and

(4) Coordinate the efforts of government, the legal system, the private sector, and a range of service providers, such as doctors, nurses, social workers, teachers, and child care workers.

NEW SECTION. Sec. 12. (1) A county or group of counties may apply to the department for a technical assistance grant to develop a comprehensive county plan for dealing with domestic violence. The county authority may contract with a local nonprofit entity to develop the plan.

(2) County comprehensive plans shall be developed in consultation with the department, domestic violence programs, schools, law enforcement, and health care, legal, and social service providers that provide services to persons affected by domestic violence.

(3) County comprehensive plans shall be based on the following principles:

(a) The safety of the victim is primary;

(b) The community needs to be well-educated about domestic violence;

(c) Those who want to and who should intervene need to know how to do so effectively;

(d) Adequate services, both crisis and long-term support, should exist throughout all parts of the county;

(e) Police and courts should hold the batterer accountable for his or her crimes;

(f) Treatment for batterers should be provided by qualified counselors; and

(g) Coordination teams are needed to ensure that the system continues to work over the coming decades.

(4) County comprehensive plans shall provide for the following:

(a) Public education about domestic violence;

(b) Training for professionals on how to recognize domestic violence and assist those affected by it;

(c) Development of protocols among agencies so that professionals respond to domestic violence in an effective, consistent manner;

(d) Development of services to victims of domestic violence and their families, including shelters, safe homes, transitional housing, community and legal advocates, and children's services; and

(e) Local and regional teams to oversee implementation of the system, ensure that efforts continue over the years, and assist with day-to-day and system-wide coordination.

Sec. 13. RCW 42.17.310 and 1990 2nd ex.s. c 1 s 1103 are each amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission

about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

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

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) 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.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

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

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) 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.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Information obtained by the board of pharmacy and its representatives as provided in RCW 69.41.044 and 69.41.280.

(y) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(z) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(aa) Financial and valuable trade information under RCW 51.36.120.

(bb) Effective March 1, 1991, the work and home addresses, other than the city of residence, of a person shall remain undisclosed or be omitted from all documents made available for public review if that person requests in writing, under oath, that these addresses be kept private because disclosure would endanger his or her life, physical safety, or property. This provision does not in any way restrict the sharing or collection of information by state and local governmental agencies required for the daily administration of their duties. The secretary of state shall administer this provision and establish the procedures and rules that are necessary for its operation. An agency that has not been furnished with a request for confidentiality of address information is not liable for damages resulting from its

disclosure of the information. For purpose of service of process, the secretary of state shall serve as agent for each person who submits a request under this subsection. A request shall be of no force or effect if the requester does not include a statement, along with or part of the request, designating the secretary of state as agent of the requester for purposes of service of process.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or a rape crisis center as defined in RCW 70.125.030.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION. Sec. 14. The department of health shall conduct a study to determine whether domestic violence perpetrator counselors should be certified to examine and treat domestic violence perpetrators. The department shall conduct the study according to the criteria set forth in RCW 18.120.110. The department shall report to the house of representatives judiciary committee and the senate law and justice committee regarding its findings and recommendations by September 1, 1992.

Sec. 15. RCW 26.44.140 and 1990 c 3 s 1301 are each amended to read as follows:

The court shall require that an individual who, while acting in a parental role, has physically or sexually abused a child and has been removed from the home pursuant to a court order issued in a proceeding under chapter 13.34 RCW, prior to being permitted to reside in the home where the child resides, complete the treatment and education requirements necessary to protect the child from future abuse. The court may require the individual to continue treatment as a condition for remaining in the home where the child resides.

The department of social and health services or supervising agency shall be responsible for advising the court as to appropriate treatment and education requirements, providing referrals to the individual, monitoring and assessing the individual's progress, informing the court of such progress, and providing recommendations to the court.

The person removed from the home shall pay for these services (~~according to a schedule established by the department of social and health services. This schedule shall be based on the individual's ability to pay~~) unless the person is otherwise eligible to receive financial assistance in paying for such services. Nothing in this section shall be construed to create in any person an entitlement to services or financial assistance in paying for services.

Sec. 16. RCW 82.14.340 and 1990 2nd ex.s. c 1 s 901 are each amended to read as follows:

The legislative authority of any county with a population of two hundred thousand or more, and any other county with a population of one hundred fifty thousand or more that has had its population increase by at least twenty-four percent during the preceding nine years, as certified by the office of financial management for the first day of April of each year, may and, if requested by resolution of the governing bodies of cities in the county with an aggregate population equal to or greater than fifty percent of the total population of the county, as last determined by the office of financial management, shall submit an authorizing proposition to the voters of the county and if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter.

The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such county. The rate of tax shall equal one-tenth of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax).

When distributing moneys collected under this section, the state treasurer shall distribute ten percent of the moneys to the county in which the tax was collected. The remainder of the moneys collected under this section shall be distributed to the county and the cities within the county ratably based on population as last determined by the office of financial management. In making the distribution based on population, the county shall receive that proportion that the unincorporated population of the county bears to the total population of the county and each city shall receive that proportion that the city incorporated population bears to the total county population.

Moneys received from any tax imposed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Moneys received by the county and the

cities within the county from any tax imposed under this section may be expended for domestic violence community advocates, as defined in RCW 70.123.020, if, prior to the effective date of this section and prior to approval of the voters, the legislative authority of the county, which submitted an authorizing proposition to the voters of the county, adopted by ordinance a financial plan that included expenditure of a portion of the moneys received for domestic violence community advocates.

This section expires January 1, 1994.

NEW SECTION. Sec. 17. Section 7 of this act is added to chapter 26.50 RCW.

NEW SECTION. Sec. 18. Sections 10 through 12 of this act are each added to chapter 70.123 RCW.

NEW SECTION. Sec. 19. Section 14 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 shall take effect immediately.

NEW SECTION. Sec. 20. If by June 30, 1991, the omnibus operating budget appropriations act for the 1991-93 biennium does not provide specific funding for sections 2, 7, 11, and 12 of this act, referencing the sections by bill and section number, any such section not referenced is null and void.

Passed the House March 19, 1991.

Passed the Senate April 19, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 302

[Engrossed Substitute House Bill 1389]

FRESHWATER AQUATIC WEED CONTROL

Effective Date: 7/1/91

AN ACT Relating to aquatic plants; adding new sections to chapter 43.21A RCW; adding a new section to chapter 46.16 RCW; creating new sections; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature hereby finds that Eurasian water milfoil and other freshwater aquatic weeds can adversely affect fish populations, reduce habitat for desirable plant and wildlife species, and decrease public recreational opportunities. The legislature further finds that the spread of freshwater aquatic weeds is a state-wide problem and requires a coordinated response among state agencies, local governments, and the public. It is therefore the intent of the legislature to establish a funding

source to reduce the propagation of Eurasian water milfoil and other freshwater aquatic weeds and to manage the problems created by such freshwater aquatic plants.

NEW SECTION. Sec. 2. A new section is added to chapter 43.21A RCW to read as follows:

The freshwater aquatic weeds account is hereby created in the state treasury. Expenditures from this account may only be used as provided in section 4 of this act. Moneys in the account may be spent only after appropriation.

NEW SECTION. Sec. 3. A new section is added to chapter 46.16 RCW to read as follows:

In addition to any other fee required under this chapter, boat trailers shall annually pay a fee of three dollars. The proceeds of this fee shall be deposited in the freshwater aquatic weeds account under section 2 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 43.21A RCW to read as follows:

Funds in the freshwater aquatic weeds account may be appropriated to the department of ecology to develop a freshwater aquatic weeds management program to:

(1) Issue grants to cities, counties, and state agencies to prevent, remove, reduce, or manage excessive freshwater aquatic weeds. Such grants shall only be issued for lakes, rivers, or streams with a public boat launching ramp. The department shall give preference to projects having matching funds or in-kind services;

(2) Develop public education programs relating to preventing the propagation and spread of freshwater aquatic weeds;

(3) Provide technical assistance to local governments and citizen groups; and

(4) Fund demonstration or pilot projects consistent with the purposes of this section.

***NEW SECTION.** Sec. 5. *If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1991, in the omnibus appropriations act, this act shall be null and void.*

*Sec. 5 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 6. 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 shall take effect July 1,

1991, except section 3 of this act shall be effective for vehicle registrations that expire August 31, 1992, and thereafter.

Passed the House March 19, 1991.

Passed the Senate April 16, 1991.

Approved by the Governor May 20, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 20, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 5, Engrossed Substitute House Bill No. 1389 entitled:

"AN ACT Relating to aquatic plants."

This bill assesses an annual \$3.00 surcharge on boat trailers in order to fund a program to address the serious environmental damage and loss of recreational opportunities caused by freshwater aquatic weeds. These problem weeds are difficult to check because these plants are usually non-native and lack any natural biological controls. Boats and trailers have been identified as a source of the spread of such problem weeds and therefore the funding mechanism contained in this bill is appropriately user-fee based.

While the legislature provided the funding mechanism, it neglected to provide an appropriation for the expenditure of these funds. I believe that establishing and funding of the freshwater aquatic weeds account is an important first step in addressing the damage caused by these weeds and will work with the legislature to provide the authority necessary to begin program operations. For this reason, I have vetoed section 5, the "null and void" clause, of Engrossed Substitute House Bill No. 1389.

With the exception of section 5, Engrossed Substitute House Bill No. 1389 is approved."

CHAPTER 303

[Senate Bill 5558]

CHILD LABOR LAWS ENFORCEMENT

Effective Date: 7/28/91 - Except Sections 2 & 8 which become effective on 5/20/91; & Sections 3 through 7 which become effective on 4/1/92.

AN ACT Relating to child labor regulation; amending RCW 49.12.121, 49.12.170, and 49.12.123; adding new sections to chapter 49.12 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

***Sec. 1. RCW 49.12.121 and 1989 c 1 s 3 are each amended to read as follows:**

(~~The committee, or the director,~~) The department may at any time inquire into wages, hours, and conditions of labor of minors employed in any trade, business or occupation in the state of Washington (~~and may~~). The department shall, by October 1, 1991, adopt special rules for the protection of the safety, health and welfare of minor employees, that replace existing rules and are consistent with federal law governing the employment of minors. The rules shall be revised as necessary to remain consistent with federal

law. The minimum wage for minors shall be as prescribed in RCW 49.46-.020. The committee shall issue work permits to employers for the employment of minors, after being assured the proposed employment of a minor meets the standards set forth concerning the health, safety and welfare of minors as set forth in the rules and regulations promulgated by the committee. No minor person shall be employed in any occupation, trade or industry subject to this 1973 amendatory act, unless a work permit has been properly issued, with the consent of the parent, guardian or other person having legal custody of the minor and with the approval of the school which such minor may then be attending.

***Sec. 1 was vetoed, see message at end of chapter.**

NEW SECTION. Sec. 2. Upon adoption of the rules under section 1 of this act, the department of labor and industries shall implement a comprehensive program to inform employers of the rules adopted. The program shall include mailings, public service announcements, seminars, and any other means deemed appropriate to inform all Washington employers of their rights and responsibilities regarding the employment of minors.

NEW SECTION. Sec. 3. (1)(a) Except as otherwise provided in subsection (2) of this section, if the director, or the director's designee, finds that an employer has violated any of the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, a citation stating the violations shall be issued to the employer. The citation shall be in writing, describing the nature of the violation including reference to the standards, rules, or orders alleged to have been violated. An initial citation for failure to comply with RCW 49.12.123 or rules requiring a minor work permit and maintenance of records shall state a specific and reasonable time for abatement of the violation to allow the employer to correct the violation without penalty. The director or the director's designee may establish a specific time for abatement of other nonserious violations in lieu of a penalty for first time violations. The citation and a proposed penalty assessment shall be given to the highest management official available at the workplace or be mailed to the employer at the workplace. In addition, the department shall mail a copy of the citation and proposed penalty assessment to the central personnel office of the employer. Citations issued under this section shall be posted at or near the place where the violation occurred.

(b) Except when an employer corrects a violation as provided in (a) of this subsection, he or she shall be assessed a civil penalty of not more than one thousand dollars depending on the size of the business and the gravity of the violation. The employer shall pay the amount assessed within thirty days of receipt of the assessment or notify the director of his or her intent to appeal the citation or the assessment penalty as provided in section 4 of this act.

(2) If the director, or the director's designee, finds that an employer has committed a serious or repeated violation of the requirements of RCW 49.12.121 or 49.12.123, or any rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, the employer is subject to a civil penalty of not more than one thousand dollars for each day the violation continues. For the purposes of this subsection, a serious violation shall be deemed to exist if death or serious physical harm has resulted or is imminent from a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use by the employer, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) In addition to any other authority provided in this section, if, upon inspection or investigation, the director, or director's designee, believes that an employer has violated RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, and that the violation creates a danger from which there is a substantial probability that death or serious physical harm could result to a minor employee, the director, or director's designee, may issue an order immediately restraining the condition, practice, method, process, or means creating the danger in the workplace. An order issued under this subsection may require the employer to take steps necessary to avoid, correct, or remove the danger and to prohibit the employment or presence of a minor in locations or under conditions where the danger exists.

(4) An employer who violates any of the posting requirements of RCW 49.12.121 or rules adopted implementing RCW 49.12.121 shall be assessed a civil penalty of not more than one hundred dollars for each violation.

(5) A person who gives advance notice, without the authority of the director, of an inspection to be conducted under this chapter shall be assessed a civil penalty of not more than one thousand dollars.

(6) Penalties assessed under this section shall be paid to the director and deposited into the general fund.

NEW SECTION. Sec. 4. A person, firm, or corporation aggrieved by an action taken or decision made by the department under section 3 of this act may appeal the action or decision to the director by filing notice of the appeal with the director within thirty days of the department's action or decision. A notice of appeal filed under this section shall stay the effectiveness of a citation or notice of the assessment of a penalty pending review of the appeal by the director, but such appeal shall not stay the effectiveness of an order of immediate restraint issued under section 3 of this act. Upon receipt of an appeal, a hearing shall be held in accordance with chapter 34.05 RCW. The director shall issue all final orders after the hearing. The final orders are subject to appeal in accordance with chapter 34.05 RCW. Orders not appealed within the time period specified in chapter 34.05 RCW are final and binding.

NEW SECTION. Sec. 5. An employer who knowingly or recklessly violates the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, is guilty of a gross misdemeanor. An employer whose practices in violation of the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, result in the death or permanent disability of a minor employee is guilty of a class C felony.

Sec. 6. RCW 49.12.170 and 1973 2nd ex.s. c 16 s 16 are each amended to read as follows:

Except as otherwise provided in section 3 or 5 of this act, any employer employing any person for whom a minimum wage or standards, conditions, and hours of labor have been specified, at less than said minimum wage, or under standards, or conditions of labor or at hours of labor prohibited by the rules and regulations of the committee; or violating any other of the provisions of this 1973 amendatory act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars.

NEW SECTION. Sec. 7. The penalties established in sections 3 and 5 of this act for violations of RCW 49.12.121 and 49.12.123 are exclusive remedies.

Sec. 8. RCW 49.12.123 and 1983 c 3 s 156 are each amended to read as follows:

In implementing state policy to assure the attendance of children in the public schools it shall be required of any person, firm or corporation employing any minor under the age of eighteen years to obtain a work permit as set forth in RCW 49.12.121 and keep such permit on file during the employment of such minor, and upon termination of such employment of such minor to return such permit to the ((~~industrial welfare committee of the~~)) department of labor and industries.

NEW SECTION. Sec. 9. Sections 2 through 5 and 7 of this act are each added to chapter 49.12 RCW.

NEW SECTION. Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 11. Sections 1, 2, and 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 12. Sections 3 through 7 of this act shall take effect April 1, 1992.

Passed the Senate March 15, 1991.

Passed the House April 16, 1991.

Approved by the Governor May 20, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 20, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1, Senate Bill No. 5558, entitled:

"AN ACT Relating to child labor regulation."

This bill would authorize the Department of Labor and Industries to issue civil penalties for violations of the state's child labor laws. I strongly support this authority.

Section 1 of this bill would require the Department of Labor and Industries to replace existing rules governing the employment of minors with rules which are consistent with federal law. Section 1 also requires the Department of Labor and Industries to revise child labor rules in the future as necessary to remain consistent with federal law. These requirements would be an unacceptable abdication of the State's responsibility and duty to its children.

Section 1 may be an unconstitutional delegation of legislative authority. Even if section 1 were upheld, provisions of state child labor law which were inconsistent with federal law might be legally unenforceable, leaving the state with no law under which to enforce some areas of child labor.

Beyond the problems of authority and process, I also object to the policy implications of section 1. Under current federal law, section 1 might effectively repeal important state policies, such as regulation of the hours of employment for sixteen- and seventeen-year-old children. The state might also be required to repeal its regulation of meal and rest breaks for children. Further, section 1 might place in jeopardy the state's newly enacted regulations of agricultural employment of children.

The remainder of the bill establishes new tools to protect our children from working conditions and hours of employment which are detrimental to their health, safety and education. It is crucial that the state be able to regulate hours of employment for children to ensure that education, not employment, is the first priority for Washington's children.

For the reasons stated, I have vetoed section 1 of Senate Bill No. 5558.

With the exception of section 1, Senate Bill No. 5558 is approved."

CHAPTER 304

[Substitute House Bill 1709]

PUBLIC WATER SYSTEMS—ANNUAL OPERATING PERMITS

Effective Date: 7/28/91

AN ACT Relating to public water system operating permits; amending RCW 70.119A-.020, 70.119A.030, and 70.119A.060; adding new sections to chapter 70.119A RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

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

(1) The responsibility for ensuring that the citizens of this state have a safe and reliable drinking water supply is shared between local government and state government, and is the obligation of every public water system;

(2) A rapid increase in the number of public water systems supplying drinking water to the citizens of this state has significantly increased the burden on both local and state government to monitor and enforce compliance by these systems with state laws that govern planning, design, construction, operation, maintenance, financing, management, and emergency response;

(3) The federal safe drinking water act imposes on state and local governments and the public water systems of this state significant new responsibilities for monitoring, testing, and treating drinking water supplies; and

(4) Existing drinking water programs at both the state and local government level need additional authorities to enable them to more comprehensively and systematically address the needs of the public water systems of this state and assure that the public health and safety of its citizens are protected.

Therefore, annual operating permit requirements shall be established in accordance with this chapter. The operating permit requirements shall be administered by the department and shall be used as a means to assure that public water systems provide safe and reliable drinking water to the public. The department and local government shall conduct comprehensive and systematic evaluations to assess the adequacy and financial viability of public water systems. The department may impose permit conditions, requirements for system improvements, and compliance schedules in order to carry out the purpose of this act.

Sec. 2. RCW 70.119A.020 and 1991 c 3 s 370 are each amended to read as follows:

Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

(1) "Department" means the department of health.

(2) "Local board of health" means the city, town, county, or district board of health.

(3) "Local health jurisdiction" means an entity created under chapter 70.05, 70.08, or 70.46 RCW which provides public health services to persons within the area.

(4) "Public water system" means any system, excluding a system serving only one single-family residence (~~(, which provides piped water for human consumption)~~) and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under

control of the purveyor but primarily used in connection with the system, including:

(a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and

(b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.

(5) "Order" means a written direction to comply with a provision of the regulations adopted under RCW 43.20.050(2)(a) or 70.119.050 or to take an action or a series of actions to comply with the regulations.

(6) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual, or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.

(7) "Regulations" means rules adopted to carry out the purposes of this chapter.

(8) "Federal safe drinking water act" means the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., as now in effect or hereafter amended.

(9) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county, or district public health department.

(10) "Person" includes, but is not limited to, natural persons, municipal corporations, governmental agencies, firms, companies, mutual or cooperative associations, institutions, and partnerships. It also means the authorized agents of any such entities.

(11) "Public health emergency" means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent.

(12) "Secretary" means the secretary of the department of health.

(13) "State board of health" is the board created by RCW 43.20.030.

Sec. 3. RCW 70.119A.030 and 1989 c 422 s 6 are each amended to read as follows:

(1) The secretary or his or her designee or the local health officer may declare a public health emergency. As limited by RCW 70.119A.040, the department may impose penalties for violations of laws or regulations that are determined to be a public health emergency.

(2) As limited by RCW 70.119A.040, the department may impose penalties for failure to comply with an order of the department, or of an authorized local board of health, when the order:

(a) Directs any person to stop work on the construction or alteration of a public water system when plans and specifications for the construction or alteration have not been approved as required by the regulations, or when

the work is not being done in conformity with approved plans and specifications;

(b) Requires any person to eliminate a cross-connection to a public water system by a specified time; or

(c) Requires any person to cease violating any regulation relating to public water systems, ((or)) to take specific actions within a specified time to place a public water system in compliance with regulations adopted under chapters 43.20 and 70.119 RCW, to apply for an operating permit as required under section 5 of this act or to comply with any conditions or requirements imposed as part of an operating permit.

Sec. 4. RCW 70.119A.060 and 1990 c 132 s 4 are each amended to read as follows:

(1) In order to assure safe and reliable public drinking water and to protect the public health, public water systems shall:

(a) Protect the water sources used for drinking water;

(b) Provide treatment adequate to assure that the public health is protected;

(c) Provide and effectively operate and maintain public water system facilities;

(d) Plan for future growth and assure the availability of safe and reliable drinking water;

(e) Provide the department with the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system, including any changes to this information, and provide to users the name and twenty-four hour telephone number of an emergency contact person; and

(f) Take whatever investigative or corrective action is necessary to assure that a safe and reliable drinking water supply is continuously available to users.

(2) The department and local health jurisdictions shall carry out the rules and regulations of the state board of health adopted pursuant to RCW 43.20.050(2)(a) and other rules adopted by the department relating to public water systems.

NEW SECTION. Sec. 5. (1) No person may operate a group A public water system unless the person first submits an application to the department and receives an operating permit as provided in this section. A new application must be submitted upon any change in ownership of the system. Any person operating a public water system on the effective date of this section may continue to operate the system until the department takes final action, including any time necessary for a hearing under subsection (3) of this section, on a permit application submitted by the person operating the system under the rules adopted by the department to implement this section.

(2) The department may require that each application include the information that is reasonable and necessary to determine that the system complies with applicable standards and requirements of the federal safe drinking water act, state law, and rules adopted by the department or by the state board of health.

(3) Following its review of the application, its supporting material, and any information received by the department in its investigation of the application, the department shall issue or deny the operating permit. The department shall act on initial permit applications as expeditiously as possible, and shall in all cases either grant or deny the application within one hundred twenty days of receipt of the application or of any supplemental information required to complete the application. The applicant for a permit shall be entitled to file an appeal in accordance with chapter 34.05 RCW if the department denies the initial or subsequent applications or imposes conditions or requirements upon the operator. Any operator of a public water system that requests a hearing may continue to operate the system until a decision is issued after the hearing.

(4) At the time of initial permit application or at the time of permit renewal the department may impose such permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will provide a safe and reliable water supply to its users.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each application shall be accompanied by an annual fee as follows:

(a) The annual fee for public water supply systems serving fifteen to forty-nine service connections shall be twenty-five dollars.

(b) The annual fee for public water supply systems serving fifty to three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection.

(c) The annual fee for public water supply systems serving three thousand three hundred thirty-four to fifty-three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection plus ten cents for each service connection in excess of three thousand three hundred thirty-three service connections.

(d) The annual fee for public water supply systems serving fifty-three thousand three hundred thirty-four or more service connections shall be ten thousand dollars.

(e) In addition to the fees under (a) through (d) of this subsection, the department may charge an additional one-time fee of five dollars for each service connection in a new water system.

(7) The department may phase-in the implementation for any group of systems provided the schedule for implementation is established by rule. Prior to implementing the operating permit requirement on water systems having less than five hundred service connections, the department shall form a committee composed of persons operating these systems. The committee shall be composed of the department of health, two operators of water systems having under one hundred connections, two operators of water systems having between one hundred and two hundred service connections, two operators of water systems having between two hundred and three hundred service connections, two operators of water systems having between three hundred and four hundred service connections, two operators of water systems having between four hundred and five hundred service connections, and two county public health officials. The members shall be chosen from different geographic regions of the state. This committee shall develop draft rules to implement this section. The draft rules will then be subject to the rule-making procedures in accordance with chapter 34.05 RCW.

(8) The department shall notify existing public water systems of the requirements of RCW 70.119A.030, 70.119A.060, and this section at least one hundred twenty days prior to the date that an application for a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this section.

(9) The department shall issue one operating permit to any approved satellite system management agency. Operating permit fees for approved satellite system management agencies shall be one dollar per connection per year for the total number of connections under the management of the approved satellite agency. The department shall define by rule the meaning of the term "satellite system management agency." If a statutory definition of this term exists, then the department shall adopt by rule a definition consistent with the statutory definition.

(10) For purposes of this section, "group A public water system" and "system" mean those water systems with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections.

NEW SECTION. Sec. 6. The safe drinking water account is created in the general fund of the state treasury. All receipts from the operating permit fees required to be paid under section 5 of this act shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of health to carry out the purposes of this act and to carry out contracts with local governments in accordance with this chapter.

NEW SECTION. Sec. 7. Until July 1, 1996, local governments shall be prohibited from administering a separate operating permit requirement

for public water systems. After July 1, 1996, local governments may establish separate operating permit requirements for public water systems provided the operating permit requirements have been approved by the department. The department shall not approve local operating permit requirements unless the local system will result in an increased level of service to the public water system. There shall not be duplicate operating permit requirements imposed by local governments and the department.

NEW SECTION. Sec. 8. The department shall adopt rules necessary to implement sections 5 through 7 of this act. The requirements of this act shall take effect upon adoption of rules pursuant to this act.

NEW SECTION. Sec. 9. Sections 5 through 7 of this act are each added to chapter 70.119A RCW.

Passed the House March 20, 1991.

Passed the Senate April 18, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 305

[Substitute House Bill 1710]

WATER SYSTEMS OPERATOR CERTIFICATION

Effective Date: 7/28/91

AN ACT Relating to water systems operator certification and registration; amending RCW 70.119.010, 70.119.020, 70.119.030, 70.119.060, 70.119.090, 70.119.100, 70.119.110, and 70.119.130; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.119.010 and 1983 c 292 s 1 are each amended to read as follows:

The legislature declares that competent operation of a public water ((supply)) system is necessary for the protection of the consumers' health, and therefore it is of vital interest to the public. In order to protect the public health and conserve and protect the water resources of the state, it is necessary to provide for the classifying of all public water ((supply)) systems; to require the examination and certification of the persons responsible for the technical operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter.

Sec. 2. RCW 70.119.020 and 1991 c 3 s 369 are each amended to read as follows:

As used in this chapter unless context requires another meaning:

(1) "Board" means the board established pursuant to RCW 70.95B-.070 which shall be known as the water and waste water operator certification board of examiners.

(2) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

(3) "Certified operator" means an individual holding a valid certificate and employed or appointed by any county, water district, municipality, public or private corporation, company, institution, person, or the state of Washington and who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

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

~~((4))~~ (5) "Distribution system" means that portion of a public water ~~((supply))~~ system which stores, transmits, pumps and distributes water to consumers.

~~((5))~~ (6) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as giardia lamblia; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(7) "Group A water system" means a system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. Group A water system does not include a system serving fewer than fifteen single-family residences, regardless of the number of people.

(8) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

~~((6))~~ "Certified operator" means an individual employed or appointed by any county, water district, municipality, public or private corporation, company, institution, person, or the state of Washington who is designated by the employing or appointing officials as the person responsible for active daily technical operation:

~~((7))~~ (9) "Public water ((supply)) system" means any ((water supply system intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission and distribution facilities where water is furnished to any community or group of individuals, or is made available to the public for human consumption or domestic use, but excluding all water supply systems serving one single family residence)) system, excluding a system serving only one single-family residence and a

system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

~~((8))~~ (10) "Purification plant" means that portion of a public water ~~((supply))~~ system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

~~((9))~~ (11) "Secretary" means the secretary of the department of health.

(12) "Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations, three persons will be considered equivalent to one service.

(13) "Surface water" means all water open to the atmosphere and subject to surface runoff.

Sec. 3. RCW 70.119.030 and 1983 c 292 s 3 are each amended to read as follows:

(1) ~~((All public water supply systems which serve either))~~ A public water system shall have a certified operator if:

(a) The system serves one hundred or more services in use at any one time; or

(b) ~~((Twenty-five or more persons which are supplied from a stream, lake or other surface water supply source and which are required by law to use a water filtration system; are required to have a certified operator))~~ It is a group A water system using a surface water source or a ground water source under the direct influence of surface water.

(2) The certified operators shall be in charge of the technical direction of a water system's operation, or an operating shift of such a system, or a major segment of a system necessary for monitoring or improving the quality of water. The operator shall be certified as provided in RCW 70.119.050.

~~((2))~~ (3) The amount of time that a certified operator shall be required to be present shall be based upon the time required to properly operate and maintain the public water ~~((supply))~~ system as designed and constructed in accordance with RCW 43.20.050. The employing or appointing officials shall designate the position or positions requiring mandatory certification within their individual systems and shall assure that such certified operators are responsible for the system's technical operation.

~~((3))~~ (4) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis.

Sec. 4. RCW 70.119.060 and 1977 ex.s. c 99 s 6 are each amended to read as follows:

The secretary shall further categorize all public water ((supply)) systems with regard to the size, type, source of water, and other relevant physical conditions affecting purification plants and distribution systems to assist in identifying the skills, knowledge and experience required for the certification of operators for each category of such systems, to assure the protection of the public health and conservation and protection of the state's water resources as required under RCW 70.119.010, and to implement the provisions of the state safe drinking water act in chapter 70.119A RCW. In categorizing all public water systems for the purpose of implementing these provisions of state law, the secretary shall take into consideration economic impacts as well as the degree and nature of any public health risk.

Sec. 5. RCW 70.119.090 and 1983 c 292 s 7 are each amended to read as follows:

Certificates shall be issued without examination under the following conditions:

(1) Certificates shall be issued without application fee to operators who, on ~~((the effective date of this act))~~ January 1, 1978, hold certificates of competency attained under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest section of the American water works association.

(2) Certification shall be issued to persons certified by a governing body or owner of a public water ((supply)) system to have been the operators of a purification plant or distribution system on ~~((the effective date of this chapter))~~ January 1, 1978, but only to those who are required to be certified under RCW 70.119.030(1). A certificate so issued shall be valid for operating any plant or system of the same classification and same type of water source.

(3) A nonrenewable certificate, temporary in nature, may be issued to an operator for a period not to exceed twelve months to fill a vacated position required to have a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position.

Sec. 6. RCW 70.119.100 and 1987 c 75 s 11 are each amended to read as follows:

The issuance and renewal of a certificate shall be subject to the following conditions:

(1) Except as provided in RCW 70.119.090, a certificate shall be issued if the operator has satisfactorily passed a written examination, has paid the department an application fee as established by the department under RCW ~~((43-20B-110))~~ 43.70.110, and has met the requirements specified in the rules and regulations as authorized by this chapter.

(2) (~~The terms for all certificates shall be for one year from the date of issuance.~~) Every certificate shall be renewed annually upon the payment of a fee as established by the department under RCW (~~43-20B-110~~) 43-70.110 and satisfactory evidence is presented to the secretary that the operator has fulfilled the continuing education requirements as prescribed by rule of the department.

(3) The secretary shall notify operators who fail to renew their certificates before the end of the (~~certificate~~) year that their certificates are temporarily valid for two months following the end of the certificate year. Certificates not renewed during the two month period shall be invalid and the secretary shall so notify the holders of such certificates.

(4) An operator who has failed to renew a certificate pursuant to the provisions of this section, may reapply for certification and the secretary may require the operator to meet the requirements established for new applicants.

Sec. 7. RCW 70.119.110 and 1983 c 292 s 9 are each amended to read as follows:

The secretary may, with the recommendation of the board and after hearing before the same, revoke a certificate found to have been obtained by fraud or deceit; or for gross negligence in the operation of a purification plant or distribution system; or for an intentional violation of the requirements of this chapter or any lawful rules, order, or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for (~~six months~~) one year from the effective date of the final order of revocation.

Sec. 8. RCW 70.119.130 and 1983 c 292 s 10 are each amended to read as follows:

(~~On or after one year following the effective date of this act,~~) Any person, including any operator or any firm, association, corporation, municipal corporation, or other governmental subdivision or agency who, after thirty days' written notice, operates a public water (~~supply~~) system which is not in compliance with RCW 70.119.030(1), shall be guilty of a misdemeanor. Each month of such operation out of compliance with RCW 70.119.030(1) shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereunder: **PROVIDED**, That, except in the case of fraud, deceit, or gross negligence under RCW 70.119.110, no revocation, citation or charge shall be made under

RCW 70.119.110 and 70.119.130 until a proper written notice of violation is received and a reasonable opportunity for correction has been given.

Passed the House March 12, 1991.

Passed the Senate April 17, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

CHAPTER 306

[Substitute Senate Bill 5670]

CHILDREN—MENTAL HEALTH—SCREENING AND TREATMENT SERVICES

Effective Date: 7/28/91

AN ACT Relating to screening and treatment of children for mental health services; amending RCW 71.24.015, 71.24.025, 71.24.035, and 71.24.045; creating new sections; and repealing RCW 71.24.800.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 71.24.015 and 1989 c 205 s 1 are each amended to read as follows:

It is the intent of the legislature to establish a community mental health program which shall help people experiencing mental illness to retain a respected and productive position in the community. This will be accomplished through programs which provide for:

(1) Access to mental health services for adults ~~((and children))~~ of the state who are acutely mentally ill, chronically mentally ill, or seriously disturbed~~((, or chronically mentally ill))~~ and children of the state who are acutely mentally ill, severely emotionally disturbed, or seriously disturbed, which services recognize the special needs of underserved populations, including minorities, children, the elderly, disabled, and low-income persons. It is also the purpose of this chapter to ~~((ensure that))~~ promote the early identification of mentally ill children ~~((in need of mental health care and treatment))~~ and to ensure that they receive the mental health care and treatment which is appropriate to their developmental level. This care should improve home, school, and community functioning, maintain children in a safe and nurturing home environment, and ~~((to))~~ should enable treatment decisions to be made in response to clinical needs ~~((and))~~ in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;

(2) Accountability of services through state-wide standards for monitoring and reporting of information;

(3) Minimum service delivery standards;

(4) Priorities for the use of available resources for the care of the mentally ill;

(5) Coordination of services within the department, including those divisions within the department that provide services to children, between the

department and the office of the superintendent of public instruction, and among state mental hospitals, county authorities, community mental health services, and other support services, which shall to the maximum extent feasible also include the families of the mentally ill, and other service providers; and

(6) Coordination of services aimed at reducing duplication in service delivery and promoting complementary services among all entities that provide mental health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders. The legislature intends to encourage the development of county-based and county-managed mental health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care. To this end, counties are encouraged to enter into joint operating agreements with other counties to form regional systems of care which integrate planning, administration, and service delivery duties assigned to counties under chapters 71.05 and 71.24 RCW to consolidate administration, reduce administrative layering, and reduce administrative costs.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end the legislature intends to promote active engagement with mentally ill persons and collaboration between families and service providers.

Sec. 2. RCW 71.24.025 and 1989 c 205 s 2 are each amended to read as follows:

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

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020(2) or, in the case of a child, as defined in RCW 71.34.020(12);

(b) Being gravely disabled as defined in RCW 71.05.020(1) or, in the case of a child, as defined in RCW 71.34.020(8); or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020(3) or, in the case of a child, as defined in RCW 71.34.020(11).

(2) "Available resources" means those funds which shall be appropriated under this chapter by the legislature during any biennium for the purpose of providing community mental health programs under RCW 71.24.045. When regional support networks are established or after July 1, 1995, "available resources" means federal funds, except those provided according to Title XIX of the social security act, and state funds appropriated

under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to RCW 71.24.300(1)(d).

(3) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW that meets state minimum standards or individuals licensed under chapter 18.57, 18.71, 18.83, or 18.88 RCW.

(4) "Child" means a person under the age of eighteen years.

(5) "Chronically mentally ill ~~((person))~~ adult" means ~~((a child or))~~ an adult who has a mental disorder~~((; in the case of a child as defined by chapter 71.34 RCW;))~~ and meets at least one of the following criteria:

(a) ~~Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years ((or, in the case of a child, has been placed by the department or its designee two or more times outside of the home, where the placements are related to a mental disorder, as defined in chapter 71.34 RCW, and where the placements progress toward a more restrictive setting. Placements by the department include but are not limited to placements by child protective services and child welfare services));~~ or

(b) ~~Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year;~~ or

(c) ~~Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended~~~~((, and shall include school attendance in the case of a child; or~~

~~(d) In the case of a child, has been subjected to continual distress as indicated by repeated physical or sexual abuse or neglect)).~~

(6) "Severely emotionally disturbed child" means an infant or child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a mentally ill or inadequate caretaker;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(7) "Community mental health program" means all mental health services established by a county authority. After July 1, 1995, or when the regional support networks are established, "community mental health program" means all activities or programs using available resources.

~~((7))~~ (8) "Community support services" means services for acutely ((and)) mentally ill persons, chronically mentally ill ((persons)) adults, and severely emotionally disturbed children and includes: (a) Discharge planning for clients leaving state mental hospitals, other acute care inpatient facilities, inpatient psychiatric facilities for persons under twenty-one years of age, and other children's mental health residential treatment facilities; (b) sufficient contacts with clients, families, schools, or significant others to provide for an effective program of community maintenance; and (c) medication monitoring. After July 1, 1995, or when regional support networks are established, for adults and children "community support services" means services authorized, planned, and coordinated through resource management services including, at least, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for acutely mentally ill and severely emotionally disturbed children discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, other services determined by regional support networks, and maintenance of a patient tracking system for chronically mentally ill ((persons)) adults and severely emotionally disturbed children.

~~((8))~~ (9) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

~~((9))~~ (10) "Department" means the department of social and health services.

~~((10))~~ (11) "Mental health services" means community services pursuant to RCW 71.24.035(5)(b) and other services provided by the state for the mentally ill. When regional support networks are established, or after July 1, 1995, "mental health services" shall include all services provided by regional support networks.

~~((11))~~ (12) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (5), (6), and ~~((15))~~ (16) of this section.

~~((12))~~ (13) "Regional support network" means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary pursuant to this chapter.

~~((13))~~ (14) "Residential services" means a facility or distinct part thereof which provides food and shelter, and may include treatment services.

When regional support networks are established, or after July 1, 1995, for adults and children "residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill ~~((persons))~~ adults, severely emotionally disturbed children, or seriously disturbed ~~((persons))~~ adults determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service mentally ill persons in nursing homes. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

~~((14))~~ (15) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for acutely mentally ill adults and children, chronically mentally ill adults ~~((and children))~~, severely emotionally disturbed children, or seriously disturbed adults ~~((and children))~~ determined by the regional support network at their sole discretion to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of

information regarding mentally ill adults' and children's enrollment in services and their individual service plan to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

~~((+5))~~ (16) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to oneself or others as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

~~((+6))~~ (17) "Secretary" means the secretary of social and health services.

~~((+7))~~ (18) "State minimum standards" means: (a) Minimum requirements for delivery of mental health services as established by departmental rules and necessary to implement this chapter, including but not limited to licensing service providers and services; (b) minimum service requirements for licensed service providers for the provision of mental health services as established by departmental rules pursuant to chapter 34.05 RCW as necessary to implement this chapter, including, but not limited to: Qualifications for staff providing services directly to mentally ill persons; the intended result of each service; and the rights and responsibilities of persons receiving mental health services pursuant to this chapter; (c) minimum requirements for residential services as established by the department in rule based on clients' functional abilities and not solely on their diagnoses, limited to health and safety, staff qualifications, and program outcomes. Minimum requirements for residential services are those developed in collaboration with consumers, families, counties, regulators, and residential providers serving the mentally ill. Minimum requirements encourage the development of broad-range residential programs, including integrated housing and cross-systems programs where appropriate, and do not unnecessarily restrict programming flexibility; and (d) minimum standards for community support services and resource management services, including at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers.

Sec. 3. RCW 71.24.035 and 1990 1st ex.s. c 8 s 1 are each amended to read as follows:

(1) The department is designated as the state mental health authority.

(2) The secretary may provide for public, client, and licensed service provider participation in developing the state mental health program.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates county biennial needs assessments and county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;

(b) Assure that any county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The acutely mentally ill; (ii) ~~((the))~~ chronically mentally ill adults and severely emotionally disturbed children; and (iii) the seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Consultation and education services; and

(F) Community support services;

(c) Develop and promulgate rules establishing state minimum standards for the delivery of mental health services including, but not limited to:

(i) Licensed service providers;

(ii) Regional support networks; and

(iii) Residential and inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used by the counties;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers;

(g) Develop and maintain an information system to be used by the state, counties, and regional support networks when they are established which shall include a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.400, 71.05.410, 71.05.420, 71.05.430, and 71.05.440. The system shall be fully operational no later than January 1, 1993: PROVIDED, HOWEVER, That when a regional support network is established, the department shall have an operational interim tracking system for that network that will be adequate for the regional support network to perform its required duties under this chapter;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically inspect certified regional support networks and licensed service providers at reasonable times and in a reasonable manner; and

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Prior to September 1, 1989, adopt such rules as are necessary to implement the department's responsibilities under this chapter pursuant to chapter 34.05 RCW: PROVIDED, That such rules shall be submitted to the appropriate committees of the legislature for review and comment prior to adoption; and

(n) Beginning July 1, 1989, and continuing through July 1, 1993, track by region and county the use and cost of state hospital and local evaluation and treatment facilities for seventy-two hour detention, fourteen, ninety, and one hundred eighty day commitments pursuant to chapter 71.05 RCW, voluntary care in state hospitals, and voluntary community inpatient care covered by the medical assistance program. Service use and cost reports shall be provided to regions in a timely fashion at six-month intervals.

(6) The secretary shall use available resources appropriated specifically for community mental health programs only for programs under RCW 71.24.045. After July 1, 1995, or when regional support networks are established, available resources may be used only for regional support networks.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules,

and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to the law, applicable rules and regulations, or applicable standards, or failure to meet the minimum standards established pursuant to this section.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) The secretary shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to certification and licensing and other action relevant to certifying regional support networks and licensing service providers.

(12) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general who shall represent the secretary in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(13) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapter 71.05 RCW, and shall otherwise assure the effectuation of the purposes and intent of this chapter and chapter 71.05 RCW.

(14)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed, and seriously disturbed as defined in chapter 71.24 RCW. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as defined in subsection (15) of this section.

These factors shall include the population concentrations resulting from commitments under the involuntary treatment act, chapter 71.05 RCW, to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The department shall submit a proposed distribution formula in accordance with this section to the ways and means and health ~~((care and corrections))~~ and long-term care committees of the senate and to the ways and means and human services committees of the house of representatives by October 1, ~~((+1989))~~ 1991. The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

(15) To supersede duties assigned under subsection (5) (a) and (b) of this section, and to assure a county-based, integrated system of care for acutely mentally ill adults and children, chronically mentally ill adults ~~((and children))~~, severely emotionally disturbed children, and seriously disturbed adults and children who are determined by regional support networks at their sole discretion to be at risk of becoming acutely or chronically mentally ill, or severely emotionally disturbed, the secretary shall encourage the development of regional support networks as follows:

By December 1, 1989, the secretary shall recognize regional support networks requested by counties or groups of counties.

All counties wishing to be recognized as a regional support network on December 1, 1989, shall submit their intentions regarding participation in the regional support networks by October 30, 1989, along with preliminary plans. Counties wishing to be recognized as a regional support network by January 1 of any year thereafter shall submit their intentions by October 30 of the previous year along with preliminary plans. The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05 and 71.24 RCW on July 1, 1995. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The implementation of regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05 and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medic-aid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(16) The secretary shall:

(a) Disburse the first funds for the regional support networks that are ready to begin implementation by January 1, 1990, or within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks to begin implementation between January 1, 1990, and March 1, 1990, and complete implementation by June 1995. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) By July 1, 1993, allocate one hundred percent of available resources to regional support networks created by January 1, 1990, in a single grant. Regional support networks created by January 1, 1991, shall receive a single block grant by July 1, 1993; regional support networks created by January 1, 1992, shall receive a single block grant by July 1, 1994; and regional support networks created by January 1, 1993, shall receive a single block grant by July 1, 1995. The grants shall include funds currently provided for all residential services, all services pursuant to chapter 71.05 RCW, and all community support services and shall be distributed in accordance with a formula submitted to the legislature by January 1, 1993, in accordance with subsection (14) of this section.

(d) By January 1, 1990, allocate available resources to regional support networks for community support services, resource management services, and residential services excluding evaluation and treatment facilities provided pursuant to chapter 71.05 RCW in a single grant using the distribution formula established in subsection (14) of this section.

(e) By March 1, 1990, or within sixty days of approval of the contract continuing through July 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. For regional support networks created by January 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW through July 1, 1995.

(f) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

~~(g) ((Study and report to the legislature by December 1, 1989, on expanding the use of federal Title XIX funds and the definition of institutions for mental diseases to provide services to persons who are acutely mentally ill, chronically mentally ill, or at risk of becoming so. The study shall also include an assessment of the impact of Title XIX funds and the definition of institutions for mental diseases on the use of state funds to provide needed mental health services to the chronically mentally ill.~~

(h)) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional

support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

((†)) (h) Identify in its departmental biennial operating and capital budget requests the funds requested by regional support networks to implement their responsibilities under this chapter.

((†)) (i) Contract to provide or, if requested, make grants to counties to provide technical assistance to county authorities or groups of county authorities to develop regional support networks.

(17) The department of social and health services, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the health care and corrections committee of the senate and the human services committee of the house of representatives.

(18) The secretary shall establish a task force to examine the recruitment, training, and compensation of qualified mental health professionals in the community, which shall include the advantages and disadvantages of establishing a training academy, loan forgiveness program, or educational stipends offered in exchange for commitments of employment in mental health. The task force shall report back to the appropriate committees of the legislature by January 1, 1990.

****NEW SECTION. Sec. 4. By December 1, 1991, the department shall develop criteria under the federal Title XIX early and periodic screening, diagnosis, and treatment program to serve acutely mentally ill and severely emotionally disturbed children in a manner that maximizes federal reimbursement by:***

(1) Developing qualifications for certified mental health screening providers and ensuring that mental health screening, as appropriate and medically necessary, is coordinated with or does not duplicate complete screening examinations;

(2) Developing, in consultation with regional support networks and private practitioners, criteria for use by providers under the early and periodic screening, diagnosis, and treatment program to identify children with mental disorders eligible for referral to further evaluation, diagnosis, and treatment planning;

(3) Requiring prior authorization and utilization review for residential and inpatient services, including inpatient acute hospitalizations and evaluation and treatment facilities as defined in RCW 71.34.020; and

(4) Providing reimbursement for specialized family, home, school, and community-based mental health services or programs designed to promote

primary prevention or intervention and maximize the development and potential of acutely mentally ill and severely emotionally disturbed children and their families.

The plan shall be submitted to appropriate committees of the legislature on or before December 1, 1991.

***Sec. 4 was vetoed, see message at end of chapter.**

Sec. 5. RCW 71.24.045 and 1989 c 205 s 4 are each amended to read as follows:

The county authority shall:

(1) Submit biennial needs assessments beginning January 1, 1983, and mental health service plans which incorporate all services provided for by the county authority consistent with state minimum standards and which provide access to treatment for the county's residents including children and other underserved populations who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed, or seriously disturbed. The county program shall provide:

- (a) Outpatient services;
- (b) Emergency care services for twenty-four hours per day;
- (c) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;
- (d) Screening for patients being considered for admission to state mental health facilities to determine appropriateness of admission;
- (e) Consultation and education services;
- (f) Residential and inpatient services, if the county chooses to provide such optional services; and
- (g) Community support services.

The county shall develop the biennial needs assessment based on clients to be served, services to be provided, and the cost of those services, and may include input from the public, clients, and licensed service providers. Each county authority may appoint a county mental health advisory board which shall review and provide comments on plans and policies developed by the county authority under this chapter. The composition of the board shall be broadly representative of the demographic character of the county and the mentally ill persons served therein. Length of terms of board members shall be determined by the county authority;

(2) Contract as needed with licensed service providers. The county authority may, in the absence of a licensed service provider entity, become a licensed service provider entity pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers;

(3) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the county authority shall comply with rules promulgated by the secretary that shall provide measurements to determine when a county provided service is more efficient and cost effective.

(4) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the county to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts, including the minimum standards of service delivery as established by the department;

(5) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this chapter;

(6) Maintain patient tracking information in a central location as required for resource management services;

(7) Use not more than two percent of state-appropriated community mental health funds, which shall not include federal funds, to administer community mental health programs under RCW 71.24.155: PROVIDED, That county authorities serving a county or combination of counties whose population is equal to or greater than that of a county of the first class may be entitled to sufficient state-appropriated community mental health funds to employ up to one full-time employee or the equivalent thereof in addition to the two percent limit established in this subsection when such employee is providing staff services to a county mental health advisory board;

(8) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state mental hospital.

NEW SECTION. Sec. 6. RCW 71.24.800 and 1987 c 439 s 4 are each repealed.

NEW SECTION. Sec. 7. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

However, if any part of this act conflicts with such federal requirements, the state appropriation for mental health services provided to children whose mental disorders are discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program shall be provided through the division of medical assistance and no

state funds appropriated to the division of mental health shall be expended or transferred for this purpose.

Passed the Senate April 28, 1991.

Passed the House April 28, 1991.

Approved by the Governor May 20, 1991, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 20, 1991.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 4, Substitute Senate Bill No. 5670, entitled:

"AN ACT Relating to screening and treatment of children for mental health services."

I am pleased with the efforts this year to organize an effective mental health system for children. The legislators involved have successfully passed thoughtful legislation which will improve the lives of children in our state.

Section 4 of this bill conflicts with section 13 of Engrossed Substitute House Bill No. 1608, in that it also requires a legislative report with plans for folding the Early Periodic Screening, Diagnosis and Treatment program into the children's mental health system. Engrossed Substitute House Bill No. 1608 also contains language requiring an inventory of all children's mental health programs as well as proposals for reducing categorical barriers to serving children. These requirements will produce valuable products.

For that reason, I will sign that provision into law and have vetoed section 4 of this bill. In doing so, I have directed the Office of Financial Management and the Department of Social and Health Services staff to develop a report that responds to the requirements in both bills.

With the exception of section 4, Substitute Senate Bill No. 5670 is approved."

CHAPTER 307

[Substitute House Bill 1649]

MUNICIPAL WATER DISCHARGE PERMIT FEES

Effective Date: 7/28/91

AN ACT Relating to municipal water discharge permit fees; and amending RCW 90.48.465.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 90.48.465 and 1989 c 2 s 13 (Initiative Measure No. 97) are each amended to read as follows:

(1) The department shall establish annual fees to collect expenses for issuing and administering each class of permits under RCW 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be established by rule within one year of March 1, 1989, and thereafter the fee schedule shall be adjusted no more often than once every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and

the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(2) The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for all domestic wastewater facility permits issued under RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of ~~((five))~~ fifteen cents per month per residence or residential equivalent contributing to the municipality's wastewater system. The department shall adopt by rule a schedule of credits for any municipality engaging in a comprehensive monitoring program beyond the requirements imposed by the department, with the credits available for five years from March 1, 1989, and with the total amount of all credits not to exceed fifty thousand dollars in the five-year period.

(3) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.165 are not recoverable by the department.

(4) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on public entities required to obtain permits for storm water runoff and shall provide appropriate adjustments.

(5) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated only for purposes of administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

(6) The department shall submit an annual report to the legislature showing detailed information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

(7) The legislative budget committee in 1993 shall review the fees established under this section and report its findings to the legislature in January 1994.

Passed the House March 19, 1991.

Passed the Senate April 19, 1991.

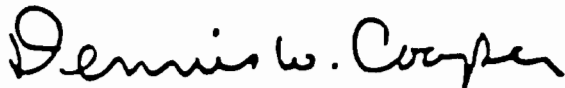
Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.

AUTHENTICATION

I, Dennis W. Cooper, Code Reviser of the State of Washington, do hereby certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by the provisions of RCW 44.20.060, the laws published in this volume are a true and correct reproduction of the copies of the enrolled laws of the 1991 regular session, chapters 1 through 307 (52nd Legislature), as certified and transmitted to the Statute Law Committee by the Secretary of State pursuant to RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 8th day of August, 1991.

A handwritten signature in black ink that reads "Dennis W. Cooper". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

DENNIS W. COOPER
Code Reviser

