

ONE-HUNDRED FOURTH DAY

MORNING SESSION

Senate Chamber, Olympia, Saturday, April 25, 2009

The Senate was called to order at 10:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators King, Regala and Tom.

The Sergeant at Arms Color Guard consisting of Legislative Assistant's Ashley Lara and Barrett Pryce, presented the Colors. Senator Kline offered the prayer.

MOTION

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

MOTION

There being no objection, the Senate advanced to the first order of business.

REPORTS OF STANDING COMMITTEES

April 25, 2009

ESHB 1244 Prime Sponsor, Committee on Ways & Means: Making operating appropriations for fiscal years 2007-2009 and 2009-2011. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Hobbs; Keiser; Kline; Kohl-Welles; McDermott; Oemig; Pridemore; Regala and Rockefeller.

MINORITY recommendation: Do not pass. Signed by Senators Zarelli; Brandland; Honeyford; Parlette; Pflug and Schoesler.

MOTION

On motion of Senator Eide, the rules were suspended and Engrossed Substitute House Bill No. 1224 was placed on the day's second reading calendar.

MOTION

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

MESSAGE FROM THE GOVERNOR
GUBERNATORIAL APPOINTMENTS

April 24, 2009

TO THE HONORABLE, THE SENATE OF THE STATE OF WASHINGTON

Ladies and Gentlemen:

I have the honor to submit the following appointment, subject to your confirmation.

LORNA WALSH, appointed April 9, 2009, for the term ending July 1, 2011, as Member, Board of Trustees, State School for the Blind.

Sincerely,
CHRISTINE O. GREGOIRE, Governor

Referred to Committee on Early Learning & K-12 Education.

MOTION

On motion of Senator Eide, the appointee listed on the Gubernatorial Appointment report was referred to the committee as designated.

MOTION

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

MESSAGE FROM THE HOUSE

April 24, 2009

MR. PRESIDENT:

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

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1959,
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 24, 2009

MR. PRESIDENT:

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

ENGROSSED HOUSE BILL NO. 2242,
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

MOTION

Senator Zarelli moved adoption of the following resolution:

SENATE RESOLUTION
8665

By Senators Zarelli and Hobbs

WHEREAS, The 98th Medical Detachment was activated in October 1944 and, after serving in New Guinea in the Pacific theater, went on to participate in fourteen campaigns in Vietnam; and

WHEREAS, Since permanently locating at Fort Lewis in October 1993 and becoming dedicated to combat stress control the 98th Medical Detachment has been to Cuba, Korea, Thailand, Bosnia-Herzegovina, and Iraq; and

WHEREAS, The 98th Medical Detachment deployed in 2003 to northern and central Iraq for sixteen consecutive months in support of Operation Iraqi Freedom, and to southern Iraq from April 2005 to March 2006; and

WHEREAS, On May 1, 2008, the 98th Medical Detachment began its third Iraq deployment, serving the entire 4th Infantry Division, Multi-National Division - Baghdad, and all units stationed at Camp Victory and Camp Liberty; and

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WHEREAS, The mission of the 98th Medical Detachment is to help soldiers cope with stress resulting from the constant grind of a combat zone, homefront issues or other mental challenges associated with being in theater, so they may return to duty rather than to a mental health facility or require evacuation for mental health reasons; and

WHEREAS, The work of the 98th Medical Detachment includes one-on-one counseling, group counseling, instruction in stoicism and posttraumatic growth, training thousands upon thousands of soldiers and their leaders to recognize signs of mental challenges in others and to take action, and encouraging soldiers to seek assistance with mental challenges; and

WHEREAS, A number of Senate staff members were honored to "adopt" the 98th Medical Detachment and provide "care packages" from the homefront during the holiday season of 2008-09; and

WHEREAS, The members of the 98th Medical Detachment returned safely to Fort Lewis on March 14, 2009, from their most recent deployment to Iraq;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate recognize the 98th Medical Detachment for its service to the United States and is pleased to have its members call Fort Lewis and the state of Washington their home; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Secretary of the Senate to the commanders of the 98th Medical Detachment, the 62nd Medical Brigade, and the 4th Infantry Division.

Senators Zarelli, Hobbs and Shin spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8665.

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

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced members of the 98th Medical Detachment, the 62nd Medical Brigade and the 4th Infantry Division and their families who were seated in the gallery.

MOTION

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

SECOND READING

CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Berkey moved that Gubernatorial Appointment No. 9070, M. A. Leonard, as a member of the Housing Fiance Commission, be confirmed.

Senator Berkey spoke in favor of the motion.

MOTION

On motion of Senator Marr, Senators Brown, Pridemore and Tom were excused.

MOTION

On motion of Senator Brandland, Senators King and Morton were excused.

MOTION

On motion of Senator Hatfield, Senator Fairley was excused.

APPOINTMENT OF M. A. LEONARD

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9070, M. A. Leonard as a member of the Housing Fiance Commission.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9070, M. A. Leonard as a member of the Housing Fiance Commission and the appointment was confirmed by the following vote: Yeas, 46; Nays, 0; Absent, 1; Excused, 2.

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

Absent: Senator Regala

Excused: Senators King and Tom

Gubernatorial Appointment No. 9070, M. A. Leonard, having received the constitutional majority was declared confirmed as a member of the Housing Fiance Commission.

MOTION

On motion of Senator Honeyford, the request for a ruling on the point of order on House Bill No. 2331 was withdrawn.

MOTION

At 10:29 a.m., on motion of Senator Eide, the Senate was declared to be recessed until 1:00 p.m.

AFTERNOON SESSION

The Senate was called to order at 1:00 p.m. by the President Pro Tempore.

SECOND READING

CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator McDermott moved that Gubernatorial Appointment No. 9123, Beth Thew, as a member of the Work Force Training and Education Coordinating Board, be confirmed.

Senator McDermott spoke in favor of the motion.

MOTION

On motion of Senator Marr, Senators Berkey, Brown, Fairley and Prentice were excused.

MOTION

On motion of Senator Brandland, Senator Swecker was excused.

APPOINTMENT OF BETH THEW

The President Pro Tempore declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9123, Beth Thew as a member of the Work Force Training and Education Coordinating Board.

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The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9123, Beth Thew as a member of the Work Force Training and Education Coordinating Board and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 2; Excused, 2.

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

Absent: Senators Jacobsen and Kauffman

Excused: Senators Brown and Fairley

Gubernatorial Appointment No. 9123, Beth Thew, having received the constitutional majority was declared confirmed as a member of the Work Force Training and Education Coordinating Board.

MOTION

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

MESSAGE FROM THE HOUSE

April 21, 2009

MR. PRESIDENT:

The Speaker ruled the Senate amendment to HOUSE BILL NO. 1238 to be beyond scope & object of the bill. House refuses to concur in said amendment and asks the Senate to recede therefrom.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate recede from its position on House Bill No. 1238 and pass the bill without the Senate amendment(s).

Senator Hargrove spoke in favor of the motion.

The President Pro Tempore declared the question before the Senate to be motion by Senator Hargrove that the Senate recede from its position on House Bill No. 1238 and pass the bill without Senate amendment(s).

The motion by Senator Hargrove carried and the Senate receded from its position on House Bill No. 1238 and pass the bill without the Senate amendment(s) by a voice vote.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1238, without the Senate amendment(s), and the bill passed the Senate by the following vote: Yeas, 44; Nays, 1; Absent, 2; Excused, 2.

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

Voting nay: Senator Honeyford

Absent: Senators Jacobsen and Regala

Excused: Senators Brown and Fairley

HOUSE BILL NO. 1238, without the Senate amendment(s), having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

The President assumed the chair.

MOTION

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

MESSAGE FROM THE HOUSE

April 24, 2009

MR. PRESIDENT:

The Speaker has signed the following:

SENATE BILL NO. 5107,
 SUBSTITUTE SENATE BILL NO. 5166,
 SUBSTITUTE SENATE BILL NO. 5252,
 SUBSTITUTE SENATE BILL NO. 5391,
 ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5560,
 ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5649,
 SUBSTITUTE SENATE BILL NO. 5718,
 SUBSTITUTE SENATE BILL NO. 5723,
 SUBSTITUTE SENATE BILL NO. 5725,
 SUBSTITUTE SENATE BILL NO. 5732,
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5746,
 ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5850,
 SUBSTITUTE SENATE BILL NO. 5931,
 SECOND SUBSTITUTE SENATE BILL NO. 5945,
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5967,
 SECOND SUBSTITUTE SENATE BILL NO. 5973,
 SENATE BILL NO. 5974,
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5978,
 SUBSTITUTE SENATE BILL NO. 6009,
 ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6015,
 SUBSTITUTE SENATE BILL NO. 6016,
 ENGROSSED SENATE BILL NO. 6033,
 SUBSTITUTE SENATE BILL NO. 6036,
 SENATE BILL NO. 6070,
 SUBSTITUTE SENATE BILL NO. 6088,
 SUBSTITUTE SENATE BILL NO. 6095,
 SENATE BILL NO. 6104,
 SUBSTITUTE SENATE CONCURRENT RESOLUTION NO. 8404,
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 24, 2009

MR. PRESIDENT:

The Speaker has signed the following:

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1018,
 SUBSTITUTE HOUSE BILL NO. 1119,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1138,
 SUBSTITUTE HOUSE BILL NO. 1170,
 SECOND SUBSTITUTE HOUSE BILL NO. 1290,
 SUBSTITUTE HOUSE BILL NO. 1347,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1553,

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SUBSTITUTE HOUSE BILL NO. 1555,
 SUBSTITUTE HOUSE BILL NO. 1592,
 ENGROSSED HOUSE BILL NO. 1616,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1709,
 ENGROSSED HOUSE BILL NO. 1815,
 SUBSTITUTE HOUSE BILL NO. 1919,
 ENGROSSED HOUSE BILL NO. 1986,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2035,
 ENGROSSED HOUSE BILL NO. 2040,
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO.
 2227,
 ENGROSSED HOUSE BILL NO. 2299,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2327,
 HOUSE BILL NO. 2328,
 SUBSTITUTE HOUSE BILL NO. 2343,
 HOUSE BILL NO. 2347,
 HOUSE BILL NO. 2349,
 HOUSE BILL NO. 2359,
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 24, 2009

MR. PRESIDENT:

The Speaker has signed the following:
 SECOND SUBSTITUTE HOUSE BILL NO. 1081,
 SUBSTITUTE HOUSE BILL NO. 1103,
 HOUSE BILL NO. 1148,
 SECOND SUBSTITUTE HOUSE BILL NO. 1172,
 HOUSE BILL NO. 1517,
 SUBSTITUTE HOUSE BILL NO. 2208
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 24, 2009

MR. PRESIDENT:

The House has passed the following bills:
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1216,
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 24, 2009

MR. PRESIDENT:

The Speaker ruled the Senate amendment to ENGROSSED
 SUBSTITUTE HOUSE BILL NO. 1379 to be beyond scope &
 object of the bill. House refuses to concur in said amendment
 and asks the Senate to recede therefrom.
 and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Fraser moved that the Senate recede from its
 position on the Senate amendments to Engrossed Substitute
 House Bill No. 1379.

Senator Fraser spoke in favor of the motion.

The President declared the question before the Senate to be
 motion by Senator Fraser that the Senate recede from its
 position on the Senate amendments to Engrossed Substitute
 House Bill No. 1379.

The motion by Senator Fraser carried and the Senate
 receded from its amendments to Engrossed Substitute House
 Bill No. 1379 by voice vote.

MOTION

On motion of Senator Fraser, the rules were suspended and
 Engrossed Substitute House Bill No. 1379 was returned to
 second reading for the purposes of amendment.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1379, by
 House Committee on Local Government & Housing (originally
 sponsored by Representatives Seaquist, Angel and Liias)

Regarding moratoria and other interim official controls
 adopted under the shoreline management act.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the
 following:

"NEW SECTION. Sec. 1. The legislature recognizes that
 cities and counties have moratoria authority granted through
 constitutional and statutory provisions and that this authority,
 when properly exercised, is an important aspect of complying
 with environmental stewardship and protection requirements.

Recognizing the fundamental role and value of properly
 exercised moratoria, the legislature intends to establish new
 moratoria procedures and to affirm moratoria authority that local
 governments have and may exercise when implementing the
 shoreline management act, while recognizing the legitimate
 interests of existing shoreline related developments during the
 period of interim moratoria.

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

(1) Local governments may adopt moratoria or other interim
 official controls as necessary and appropriate to implement this
 chapter.

(2)(a) A local government adopting a moratorium or control
 under this section must:

(i) Hold a public hearing on the moratorium or control;
 (ii) Adopt detailed findings of fact that include, but are not
 limited to justifications for the proposed or adopted actions and
 explanations of the desired and likely outcomes;

(iii) Notify the department of the moratorium or control
 immediately after its adoption. The notification must specify the
 time, place, and date of any public hearing required by this
 subsection;

(iv) Provide that all lawfully existing uses, structures, or
 other development shall continue to be deemed lawful
 conforming uses and may continue to be maintained, repaired,
 and redeveloped, so long as the use is not expanded, under the
 terms of the land use and shoreline rules and regulations in place
 at the time of the moratorium.

(b) The public hearing required by this section must be held
 within sixty days of the adoption of the moratorium or control.

(3) A moratorium or control adopted under this section may
 be effective for up to six months if a detailed work plan for

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remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for two six-month periods if the local government complies with subsection (2)(a) of this section before each renewal. If a moratorium or control is in effect on the date a proposed master program or amendment is submitted to the department, the moratorium or control must remain in effect until the department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if the department has not taken final action.

(4) Nothing in this section may be construed to modify county and city moratoria powers conferred outside this chapter."

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

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Fraser and others to Engrossed Substitute House Bill No. 1379.

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

MOTION

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

On page 1, line 2 of the title, after "act;" strike the remainder of the title and insert "adding a new section to chapter 90.58 RCW; and creating a new section."

MOTION

On motion of Senator Fraser, the rules were suspended, Engrossed Substitute House Bill No. 1379 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Fraser spoke in favor of passage of the bill.

Senator Honeyford spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1379 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1379 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 28; Nays, 19; Absent, 1; Excused, 1.

Voting yea: Senators Berkey, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hatfield, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Absent: Senator Kohl-Welles

Excused: Senator Brown

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1379 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to HOUSE BILL NO. 1527 and asks Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Keiser moved that the Senate recede from its position on House Bill No. 1527 and pass the bill without the Senate amendment(s).

The President declared the question before the Senate to be motion by Senator Keiser that the Senate recede from its position on House Bill No. 1527 and pass the bill without Senate amendment(s).

The motion by Senator Keiser carried and the Senate receded from its position on House Bill No. 1527 and pass the bill without the Senate amendment(s) by voice vote.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1527, without the Senate amendment(s), and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

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

Excused: Senator Brown

HOUSE BILL NO. 1527, without the Senate amendment(s), having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SIGNED BY THE PRESIDENT

The President signed:

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1018,
 SECOND SUBSTITUTE HOUSE BILL NO. 1081,
 SUBSTITUTE HOUSE BILL NO. 1103,
 SUBSTITUTE HOUSE BILL NO. 1119,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1138,
 HOUSE BILL NO. 1148,
 SUBSTITUTE HOUSE BILL NO. 1170,
 SECOND SUBSTITUTE HOUSE BILL NO. 1172,
 SECOND SUBSTITUTE HOUSE BILL NO. 1290,
 SUBSTITUTE HOUSE BILL NO. 1347,
 HOUSE BILL NO. 1517,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1553,
 SUBSTITUTE HOUSE BILL NO. 1555,
 SUBSTITUTE HOUSE BILL NO. 1592,
 ENGROSSED HOUSE BILL NO. 1616,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1709,
 ENGROSSED HOUSE BILL NO. 1815,
 SUBSTITUTE HOUSE BILL NO. 1919,
 ENGROSSED HOUSE BILL NO. 1986,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2035,
 ENGROSSED HOUSE BILL NO. 2040,
 SUBSTITUTE HOUSE BILL NO. 2208,
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2227,

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ENGROSSED HOUSE BILL NO. 2299,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 2327,
HOUSE BILL NO. 2328,
SUBSTITUTE HOUSE BILL NO. 2343,
HOUSE BILL NO. 2347,
HOUSE BILL NO. 2349,
HOUSE BILL NO. 2359,

MOTION

On motion of Senator Hargrove, the rules were suspended and Engrossed Substitute House Bill No. 1782 was returned to second reading for the purposes of amendment.

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 1776 and asks Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Tom moved that the Senate recede from its position on the Senate amendments to Substitute House Bill No. 1776. The President declared the question before the Senate to be motion by Senator Tom that the Senate recede from its position on the Senate amendments to Substitute House Bill No. 1776. The motion by Senator Tom carried and the Senate receded from its amendments to Substitute House Bill No. 1776.

MOTION

On motion of Senator Tom, the rules were suspended and Substitute House Bill No. 1776 was returned to second reading for the purposes of amendment.

MOTION

On motion of Senator Eide, further consideration of Substitute House Bill No. 1776 was deferred and the bill held its place on the second reading calendar.

MESSAGE FROM THE HOUSE

April 21, 2009

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1782 and asks Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate recede from its position on the Senate amendments to Engrossed Substitute House Bill No. 1782. The President declared the question before the Senate to be motion by Senator Hargrove that the Senate recede from its position on the Senate amendments to Engrossed Substitute House Bill No. 1782. The motion by Senator Hargrove carried and the Senate receded from its amendments to Engrossed Substitute House Bill No. 1782.

The motion by Senator Hargrove carried and the Senate receded from its amendments to Engrossed Substitute House Bill No. 1782.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1782, by House Committee on Early Learning & Children's Services (originally sponsored by Representatives Goodman, Roberts, Walsh, Dickerson, Darneille, Kagi and Nelson)

Concerning parent participation in dependency matters.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"NEW SECTION, Sec. 1. The legislature finds that when children have been found dependent and placed in out-of-home care, the likelihood of reunification with their parents diminishes significantly after fifteen months. The legislature also finds that early and consistent parental engagement in services and participation in appropriate parent-child contact and visitation increases the likelihood of successful reunifications. The legislature intends to promote greater awareness among parents in dependency cases of the importance of active participation in services, visitation, and case planning for the child, and the risks created by failure to participate in their child's case over the long term.

Sec. 2. RCW 13.34.062 and 2007 c 413 s 4 and 2007 c 409 s 5 are each reenacted and amended to read as follows:

(1)(a) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make reasonable efforts to inform the parent, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title, including the right to a shelter care hearing, as soon as possible. Notice must be provided in an understandable manner and take into consideration the parent's, guardian's, or legal custodian's primary language, level of education, and cultural issues.

(b) In no event shall the notice required by this section be provided to the parent, guardian, or legal custodian more than twenty- four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody.

(2)(a) The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is provided by a means other than writing, child protective services shall make reasonable efforts to also provide written notification.

(b) The written notice of custody and rights required by this section shall be in substantially the following form:

"NOTICE

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Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody excluding Saturdays, Sundays, and holidays. You should call the court at _____ (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. Your right to representation continues after the shelter care hearing. You have the right to records the department intends to rely upon. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: _____ (explain local procedure) .

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

4. If your hearing occurs before a court commissioner, you have the right to have the decision of the court commissioner reviewed by a superior court judge. To obtain that review, you must, within ten days after the entry of the decision of the court commissioner, file with the court a motion for revision of the decision, as provided in RCW 2.24.050.

You should be present at any shelter care hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: _____ (insert name and telephone number) .

5. You have a right to a case conference to develop a written service agreement following the shelter care hearing. The service agreement may not conflict with the court's order of shelter care. You may request that a multidisciplinary team, family group conference, or prognostic staffing be convened for your child's case. You may participate in these processes with your counsel present.

6. If your child is placed in the custody of the department of social and health services or other supervising agency, immediately following the shelter care hearing, the court will enter an order granting the department or other supervising agency the right to inspect and copy all health, medical, mental health, and education records of the child, directing health care providers to release such information without your further consent, and granting the department or supervising agency or its designee the authority and responsibility, where applicable, to:

- (1) Notify the child's school that the child is in out-of-home placement;
- (2) Enroll the child in school;
- (3) Request the school transfer records;
- (4) Request and authorize evaluation of special needs;
- (5) Attend parent or teacher conferences;
- (6) Excuse absences;
- (7) Grant permission for extracurricular activities;
- (8) Authorize medications which need to be administered during school hours and sign for medical needs that arise during school hours; and
- (9) Complete or update school emergency records.

7. If the court decides to place your child in the custody of the department of social and health services or other supervising agency, the department or agency will create a permanency plan for your child, including a primary placement goal and secondary placement goal. The department or agency also will recommend that the court order services for your child and for you, if needed. The department or agency is required to make

reasonable efforts to provide you with services to address your parenting problems, and to provide you with visitation with your child according to court orders. Failure to promptly engage in services or to maintain contact with your child may lead to the filing of a petition to terminate your parental rights.

8. Primary and secondary permanency plans are intended to run at the same time so that your child will have a permanent home as quickly as possible. Absent good cause, and when appropriate, the department or other supervising agency must follow the wishes of a natural parent regarding placement of a child. You should tell your lawyer and the court where you wish your child placed immediately, including whether you want your child placed with you, with a relative, or with another suitable person. You also should tell your lawyer and the court what services you feel are necessary and your wishes regarding visitation with your child. Even if you want another parent or person to be the primary placement choice for your child, you should tell your lawyer, the department or other supervising agency, and the court if you want to be a secondary placement option, and you should comply with court orders for services and participate in visitation with your child. Early and consistent involvement in your child's case plan is important for the well-being of your child.

9. A dependency petition begins a judicial process, which, if the court finds your child dependent, could result in substantial restrictions including, the entry or modification of a parenting plan or residential schedule, nonparental custody order or decree, guardianship order, or permanent loss of your parental rights."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(3) If child protective services is not required to give notice under this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(4) Reasonable efforts to advise and to give notice, as required in this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the petitioner shall testify at the hearing or state in a declaration:

- (a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or ~~(legal)~~ custodian; and
- (b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used.

Sec. 3. RCW 13.34.065 and 2008 c 267 s 2 are each amended to read as follows:

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

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed

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prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

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

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

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

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

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

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

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

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

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

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

(c) What efforts have been made to place the child with a relative;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

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

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

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

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

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

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

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

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

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

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

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

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

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

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

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

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

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

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

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

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a

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child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative under (b) of this subsection or with another suitable person under (d) of this subsection.

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

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

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

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

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

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

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

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

Sec. 4. RCW 13.34.145 and 2008 c 152 s 3 are each amended to read as follows:

(1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed. Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in

out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

At this hearing, the court shall order the department to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child. For purposes of this section, "good cause exception" includes but is not limited to the following: The child is being cared for by a relative; the department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; or the department has documented in the case plan a compelling reason for determining that filing a petition to

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terminate parental rights would not be in the child's best interests.

(c)(i) If the permanency plan identifies independent living as a goal, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care.

(ii) The permanency plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living.

(iii) The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(d) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall also enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(5), and 13.34.096.

(4) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(5) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(6) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (8) of this section are met.

(10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental

rights, establishing guardianship, or otherwise resolving the matter.

(11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

Sec. 5. RCW 13.34.180 and 2001 c 332 s 4 are each amended to read as follows:

(1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

(a) That the child has been found to be a dependent child;

(b) That the court has entered a dispositional order pursuant to RCW 13.34.130;

(c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;

(d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; ((or))

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; or

(iii) Failure of the parent to have contact with the child for an extended period of time after the filing of the dependency petition if the parent was provided an opportunity to have a relationship with the child by the department or the court and received documented notice of the potential consequences of this failure, except that the actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's incarceration or service in the military does not in and of itself constitute failure to have contact with the child; and

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(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(3) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

(a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;

(b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;

(c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

(4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

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

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Hargrove, Regala and Stevens to Engrossed Substitute House Bill No. 1782.

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

MOTION

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

On page 1, line 2 of the title, after "matters;" strike the remainder of the title and insert "amending RCW 13.34.065, 13.34.145, and 13.34.180; reenacting and amending RCW 13.34.062; and creating a new section."

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Substitute House Bill No. 1782 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1782 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1782 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1782 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 21, 2009

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1619 and asks Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Fraser moved that the Senate recede from its position on the Senate amendments to Engrossed Substitute House Bill No. 1619.

The President declared the question before the Senate to be motion by Senator Fraser that the Senate recede from its position on the Senate amendments to Engrossed Substitute House Bill No. 1619.

The motion by Senator Fraser carried and the Senate receded from its amendments to Engrossed Substitute House Bill No. 1619 by voice vote.

MOTION

On motion of Senator Fraser, the rules were suspended and Engrossed Substitute House Bill No. 1619 was returned to second reading for the purposes of amendment.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1619, by House Committee on Capital Budget (originally sponsored by Representatives White, Kenney, Sullivan, Carlyle, Nelson,

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 Hasegawa, Liias, Green, Miloscia, Orwall, Maxwell and
 Simpson)

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Concerning the use of capital projects funds by school districts.

The measure was read the second time.

MOTION

Senator Fraser moved that the following amendment by Senators Fraser and Brandland be adopted:

On page 1, line 3 of the title, after "28A.320.330;" insert "and"

On page 1, line 3 of the title, after "section" strike ";" and providing an expiration date"

On page 1, beginning on line 5, strike section 1, through page 2 line 3, and renumber the sections consecutively.

On page 2, line 35, after "major repairs," insert "exterior painting of facilities."

On page 4, line 12, after "service regulations." insert "Based on the district's most recent two-year history of general fund maintenance expenditures, funds used for this purpose may not replace routine annual preventive maintenance expenditures made from the district's general fund."

On page 5, line 16, strike "NEW SECTION. Sec. 4." This act expires July 1, 2013."

Senator Fraser spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Fraser and Brandland to Engrossed Substitute House Bill No. 1619.

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

MOTION

On motion of Senator Fraser, the rules were suspended, Engrossed Substitute House Bill No. 1619 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Fraser spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1619 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1619 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1619 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2116 and asks Senate to recede therefrom.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Rockefeller moved that the Senate insist on its position on the Senate amendment(s) to Engrossed Substitute House Bill No. 2116 and ask the House to concur thereon.

Senators Rockefeller and Honeyford spoke in favor of passage of the motion.

The President declared the question before the Senate to be motion by Senator Rockefeller that the Senate insist on its position on the Senate amendment(s) to Engrossed Substitute House Bill No. 2116 and ask the House to concur thereon.

The motion by Senator Rockefeller carried and the Senate insisted on its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 2116 and asked the House to concur thereon by voice vote.

MESSAGE FROM THE HOUSE

April 22, 2009

MR. PRESIDENT:

The House insists on its position regarding the House amendment(s) to ENGROSSED SENATE BILL NO. 5200 and again asks Senate to concur thereon.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kline moved that the Senate insist on its position on the House amendment(s) to Engrossed Senate Bill No. 5200 and ask the House to recede therefrom.

Senator Kline spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Kline that the Senate insist on its position on the House amendment(s) to Engrossed Senate Bill No. 5200 and ask the House to recede therefrom.

The motion by Senator Kline carried and the Senate insisted on its position in the House amendment(s) to Engrossed Senate Bill No. 5200 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House insists on its position regarding the House amendment(s) to SUBSTITUTE SENATE BILL NO. 5913 and asks Senate to concur thereon.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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Senator Pflug moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5913.
 Senator Pflug spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Pflug that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5913.

The motion by Senator Pflug carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5913 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5913, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5913, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

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

Absent: Senator Brown

SUBSTITUTE SENATE BILL NO. 5913, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House has passed SENATE BILL NO. 6173 with the following amendment: 6173 AMH ENGR H3446.E

Strike everything after the enacting clause and insert the following:

**"PART I
 FINDING AND INTENT**

NEW SECTION. Sec. 101. The legislature finds that the department of revenue's 2008 compliance study estimates that sales tax noncompliance exceeds well over one hundred million dollars annually in unpaid state and local sales and use taxes.

The legislature intends to address this significant problem by eliminating the use of resale certificates to document wholesale purchases. Resale certificates will be replaced with seller's permits, which will be issued by the department of revenue only to those businesses that make wholesale purchases, such as retailers, wholesalers, manufacturers, and qualified contractors. Businesses that do not make wholesale purchases, such as most service businesses, will not be entitled to a seller's permit.

**PART II
 REPLACING RESALE CERTIFICATES WITH
 SELLER'S PERMITS
 ISSUED BY THE DEPARTMENT OF REVENUE**

NEW SECTION. Sec. 201. A new section is added to chapter 82.32 RCW to read as follows:

(1) Taxpayers seeking a new seller's permit or to renew or reinstate a seller's permit, other than taxpayers subject to the provisions of section 202 of this act, must apply to the department in a form and manner prescribed by the department. The department must rule on applications within sixty days of receiving a complete application. An application must be denied if the department determines that, based on the nature of the applicant's business, the applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a seller's permit. The department may also deny an application if it determines that denial would be in the best interest of collecting taxes due under this title. The department's decision whether to approve or deny an application may be based on tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the seller's permit application, and other information available to the department.

(2) Notwithstanding subsection (1) of this section, the department may issue a seller's permit to a taxpayer that has not applied for the permit if it appears to the department's satisfaction, based on the nature of the taxpayer's business activities and any other information available to the department, that the taxpayer is entitled to make purchases at wholesale.

(3) Seller's permits issued by the department will be in a form prescribed by the department, which may include an electronic form, and must contain a unique identifying number assigned by the department.

(4)(a) Except as otherwise provided in this section, seller's permits issued, renewed, or reinstated under this section will be valid for a period of forty-eight months from the date of issuance, renewal, or reinstatement.

(b) A seller's permit issued to taxpayers who register with the department under RCW 82.32.030 after January 1, 2009, is valid for a period of twenty-four months and may be renewed for the period prescribed in (a) of this subsection (4).

(c) A seller's permit is no longer valid if the permit holder's certificate of registration is revoked by the department or the person otherwise ceases to engage in business.

(5)(a) The department may revoke a seller's permit of a taxpayer for any of the following reasons:

(i) The taxpayer used or allowed or caused its seller's permit to be used to purchase any item or service without payment of sales tax, but the taxpayer or other purchaser was not entitled to use the seller's permit for the purchase;

(ii) The department issued the seller's permit to the taxpayer in error;

(iii) The department determines that the taxpayer is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the seller's permit would be in the best interest of collecting taxes due under this title.

(b) The notice of revocation must be in writing and is effective on the date specified in the revocation notice. The notice must also advise the taxpayer of its right to a review by the department.

(c) The department may refuse to reinstate a seller's permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a taxpayer whose seller's permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not entitled to a seller's permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(d) For purposes of this subsection, "reorganize" or "reorganization" means: (i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly; (ii) a mere change in identity or form of ownership,

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however effected; or (iii) the new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(6) The department may provide lists of valid and revoked seller's permit numbers on its web site.

(7) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a seller's permit. Such review must be consistent with the requirements of chapter 34.05 RCW.

(8) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a seller's permit or uniform exemption certificate authorized under RCW 82.04.470 and the consequences of misusing such permits or exemption certificates.

NEW SECTION. Sec. 202. A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) Contractors seeking a new seller's permit or to renew or reinstate a seller's permit must apply to the department in a form and manner prescribed by the department.

(b) As part of the application, the contractor must report the dollar amount of all purchases of materials and labor during the preceding twelve months for retail construction activity, speculative building, public road construction, and government contracting. If the contractor was not engaged in business as a contractor during the preceding twelve months, the contractor may provide an estimate of the dollar amount of purchases of materials and labor for retail construction activity, speculative building, public road construction, and government contracting during the twelve-month period for which the seller's permit will be valid.

(c) The department must rule on applications within sixty days of receiving a complete application.

(d)(i) An application must be denied if:

(A) The department determines that the applicant is not entitled to make purchases at wholesale;

(B) The application contains any material misstatement;

(C) The application is incomplete; or

(D) Less than twenty-five percent of the taxpayer's total dollar amount of actual or, if applicable, estimated material and labor purchases as reported on the application is for retail construction activity performed by the applicant. However, the department may approve an application not meeting the criteria in this subsection (1)(d)(i)(D) if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under this title.

(ii) The department may also deny an application if the department determines that denial would be in the best interest of collecting taxes due under this title.

(e) Applications to renew a seller's permit may not be made more than ninety days before the expiration of the seller's permit.

(2) Sellers' permits issued by the department will be in a form prescribed by the department, which may include an electronic form, and must contain a unique identifying number assigned by the department.

(3)(a) Sellers' permits issued, renewed, or reinstated under this section will be valid for a period of twelve months from the date of issuance, renewal, or reinstatement.

(b) A seller's permit is no longer valid if the permit holder's certificate of registration is revoked by the department or the person otherwise ceases to engage in business.

(4)(a) The department may revoke a seller's permit of a contractor for any of the following reasons:

(i) The contractor used or allowed or caused its seller's permit to be used to purchase any item or service without payment of sales tax, but the contractor or other purchaser was not entitled to use the seller's permit for the purchase;

(ii) The department issued the seller's permit to the contractor in error;

(iii) The department determines that the contractor is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the seller's permit would be in the best interest of collecting taxes due under this title.

(b) The notice of revocation must be in writing and is effective on the date specified in the revocation notice. The notice must also advise the contractor of its right to a review by the department.

(c) The department may refuse to reinstate a seller's permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a contractor whose seller's permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not entitled to a seller's permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(d) For purposes of this subsection, "reorganize" or "reorganization" means: (i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly; (ii) a mere change in identity or form of ownership, however effected; or (iii) the new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(5) The department may provide lists of valid and revoked sellers' permit numbers on its web site.

(6) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a seller's permit. Such review must be consistent with the requirements of chapter 34.05 RCW.

(7) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a seller's permit or uniform exemption certificate authorized under RCW 82.04.470 and the consequences of misusing such permits or exemption certificates.

(8) As used in this section, the following definitions apply:

(a) "Contractor" means a person who engages in any retail construction activity, or who engages in any activity that brings the person within the definition of consumer in RCW 82.04.190 (3) or (6), or who is a speculative builder as defined by rule of the department.

(b) "Government contracting" means the activity described in RCW 82.04.190(6).

(c) "Public road construction" means the activity described in RCW 82.04.190(3).

(d) "Retail construction activity" means any activity defined as a retail sale in RCW 82.04.050(2) (b) or (c).

(e) "Speculative building" means the activities of a speculative builder as the term "speculative builder" is defined by rule of the department.

NEW SECTION. Sec. 203. A new section is added to chapter 82.32 RCW to read as follows:

The department of revenue must, by January 1, 2011, develop a system, as resources permit, allowing sellers to voluntarily verify through electronic means the validity of sellers' permits presented to sellers from their customers.

NEW SECTION. Sec. 204. A new section is added to chapter 82.32 RCW to read as follows:

A person must, upon request of the department, provide the department with a copy of all sellers' permits, or uniform exemption certificates as authorized in RCW 82.04.470, accepted by that person during the period specified by the department.

Sec. 205. RCW 82.04.470 and 2007 c 6 s 1201 are each amended to read as follows:

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(1) Unless a seller has taken from the buyer a ~~((resale certificate))~~ seller's permit, the burden of proving that a sale of tangible personal property, extended warranty, or of services, was not a sale at retail shall be upon the person who made it.

(2) If a seller does not receive a ~~((resale certificate))~~ seller's permit at the time of the sale, have a ~~((resale certificate))~~ seller's permit on file at the time of the sale, or obtain a ~~((resale certificate))~~ seller's permit from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department ~~((of revenue))~~ that show the sale was properly made without payment of retail sales tax.

(3) ~~((The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.~~

~~((4) As used in this section, "resale certificate" means documentation provided by a buyer to a seller stating that the purchase is for resale in the regular course of business, or that the buyer is exempt from retail sales tax, and containing the following information))~~ A seller's permit must contain such information as required by the department, which may include, but is not limited to:

- (a) The name and address of the buyer;
- (b) The ~~((uniform business identifier or revenue registration number of the buyer, if the buyer is required to be registered))~~ seller's permit number issued by the department;
- (c) The type of business engaged in;
- (d) The categories of items or services to be purchased for resale or that are ~~((exempt))~~ otherwise to be purchased at wholesale, unless the buyer presents a blanket ~~((resale certificate))~~ seller's permit;
- (e) The date on which the ~~((certificate))~~ permit was provided to the seller;
- (f) A statement that the items or services purchased either:
 - (i) Are purchased for resale in the regular course of business; or
 - (ii) are ~~((exempt from tax pursuant to statute))~~ otherwise purchased at wholesale;
- (g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the ~~((certificate))~~ permit and that misuse of the resale ~~((or exemption))~~ privilege claimed on the ~~((certificate))~~ permit subjects the buyer to ~~((a penalty of fifty percent of the tax due))~~ revocation of the seller's permit, penalties as provided in RCW 82.32.290 and 82.32.291, in addition to the tax, interest, and any other penalties imposed by law;
- (h) The name of the individual authorized to sign the ~~((certificate))~~ permit, printed in a legible fashion;
 - (i) The signature of the authorized individual; ~~((and))~~
 - (j) The name of the seller;
 - (k) The date the permit was issued, renewed, or reinstated by the department;
 - (l) The date that the permit expires;
 - (m) Instructions for renewing the permit; and
 - (n) A statement that the department is authorized to obtain information concerning the buyer's purchase of items or services under the permit from the seller to verify whether the buyer was authorized to purchase such items or services without payment of retail sales tax.

~~((5))~~ (4) Subsection ~~((4))~~, (3)(h)(i) and (i)(j) of this section does not apply if the ~~((certificate))~~ permit is provided in a format other than paper. If the ~~((certificate))~~ permit is provided in a format other than paper, the name of the individual providing the ~~((certificate))~~ permit must be included in the ~~((certificate))~~ permit.

(5)(a) In lieu of a seller's permit issued by the department under section 201 or 202 of this act, a seller may accept from a

buyer that is not required to be registered with the department under RCW 82.32.030 a properly completed:

- (i) Uniform sales and use tax exemption certificate developed by the multistate tax commission; or
- (ii) Uniform exemption certificate approved by the streamlined sales and use tax agreement governing board.

(b) A seller who accepts a properly completed exemption certificate as authorized in (a) of this subsection is relieved of the obligation to collect and remit retail sales tax.

(6) In lieu of a seller's permit issued by the department under section 201 or 202 of this act, a seller may accept from a buyer that is required to be registered with the department under RCW 82.32.030 a properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board as long as that certificate includes the seller's permit number issued by the department to the buyer.

(7) As used in this section, "seller's permit" means documentation issued by the department under section 201 or 202 of this act and provided by a buyer to a seller to substantiate a wholesale sale.

Sec. 206. RCW 82.08.050 and 2007 c 6 s 1202 are each amended to read as follows:

(1) The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) In case any seller fails to collect the tax herein imposed or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer a ~~((resale certificate))~~ seller's permit or uniform exemption certificate authorized under RCW 82.04.470, a copy of a direct pay permit issued under RCW 82.32.087, a direct mail form under RCW 82.32.730(5), or other information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department.

(4) Sellers shall not be relieved from personal liability for the amount of the tax unless they maintain proper records of exempt transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days,

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or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(8) The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

(11) Notwithstanding subsections (1) through (10) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(12) Subsection (11) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or

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(b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(13) For purposes of this section, "seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller.

Sec. 207. RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each amended to read as follows:

(1) If a buyer normally is engaged in both consuming and reselling certain types of articles of tangible personal property and is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a ~~((resale certificate))~~ seller's permit or, if eligible, a uniform exemption certificate authorized under RCW 82.04.470 for the entire purchase if the buyer principally resells the articles according to the general nature of the buyer's business. The buyer shall account for the value of any articles purchased with a ~~((resale certificate))~~ seller's permit or uniform exemption certificate authorized under RCW 82.04.470 that are used by the buyer and remit the deferred sales tax on the articles to the department.

(2) A buyer who pays a tax on all purchases and subsequently resells an article or service at retail, without intervening use by the buyer, shall collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction or credit on the buyer's tax return equal to, in the case of a deduction, the cost to the buyer of the property or service resold upon which retail sales tax has been paid, and in the case of a credit, the amount of state and local sales taxes paid with respect to the property or service resold. The deduction or credit is allowed only if the taxpayer keeps and preserves records that show the names of the persons from whom the articles or services were purchased, the date of the purchase, the type of articles or services, the amount of the purchase, and the tax that was paid.

(3) The department ~~((shall))~~ must provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later ~~((sold at wholesale))~~ resold without intervening use by the buyer or for purchases that would otherwise have met the definition of wholesale sale if the buyer had provided the seller with a seller's permit or uniform exemption certificate as authorized in RCW 82.04.470.

(4) Nothing in this section may be construed to authorize a deduction or credit in respect to the purchase of services if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

Sec. 208. RCW 82.14B.042 and 2002 c 341 s 10 are each amended to read as follows:

(1) The state enhanced 911 excise taxes imposed by this chapter must be paid by the subscriber to the local exchange company providing the switched access line or the radio communications service company providing the radio access line, and each local exchange company and each radio communications service company shall collect from the subscriber the full amount of the taxes payable. The state enhanced 911 excise taxes required by this chapter to be collected by the local exchange company or the radio communications service company are deemed to be held in trust by the local exchange company or the radio communications service company until paid to the department. Any local exchange company or radio communications service company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company or radio communications service company fails to collect the state enhanced 911 excise tax or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the local exchange company or the radio

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communications service company is personally liable to the state for the amount of the tax, unless the local exchange company or the radio communications service company has taken from the buyer in good faith (~~a properly executed resale certificate under RCW 82.14B.200~~) documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for the state enhanced 911 tax.

(3) The amount of tax, until paid by the subscriber to the local exchange company, the radio communications service company, or to the department, constitutes a debt from the subscriber to the local exchange company or the radio communications service company. Any local exchange company or radio communications service company that fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber who refuses to pay any tax due under this chapter is guilty of a misdemeanor. The state enhanced 911 excise taxes required by this chapter to be collected by the local exchange company or the radio communications service company must be stated separately on the billing statement that is sent to the subscriber.

(4) If a subscriber has failed to pay to the local exchange company or the radio communications service company the state enhanced 911 excise taxes imposed by this chapter and the local exchange company or the radio communications service company has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the subscriber to pay the tax to the local exchange company or the radio communications service company, regardless of when the tax is collected by the department. Tax under this chapter is due as provided under RCW 82.14B.061.

Sec. 209. RCW 82.14B.200 and 2002 c 341 s 12 are each amended to read as follows:

(1) Unless a local exchange company or a radio communications service company has taken from the buyer (~~a resale certificate or equivalent document under RCW 82.04.470~~) documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for the tax, the burden of proving that a sale of the use of a switched access line or radio access line was not a sale to a subscriber or was not otherwise subject to the tax is upon the person who made the sale.

(2) If a local exchange company or a radio communications service company does not receive (~~a resale certificate~~) documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for the tax at the time of the sale, have (~~a resale certificate~~) such documentation on file at the time of the sale, or obtain (~~a resale certificate~~) such documentation from the buyer within a reasonable time after the sale, the local exchange company or the radio communications service company remains liable for the tax as provided in RCW 82.14B.042, unless the local exchange company or the radio communications service company can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of the state enhanced 911 excise tax.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on state enhanced 911 excise taxes due but not paid as a result of the improper use of (~~a resale certificate~~) documentation stating that the buyer is not a subscriber or is otherwise not liable for the state enhanced 911 tax. This subsection does not prohibit or restrict the application of other penalties authorized by law.

Sec. 210. RCW 82.32.087 and 2001 c 188 s 2 are each amended to read as follows:

(1) The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the

taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit shall remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

(2)(a) A taxpayer may apply for a permit under this section if the taxpayer (i) is subject to mandatory use of electronic funds transfer under RCW 82.32.080; or (ii) makes purchases subject to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten million dollars per calendar year.

(b) Application for a permit must be made in writing to the director in a form and manner prescribed by the department. A taxpayer who transacts business in two or more locations may submit one application to cover the multiple locations.

(c) The director shall review a direct pay permit application in a timely manner and shall notify the applicant, in writing, of the approval or denial of the application. The department shall approve or deny an application based on the applicant's ability to comply with local government use tax coding capabilities and responsibilities; requirements for vendor notification; recordkeeping obligations; electronic data capabilities; and tax reporting procedures. Additionally, an application may be denied if the director determines that denial would be in the best interest of collecting taxes due under this title. The department shall provide a direct pay permit to an approved applicant with the notice of approval. The direct pay permit shall clearly state that the holder is solely responsible for the accrual and payment of the tax imposed under chapters 82.08 and 82.12 RCW and that the seller is relieved of liability to collect tax imposed under chapters 82.08 and 82.12 RCW on all sales to the direct pay permit holder. The taxpayer may petition the director for reconsideration of a denial.

(d) A taxpayer who uses a direct pay permit must continue to maintain records that are necessary to a determination of the tax liability in accordance with this title. A direct pay permit is not transferable and the use of a direct pay permit may not be assigned to a third party.

(3) Taxes for which the direct pay permit is used are due and payable on the tax return for the reporting period in which the taxpayer (a) receives the tangible personal property purchased or in which the labor and/or services are performed or (b) receives an invoice for such property or such labor and/or services, whichever period is earlier.

(4) The holder of a direct pay permit shall furnish a copy of the direct pay permit to each vendor with whom the taxpayer has opted to use a direct pay permit. Sellers who make sales upon which the sales or use tax is not collected by reason of the provisions of this section, in addition to existing requirements under this title, shall maintain a copy of the direct pay permit and any such records or information as the department may specify.

(5) A direct pay permit is subject to revocation by the director at any time the department determines that the taxpayer has violated any provision of this section or that revocation would be in the best interests of collecting the taxes due under this title. The notice of revocation must be in writing and is effective either as of the end of the taxpayer's next normal reporting period or a date deemed appropriate by the director and identified in the revocation notice. The taxpayer may petition the director for reconsideration of a revocation and reinstatement of the permit.

(6) Any taxpayer who chooses to no longer use a direct pay permit or whose permit is revoked by the department, shall

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return the permit to the department and immediately make a good faith effort to notify all vendors to whom the permit was given, advising them that the permit is no longer valid.

(7) Except as provided in this subsection, the direct pay permit may be used for any purchase of tangible personal property and any retail sale under RCW 82.04.050. The direct pay permit may not be used for:

(a) Purchases of meals or beverages;

(b) Purchases of motor vehicles, trailers, boats, airplanes, and other property subject to requirements for title transactions by the department of licensing;

(c) Purchases for which a ~~((resale certificate))~~ seller's permit or uniform exemption certificate authorized under RCW 82.04.470 may be used;

(d) Purchases that meet the definitions of RCW 82.04.050

(2) (e) and (f), (3) (a) through (d), (f), and (g), and (5); or

(e) Other activities subject to tax under chapter 82.08 or 82.12 RCW that the department by rule designates, consistent with the purposes of this section, as activities for which a direct pay permit is not appropriate and may not be used.

Sec. 211. RCW 82.32.290 and 1985 c 414 s 2 are each amended to read as follows:

(1)(a) It shall be unlawful:

(i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business without having obtained a certificate of registration as provided in this chapter;

(iii) For any person to tear down or remove any order or notice posted by the department;

(iv) For any person to aid or abet another in an attempt to evade the payment of any tax or any part thereof;

(v) For any purchaser to fraudulently sign or furnish to a ~~seller a ((resale certificate))~~ seller's permit or uniform exemption certificate authorized under RCW 82.04.470 without intent to resell the property purchased; or

(vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

(b) Any person violating any of the provisions of this subsection (1) shall be guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

(2)(a) It shall be unlawful:

(i) For any person to engage in business after revocation of a certificate of registration;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business after revocation of a certificate of registration; or

(iii) For any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof.

(b) Any person violating any of the provisions of this subsection (2) shall be guilty of a class C felony in accordance with chapter 9A.20 RCW.

(3) In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, shall be punished, upon conviction thereof, by a fine of not more than one thousand dollars. All penalties or punishments provided in this section shall be in addition to all other penalties provided by law.

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Sec. 212. RCW 82.32.291 and 1993 sp.s. c 25 s 703 are each amended to read as follows:

Any person who uses a ~~((resale certificate))~~ seller's permit to purchase items or services without payment of sales tax, or who uses a uniform exemption certificate developed by the multistate tax commission or approved by the streamlined sales and use tax agreement governing board to claim a purchase for resale exemption, and who is not entitled to use the seller's permit or exemption certificate for the purchase shall be assessed a penalty of fifty percent of the tax due, in addition to all other taxes, penalties, and interest due, on the improperly purchased item or service. The department may waive the penalty imposed under this section if it finds that the use of the seller's permit or exemption certificate was due to circumstances beyond the taxpayer's control or if the seller's permit or exemption certificate was properly used for purchases for dual purposes. The department shall define by rule what circumstances are considered to be beyond the taxpayer's control.

Sec. 213. RCW 82.32.330 and 2008 c 81 s 11 are each amended to read as follows:

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense(~~(--PROVIDED, That)).~~ However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information ~~((shall be))~~ are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding;

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(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director (~~shall~~) prescribes by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person (~~PROVIDED, That~~). However, tax information not received from the taxpayer (~~shall~~) must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department (~~shall~~) is not (~~be~~) required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives within the Department of Justice, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States Department of Homeland Security, the Coast Guard of the United States, and the United States Department of Transportation, or any authorized representative (~~thereof~~) of these federal agencies, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, seller's permit numbers and the status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection (~~shall~~) must not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax; or

(r) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department (~~shall~~) must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence (~~shall~~) must clearly identify the data,

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materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department ~~((shall))~~ must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person ~~((shall))~~ must forfeit such office or employment and ~~((shall be))~~ is incapable of holding any public office or employment in this state for a period of two years thereafter.

Sec. 214. RCW 82.72.040 and 2004 c 254 s 6 are each amended to read as follows:

(1) Telephone program excise taxes must be paid by the subscriber to the local exchange company providing the switched access line, and each local exchange company shall collect from the subscriber the full amount of the taxes payable. Telephone program excise taxes to be collected by the local exchange company are deemed to be held in trust by the local exchange company until paid to the department. Any local exchange company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company fails to collect telephone program excise taxes or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the local exchange company is personally liable to the state for the amount of the tax, unless the local exchange company has taken from the buyer in good faith ~~((a properly executed resale certificate under RCW 82.72.070))~~ documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for telephone program excise taxes.

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(3) The amount of tax, until paid by the subscriber to the local exchange company or to the department, constitutes a debt from the subscriber to the local exchange company. Any local exchange company that fails or refuses to collect telephone program excise taxes as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber who refuses to pay any telephone excise tax is guilty of a misdemeanor.

(4) If a subscriber has failed to pay to the local exchange company the telephone program excise taxes and the local exchange company has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the subscriber to pay the tax to the local exchange company, regardless of when the tax is collected by the department. Telephone program excise taxes are due as provided under RCW 82.72.050.

Sec. 215. RCW 82.72.070 and 2004 c 254 s 9 are each amended to read as follows:

(1) Unless a local exchange company has taken from the buyer ~~((a resale certificate or equivalent document under RCW 82.04.470))~~ documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for telephone program excise taxes, the burden of proving that a sale of the use of a switched access line was not a sale to a subscriber or was otherwise not subject to telephone program excise taxes is upon the person who made the sale.

(2) If a local exchange company does not receive ~~((a resale certificate))~~ documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for telephone program excise taxes at the time of the sale, have ~~((a resale certificate))~~ such documentation on file at the time of the sale, or obtain ~~((a resale certificate))~~ such documentation from the buyer within a reasonable time after the sale, the local exchange company remains liable for the telephone program excise taxes as provided in RCW 82.72.040, unless the local exchange company can demonstrate facts and circumstances according to rules adopted by the department that show the sale was properly made without payment of telephone program excise taxes.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on telephone program excise taxes that are due but not paid as a result of the improper use of ~~((a resale certificate))~~ documentation stating that the buyer is not a subscriber or is otherwise not liable for telephone program excise taxes. This subsection does not prohibit or restrict the application of other penalties authorized by law.

PART III TECHNICAL CHANGES

Sec. 301. RCW 82.04.050 and 2007 c 54 s 4 and 2007 c 6 s 1004 are each reenacted and amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a ~~((resale certificate under))~~ seller's permit or uniform exemption certificate in conformity with RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for

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consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) Persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term shall also include:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term shall not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term shall also include the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of prewritten computer software other than a sale to a person who presents a ~~((resale certificate under))~~ seller's permit or uniform exemption certificate in conformity with RCW 82.04.470, regardless of the

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method of delivery to the end user, but shall not include custom software or the customization of prewritten computer software.

(7) The term shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(9) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(10) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(11) The term shall not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

PART IV MISCELLANEOUS

NEW SECTION. Sec. 401. If any provision of this act or its application to any person or circumstance is held invalid, the

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remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 402. This act must be liberally construed in order to carry out its purposes.

NEW SECTION. Sec. 403. This act takes effect January 1, 2010.

NEW SECTION. Sec. 404. The effective date in section 403 of this act may not be construed as preventing the department of revenue from accepting applications for, or issuing, seller's permits before January 1, 2010, adopting rules, or taking any other action before January 1, 2010, necessary to ensure the effective implementation of this act.

NEW SECTION. Sec. 405. By December 1, 2009, the finance committee of the house of representatives and the joint legislative task force on the underground economy in the Washington state construction industry, shall each prepare a report that reviews the issues and concerns that need to be addressed by the legislature as a result of the changes made in this act. The reports shall include any recommendations on potential modifications to the provisions of this act. The department of revenue shall provide necessary support and information.

NEW SECTION. Sec. 406. Part headings used in this act are not any part of the law."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Tom moved that the Senate concur in the House amendment(s) to Senate Bill No. 6173.

The President declared the question before the Senate to be the motion by Senator Tom that the Senate concur in the House amendment(s) to Senate Bill No. 6173.

The motion by Senator Tom carried and the Senate concurred in the House amendment(s) to Senate Bill No. 6173 by voice vote.

MOTION

On motion of Senator Hobbs, Senator Hatfield was excused.

The President declared the question before the Senate to be the final passage of Senate Bill No. 6173, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 6173, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 30; Nays, 19; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

SENATE BILL NO. 6173, as amended by the House, having received the constitutional majority, was declared

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passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House receded in its amendment to ENGROSSED SUBSTITUTE SENATE BILL NO. 5889. Under suspension of rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5589-S.E AMH QUAL H3425.4, and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 28A.165.025 and 2004 c 20 s 3 are each amended to read as follows:

~~((By July 1st of each year.))~~ (1) A participating school district shall submit the district's plan for using learning assistance funds to the office of the superintendent of public instruction for approval, to the extent required under subsection (2) of this section. ~~((For the 2004-05 school year, school districts must identify the program activities to be implemented from RCW 28A.165.035 and are encouraged to implement the elements in subsections (1) through (8) of this section. Beginning in the 2005-06 school year.))~~ The program plan must identify the program activities to be implemented from RCW 28A.165.035 and implement all of the elements in ~~((subsections (1) through (8)))~~ (a) through ((8)) (h) of this ((section)) subsection. The school district plan shall include the following:

~~((1))~~ (a) District and school-level data on reading, writing, and mathematics achievement as reported pursuant to chapter 28A.655 RCW and relevant federal law;

~~((2))~~ (b) Processes used for identifying the underachieving students to be served by the program, including the identification of school or program sites providing program activities;

~~((3))~~ (c) How accelerated learning plans are developed and implemented for participating students. Accelerated learning plans may be developed as part of existing student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students. Accelerated learning plans shall include:

~~((a))~~ (i) Achievement goals for the students;

~~((b))~~ (ii) Roles of the student, parents, or guardians and teachers in the plan;

~~((c))~~ (iii) Communication procedures regarding student accomplishment; and

~~((d))~~ (iv) Plan reviews and adjustments processes;

~~((e))~~ (d) How state level and classroom assessments are used to inform instruction;

~~((f))~~ (e) How focused and intentional instructional strategies have been identified and implemented;

~~((g))~~ (f) How highly qualified instructional staff are developed and supported in the program and in participating schools;

~~((h))~~ (g) How other federal, state, district, and school resources are coordinated with school improvement plans and the district's strategic plan to support underachieving students; and

~~((i))~~ (h) How a program evaluation will be conducted to determine direction for the following school year.

(2) If a school district has received approval of its plan once, it is not required to submit a plan for approval under RCW 28A.165.045 or this section unless the district has made a significant change to the plan. If a district has made a significant change to only a portion of the plan the district need only submit a description of the changes made and not the entire plan. Plans or descriptions of changes to the plan must be submitted by July 1st as required under this section. The office of the superintendent of public instruction shall establish guidelines for what a "significant change" is.

Sec. 2. RCW 28A.165.045 and 2004 c 20 s 5 are each amended to read as follows:

A participating school district shall ~~((annually))~~ submit a program plan to the office of the superintendent of public instruction for approval to the extent required by RCW 28A.165.025. The program plan must address all of the elements in RCW 28A.165.025 and identify the program activities to be implemented from RCW 28A.165.035.

School districts achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW shall have their program approved once the program plan and activities submittal is completed.

School districts not achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW and that are not in a state or federal program of school improvement shall be subject to program approval once the plan components are reviewed by the office of the superintendent of public instruction for the purpose of receiving technical assistance in the final development of the plan.

School districts with one or more schools in a state or federal program of school improvement shall have their plans and activities reviewed and approved in conjunction with the state or federal program school improvement program requirements.

Sec. 3. RCW 28A.210.010 and 1971 c 32 s 1 are each amended to read as follows:

The state board of health, after consultation with the superintendent of public instruction, shall adopt reasonable rules ~~((and regulations))~~ regarding the presence of persons on or about any school premises who have, or who have been exposed to, contagious diseases deemed by the state board of health as dangerous to the public health. Such rules ~~((and regulations))~~ shall specify reasonable and precautionary procedures as to such presence and/or readmission of such persons and may include the requirement for a certificate from a licensed physician that there is no danger of contagion. The superintendent of public instruction shall ~~((print and distribute the))~~ provide to appropriate school officials and personnel, access and notice of these rules ((and regulations)) of the state board of health ((above provided to appropriate school officials and personnel)). Providing online access to these rules satisfies the requirements of this section. The superintendent of public instruction is required to provide this notice only when there are significant changes to the rules.

Sec. 4. RCW 28A.210.040 and 1990 c 33 s 189 are each amended to read as follows:

The superintendent of public instruction shall ~~((print and distribute))~~ provide access to appropriate school officials the rules ((and regulations)) adopted by the state board of health pursuant to RCW 28A.210.020 and the recommended records and forms to be used in making and reporting such screenings. Providing online access to the materials satisfies the requirements of this section.

Sec. 5. RCW 28A.225.005 and 1992 c 205 s 201 are each amended to read as follows:

Each school within a school district shall inform the students and the parents of the students enrolled in the school about the compulsory education requirements under this chapter. The school shall ~~((distribute))~~ provide access to the information at least annually. Providing online access to the information satisfies the requirements of this section unless a parent or guardian specifically requests information to be provided in written form.

Sec. 6. RCW 28A.225.290 and 1990 1st ex.s. c 9 s 207 are each amended to read as follows:

(1) The superintendent of public instruction shall prepare and annually ~~((distribute an))~~ provide access to information ~~((booklet))~~ outlining parents' and guardians' enrollment options for their children. Providing online access to the information satisfies the requirements of this section unless a parent or guardian specifically requests information to be provided in written form.

(2) ~~((Before the 1991-92 school year, the booklet shall be distributed to all school districts by the office of the superintendent of public instruction. School districts shall have a copy of the information booklet available for public inspection at each school in the district, at the district office, and in public libraries))~~ School districts shall provide access to the information in this section to the public. Providing online access to the information satisfies the requirements of this subsection unless a parent or guardian specifically requests the information be provided in written form.

(3) The booklet shall include:

(a) Information about enrollment options and program opportunities, including but not limited to programs in RCW 28A.225.220, 28A.185.040, 28A.225.200 through 28A.225.215, 28A.225.230 through 28A.225.250, 28A.175.090, 28A.340.010 through 28A.340.070 (small high school cooperative projects), and 28A.335.160.

(b) Information about the running start - community college or vocational-technical institute choice program under RCW 28A.600.300 through ~~((28A.600.395))~~ 28A.600.390; and

(c) Information about the seventh and eighth grade choice program under RCW 28A.230.090.

Sec. 7. RCW 28A.225.300 and 1990 1st ex.s. c 9 s 208 are each amended to read as follows:

Each school district board of directors annually shall inform parents of the district's intradistrict and interdistrict enrollment options and parental involvement opportunities. Information on intradistrict enrollment options and interdistrict acceptance policies shall be provided to nonresidents on request. Providing online access to the information satisfies the requirements of this section unless a parent or guardian specifically requests information to be provided in written form.

Sec. 8. RCW 28A.230.095 and 2006 c 113 s 2 are each amended to read as follows:

(1) By the end of the 2008-09 school year, school districts shall have in place in elementary schools, middle schools, and high schools assessments or other strategies chosen by the district to assure that students have an opportunity to learn the essential academic learning requirements in social studies, the arts, and health and fitness. Social studies includes history, geography, civics, economics, and social studies skills. Beginning with the 2008-09 school year, school districts shall annually submit an implementation verification report to the office of the superintendent of public instruction. The office of the superintendent of public instruction may not require school districts to use a classroom-based assessment in social studies, the arts, and health and fitness to meet the requirements of this

section and shall clearly communicate to districts their option to use other strategies chosen by the district.

(2) Beginning with the 2008-09 school year, school districts shall require students in ~~((the fourth or fifth grades [grade];))~~ the seventh or eighth ~~((grades [grade]))~~ grade, and the eleventh or twelfth ~~((grades [grade]))~~ grade to each complete at least one classroom-based assessment in civics. Beginning with the 2010-11 school year, school districts shall require students in the fourth or fifth grade to complete at least one classroom-based assessment in civics. The civics assessment may be selected from a list of classroom-based assessments approved by the office of the superintendent of public instruction. Beginning with the 2008-09 school year, school districts shall annually submit implementation verification reports to the office of the superintendent of public instruction documenting the use of the classroom-based assessments in civics.

(3) Verification reports shall require school districts to report only the information necessary to comply with this section.

Sec. 9. RCW 28A.230.125 and 2006 c 263 s 401 and 2006 c 115 s 6 are each reenacted and amended to read as follows:

(1) The superintendent of public instruction, in consultation with the higher education coordinating board, the state board for community and technical colleges, and the workforce training and education coordinating board, shall develop for use by all public school districts a standardized high school transcript. The superintendent shall establish clear definitions for the terms "credits" and "hours" so that school programs operating on the quarter, semester, or trimester system can be compared.

(2) The standardized high school transcript shall include a notation of whether the student has earned a certificate of individual achievement or a certificate of academic achievement.

~~((3) Transcripts are important documents to students who will apply for admission to postsecondary institutions of higher education. Transcripts are also important to students who will seek employment upon or prior to graduation from high school. It is recognized that student transcripts may be the only record available to employers in their decision-making processes regarding prospective employees. The superintendent of public instruction shall require school districts to inform annually all high school students that prospective employers may request to see transcripts and that the prospective employee's decision to release transcripts can be an important part of the process of applying for employment.))~~

Sec. 10. RCW 28A.300.040 and 2006 c 263 s 104 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 for the government of the common schools, 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

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schools, and 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))~~ made available online 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 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 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;

(7) 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 as required by the superintendent of public instruction; and it is 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;

(8) To keep in the superintendent's office a record of all teachers receiving certificates to teach in the common schools of this state;

(9) To issue certificates as provided by law;

(10) 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;

(11) 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;

(12) To administer oaths and affirmations in the discharge of the superintendent's official duties;

(13) 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;

(14) To administer family services and programs to promote the state's policy as provided in RCW 74.14A.025;

(15) To promote the adoption of school-based curricula and policies that provide quality, daily physical education for all students, and to encourage policies that provide all students with opportunities for physical activity outside of formal physical education classes;

(16) To perform such other duties as may be required by law.

Sec. 11. RCW 28A.300.525 and 2008 c 297 s 2 are each amended to read as follows:

(1) The superintendent of public instruction shall provide an annual aggregate report to the legislature on the educational experiences and progress of students in children's administration out-of-home care. This data should be disaggregated in the smallest units allowable by law that do not identify an individual student, in order to learn which school districts are experiencing the greatest success and challenges in achieving quality educational outcomes with students in children's administration out-of-home care.

(2) This section is suspended until July 1, 2011.

Sec. 12. RCW 28A.320.165 and 2001 c 333 s 4 are each amended to read as follows:

Schools as defined in RCW 17.21.415 shall provide notice of pesticide use to parents or guardians of students and employees pursuant to chapter 17.21 RCW, upon the request of the parent or guardian.

Sec. 13. RCW 28A.320.180 and 2007 c 396 s 11 are each amended to read as follows:

(1) Subject to funding appropriated for this purpose and beginning in the fall of 2009, school districts shall provide all high school students enrolled in the district the option of taking the mathematics college readiness test developed under RCW 28B.10.679 once at no cost to the students. Districts shall encourage, but not require, students to take the test in their junior or senior year of high school.

(2) Subject to funding appropriated for this purpose, the office of the superintendent of public instruction shall reimburse each district for the costs incurred by the district in providing students the opportunity to take the mathematics placement test.

(3) This section is suspended until July 1, 2011.

Sec. 14. RCW 28A.600.160 and 1998 c 225 s 2 are each amended to read as follows:

Any middle school, junior high school, or high school using educational pathways shall ensure that all participating students will continue to have access to the courses and instruction necessary to meet admission requirements at baccalaureate institutions. Students shall be allowed to enter the educational pathway of their choice. Before accepting a student into an educational pathway, the school shall inform the student's parent of the pathway chosen, the opportunities available to the student through the pathway, and the career objectives the student will have exposure to while pursuing the pathway. Providing online access to the information satisfies the requirements of this section unless a parent or guardian specifically request information to be provided in written form. Parents and students dissatisfied with the opportunities available through the selected educational pathway shall be provided with the opportunity to transfer the student to any other pathway provided in the school. Schools may not develop educational pathways that retain students in high school beyond the date they are eligible to graduate, and may not require students who transfer between pathways to complete pathway requirements beyond the date the student is eligible to graduate. Educational pathways may include, but are not limited to, programs such as work-based learning, ~~((school-to-work transition,))~~ tech prep, ~~((vocational-technical))~~ career and technical education, running start, and preparation for technical college, community college, or university education.

Sec. 15. RCW 28A.655.075 and 2007 c 396 s 16 are each amended to read as follows:

(1) Within funds specifically appropriated therefor, by December 1, 2008, the superintendent of public instruction shall develop essential academic learning requirements and grade level expectations for educational technology literacy and technology fluency that identify the knowledge and skills that all public school students need to know and be able to do in the areas of technology and technology literacy. The development process shall include a review of current standards that have been developed or are used by other states and national and international technology associations. To the maximum extent possible, the superintendent shall integrate goal four and the knowledge and skill areas in the other goals in the technology essential academic learning requirements.

(a) As used in this section, "technology literacy" means the ability to responsibly, creatively, and effectively use appropriate technology to communicate; access, collect, manage, integrate, and evaluate information; solve problems and create solutions; build and share knowledge; and improve and enhance learning in all subject areas and experiences.

(b) Technology fluency builds upon technology literacy and is demonstrated when students: Apply technology to real-world experiences; adapt to changing technologies; modify current and create new technologies; and personalize technology to meet personal needs, interests, and learning styles.

(2)(a) Within funds specifically appropriated therefor, the superintendent shall obtain or develop education technology assessments that may be administered in the elementary, middle, and high school grades to assess the essential academic learning requirements for technology. The assessments shall be designed to be classroom or project-based so that they can be embedded in classroom instruction and be administered and scored by school staff throughout the regular school year using consistent scoring criteria and procedures. By the 2010-11 school year, these assessments shall be made available to school districts for the districts' voluntary use. If a school district uses the assessments created under this section, then the school district shall notify the superintendent of public instruction of the use. The superintendent shall report annually to the legislature on the number of school districts that use the assessments each school year.

(b) Beginning December 1, 2010, and annually thereafter, the superintendent of public instruction shall provide a report to the relevant legislative committees regarding the use of the assessments.

(3) This section is suspended until July 1, 2011.

Sec. 16. RCW 17.21.415 and 2001 c 333 s 3 are each amended to read as follows:

(1) As used in this section, "school" means a licensed day care center or a public kindergarten or a public elementary or secondary school.

(2) A school shall provide written notification (~~(annually or upon enrollment)~~), upon request, to parents or guardians of students and employees describing the school's pest control policies and methods, including the posting and notification requirements of this section.

(3) A school shall establish a notification system that, as a minimum, notifies interested parents or guardians of students and employees at least forty-eight hours before a pesticide application to a school facility. The notification system shall include posting of the notification in a prominent place in the main office of the school.

(4) All notifications to parents, guardians, and employees shall include the heading "Notice: Pesticide Application" and, at a minimum, shall state:

(a) The product name of the pesticide to be applied;

(b) The intended date and time of application;

(c) The location to which the pesticide is to be applied;

(d) The pest to be controlled; and

(e) The name and phone number of a contact person at the school.

(5) A school facility application must be made within forty-eight hours following the intended date and time stated in the notification or the notification process shall be repeated.

(6) A school shall, at the time of application, post notification signs for all pesticide applications made to school facilities unless the application is otherwise required to be posted by a certified applicator under the provisions of RCW 17.21.410(1)(d).

(a) Notification signs for applications made to school grounds by school employees shall be placed at the location of the application and at each primary point of entry to the school grounds. The signs shall be a minimum of four inches by five inches and shall include the words: "THIS LANDSCAPE HAS BEEN RECENTLY SPRAYED OR TREATED WITH PESTICIDES BY YOUR SCHOOL" as the headline and "FOR MORE INFORMATION PLEASE CALL" as the footer. The footer shall provide the name and telephone number of a contact person at the school.

(b) Notification signs for applications made to school facilities other than school grounds shall be posted at the location of the application. The signs shall be a minimum of eight and one-half by eleven inches and shall include the heading "Notice: Pesticide Application" and, at a minimum, shall state:

(i) The product name of the pesticide applied;

(ii) The date and time of application;

(iii) The location to which the pesticide was applied;

(iv) The pest to be controlled; and

(v) The name and phone number of a contact person at the school.

(c) Notification signs shall be printed in colors contrasting to the background.

(d) Notification signs shall remain in place for at least twenty-four hours from the time the application is completed. In the event the pesticide label requires a restricted entry interval greater than twenty-four hours, the notification sign shall remain in place consistent with the restricted entry interval time as required by the label.

(7) A school facility application does not include the application of antimicrobial pesticides or the placement of insect or rodent baits that are not accessible to children.

(8) The prenotification requirements of this section do not apply if the school facility application is made when the school is not occupied by students for at least two consecutive days after the application.

(9) The prenotification requirements of this section do not apply to any emergency school facility application for control of any pest that poses an immediate human health or safety threat, such as an application to control stinging insects. When an emergency school facility application is made, notification consistent with the school's notification system shall occur as soon as possible after the application. The notification shall include information consistent with subsection (6)(b) of this section.

(10) A school shall make the records of all pesticide applications to school facilities required under this chapter, including an annual summary of the records, readily accessible to interested persons.

(11) A school is not liable for the removal of signs by unauthorized persons. A school that complies with this section

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may not be held liable for personal property damage or bodily injury resulting from signs that are placed as required.

Sec. 17. RCW 28A.650.015 and 2006 c 263 s 917 are each amended to read as follows:

(1) The superintendent of public instruction, to the extent funds are appropriated, shall develop and implement a Washington state K-12 education technology plan. The technology plan shall be updated on at least a biennial basis, shall be developed to coordinate and expand the use of education technology in the common schools of the state. The plan shall be consistent with applicable provisions of chapter 43.105 RCW. The plan, at a minimum, shall address:

(a) The provision of technical assistance to schools and school districts for the planning, implementation, and training of staff in the use of technology in curricular and administrative functions;

(b) The continued development of a network to connect school districts, institutions of higher learning, and other sources of online information; and

(c) Methods to equitably increase the use of education technology by students and school personnel throughout the state.

(2) The superintendent of public instruction shall appoint an educational technology advisory committee to assist in the development and implementation of the technology plan in subsection (1) of this section. The committee shall include, but is not limited to, persons representing: The department of information services, educational service districts, school directors, school administrators, school principals, teachers, classified staff, higher education faculty, parents, students, business, labor, scientists and mathematicians, the higher education coordinating board, the workforce training and education coordinating board, and the state library.

(3) The plan adopted and implemented under this section may not impose on school districts any requirements that are not specifically required by federal law or regulation, including requirements to maintain eligibility for the federal schools and libraries program of the universal service fund.

Sec. 18. RCW 28A.210.020 and 1971 c 32 s 2 are each amended to read as follows:

Every board of school directors shall have the power, and it shall be its duty to provide for and require screening for the visual and auditory acuity of all children attending schools in their districts to ascertain which if any of such children have defects sufficient to retard them in their studies. Auditory and visual screening shall be made in accordance with procedures and standards adopted by rule or regulation of the state board of health. Prior to the adoption or revision of such rules or regulations the state board of health shall seek the recommendations of the superintendent of public instruction regarding the administration of visual and auditory screening and the qualifications of persons competent to administer such screening. Persons performing visual screening may include, but are not limited to, ophthalmologists, optometrists, or opticians who donate their professional services to schools or school districts. If a vision professional who donates his or her services identifies a vision defect sufficient to affect a student's learning, the vision professional must notify the school nurse and/or the school principal in writing and may not contact the student's parents or guardians directly. A school official shall inform parents or guardians of students in writing that a visual examination was recommended, but may not communicate the name or contact information of the vision professional conducting the screening.

Sec. 19. RCW 28A.655.065 and 2008 c 170 s 205 are each amended to read as follows:

(1) The legislature has made a commitment to rigorous academic standards for receipt of a high school diploma. The primary way that students will demonstrate that they meet the standards in reading, writing, mathematics, and science is through the Washington assessment of student learning. Only objective assessments that are comparable in rigor to the state assessment are authorized as an alternative assessment. Before seeking an alternative assessment, the legislature expects students to make a genuine effort to meet state standards, through regular and consistent attendance at school and participation in extended learning and other assistance programs.

(2) Under RCW 28A.655.061, beginning in the 2006-07 school year, the superintendent of public instruction shall implement objective alternative assessment methods as provided in this section for students to demonstrate achievement of the state standards in content areas in which the student has not yet met the standard on the high school Washington assessment of student learning. A student may access an alternative if the student meets applicable eligibility criteria in RCW 28A.655.061 and this section and other eligibility criteria established by the superintendent of public instruction, including but not limited to attendance criteria and participation in the remediation or supplemental instruction contained in the student learning plan developed under RCW 28A.655.061. A school district may waive attendance and/or remediation criteria for special, unavoidable circumstances.

(3) For the purposes of this section, "applicant" means a student seeking to use one of the alternative assessment methods in this section.

(4) One alternative assessment method shall be a combination of the applicant's grades in applicable courses and the applicant's highest score on the high school Washington assessment of student learning, as provided in this subsection. A student is eligible to apply for the alternative assessment method under this subsection (4) if the student has a cumulative grade point average of at least 3.2 on a four point grading scale. The superintendent of public instruction shall determine which high school courses are applicable to the alternative assessment method and shall issue guidelines to school districts.

(a) Using guidelines prepared by the superintendent of public instruction, a school district shall identify the group of students in the same school as the applicant who took the same high school courses as the applicant in the applicable content area. From the group of students identified in this manner, the district shall select the comparison cohort that shall be those students who met or slightly exceeded the state standard on the Washington assessment of student learning.

(b) The district shall compare the applicant's grades in high school courses in the applicable content area to the grades of students in the comparison cohort for the same high school courses. If the applicant's grades are equal to or above the mean grades of the comparison cohort, the applicant shall be deemed to have met the state standard on the alternative assessment.

(c) An applicant may not use the alternative assessment under this subsection (4) if there are fewer than six students in the comparison cohort.

(5) The superintendent of public instruction shall develop an alternative assessment method that shall be an evaluation of a collection of work samples prepared and submitted by the applicant. Effective September 1, 2009, collection of work samples may be submitted only in content areas where meeting

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the state standard on the high school assessment is required for purposes of graduation.

(a) The superintendent of public instruction shall develop guidelines for the types and number of work samples in each content area that may be submitted as a collection of evidence that the applicant has met the state standard in that content area. Work samples may be collected from academic, career and technical, or remedial courses and may include performance tasks as well as written products. The superintendent shall submit the guidelines for approval by the state board of education.

(b) The superintendent shall develop protocols for submission of the collection of work samples that include affidavits from the applicant's teachers and school district that the samples are the work of the applicant and a requirement that a portion of the samples be prepared under the direct supervision of a classroom teacher. The superintendent shall submit the protocols for approval by the state board of education.

(c) The superintendent shall develop uniform scoring criteria for evaluating the collection of work samples and submit the scoring criteria for approval by the state board of education. Collections shall be scored at the state level or regionally by a panel of educators selected and trained by the superintendent to ensure objectivity, reliability, and rigor in the evaluation. An educator may not score work samples submitted by applicants from the educator's school district. If the panel awards an applicant's collection of work samples the minimum required score, the applicant shall be deemed to have met the state standard on the alternative assessment.

(d) Using an open and public process that includes consultation with district superintendents, school principals, and other educators, the state board of education shall consider the guidelines, protocols, scoring criteria, and other information regarding the collection of work samples submitted by the superintendent of public instruction. The collection of work samples may be implemented as an alternative assessment after the state board of education has approved the guidelines, protocols, and scoring criteria and determined that the collection of work samples: (i) Will meet professionally accepted standards for a valid and reliable measure of the grade level expectations and the essential academic learning requirements; and (ii) is comparable to or exceeds the rigor of the skills and knowledge that a student must demonstrate on the Washington assessment of student learning in the applicable content area. The state board shall make an approval decision and determination no later than December 1, 2006, and thereafter may increase the required rigor of the collection of work samples.

(e) By September of 2006, the superintendent of public instruction shall develop informational materials for parents, teachers, and students regarding the collection of work samples and the status of its development as an alternative assessment method. The materials shall provide specific guidance regarding the type and number of work samples likely to be required, include examples of work that meets the state learning standards, and describe the scoring criteria and process for the collection. The materials shall also encourage students in the graduating class of 2008 to begin creating a collection if they believe they may seek to use the collection once it is implemented as an alternative assessment.

(6)(a) For students enrolled in a career and technical education program approved under RCW 28A.700.030, the superintendent of public instruction shall develop additional guidelines for collections of work samples that are tailored to

different career and technical programs. The additional guidelines shall:

(i) Provide multiple examples of work samples that are related to the particular career and technical program;

(ii) Permit work samples based on completed activities or projects where demonstration of academic knowledge is inferred; and

(iii) Provide multiple examples of work samples drawn from career and technical courses.

(b) The purpose of the additional guidelines is to provide a clear pathway toward a certificate of academic achievement for career and technical students by showing them applied and relevant opportunities to demonstrate their knowledge and skills, and to provide guidance to teachers in integrating academic and career and technical instruction and assessment and assisting career and technical students in compiling a collection. The superintendent of public instruction shall develop and disseminate additional guidelines for no fewer than ten career and technical education programs representing a variety of program offerings by no later than September 1, 2008. Guidelines for ten additional programs shall be developed and disseminated no later than June 1, 2009.

(c) The superintendent shall consult with community and technical colleges, employers, the workforce training and education coordinating board, apprenticeship programs, and other regional and national experts in career and technical education to create appropriate guidelines and examples of work samples and other evidence of a career and technical student's knowledge and skills on the state academic standards.

(7) The superintendent of public instruction shall study the feasibility of using existing mathematics assessments in languages other than English as an additional alternative assessment option. The study shall include an estimation of the cost of translating the tenth grade mathematics assessment into other languages and scoring the assessments should they be implemented.

(8) The superintendent of public instruction shall implement:

(a) By June 1, 2006, a process for students to appeal the score they received on the high school assessments; and

(b) By January 1, 2007, guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and to the certificate of individual achievement for students who: (i) Transfer to a Washington public school in their junior or senior year with the intent of obtaining a public high school diploma, or (ii) have special, unavoidable circumstances.

(9) The state board of education shall examine opportunities for additional alternative assessments, including the possible use of one or more standardized norm-referenced student achievement tests and the possible use of the reading, writing, or mathematics portions of the ACT ASSET and ACT COMPASS test instruments as objective alternative assessments for demonstrating that a student has met the state standards for the certificate of academic achievement. The state board shall submit its findings and recommendations to the education committees of the legislature by January 10, 2008.

(10) The superintendent of public instruction shall adopt rules to implement this section.

NEW SECTION. Sec. 20. The following acts or parts of acts, as now existing or hereafter amended, are each repealed:

20.1.1.1. RCW 28A.230.092 (Washington state history and government-- Course content) and 2008 c 190 s 2;

20.1.1.2. RCW 28A.230.185 (Family preservation education program) and 2005 c 491 s 2;

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20.1.1.3. RCW 28A.300.412 (Washington civil liberties public education program--Report) and 2000 c 210 s 6;

20.1.1.4. RCW 28A.600.415 (Alternatives to suspension--Community service encouraged--Information provided to school districts) and 1992 c 155 s 2;

20.1.1.5. RCW 28A.625.010 (Short title) and 1995 c 335 s 107, 1990 c 33 s 513, & 1986 c 147 s 1;

20.1.1.6. RCW 28A.625.020 (Recipients--Awards) and 1991 c 255 s 1;

20.1.1.7. RCW 28A.625.030 (Washington State Christa McAuliffe award for teachers) and 1991 c 255 s 2 & 1986 c 147 s 3;

20.1.1.8. RCW 28A.625.042 (Certificates--Recognition awards) and 1994 c 279 s 4;

20.1.1.9. RCW 28A.625.050 (Rules) and 1995 c 335 s 108, 1991 c 255 s 8, 1990 c 33 s 516, 1988 c 251 s 2, & 1986 c 147 s 5;

20.1.1.10. RCW 28A.625.350 (Short title) and 1990 1st ex.s. c 10 s 1;

20.1.1.11. RCW 28A.625.360 (Excellence in teacher preparation award) and 2006 c 263 s 804 & 1990 1st ex.s. c 10 s 2;

20.1.1.12. RCW 28A.625.370 (Award for teacher educator) and 2006 c 263 s 820 & 1990 1st ex.s. c 10 s 3;

20.1.1.13. RCW 28A.625.380 (Rules) and 2006 c 263 s 821 & 1990 1st ex.s. c 10 s 4;

20.1.1.14. RCW 28A.625.390 (Educational grant--Eligibility--Award) and 2006 c 263 s 822 & 1990 1st ex.s. c 10 s 5;

20.1.1.15. RCW 28A.625.900 (Severability--1990 1st ex.s. c 10) and 1990 1st ex.s. c 10 s 10;

20.1.1.16. RCW 28A.630.045 (Local control and flexibility in assessments--Pilot project) and 2006 c 175 s 1; and

20.1.1.17. RCW 28A.630.881 (School-to-work transition project--Findings-- Intent--Outreach--Technical assistance) and 1997 c 58 s 304.

NEW SECTION. Sec. 21. Sections 11, 13, and 15 of this act expire July 1, 2011."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hobbs moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5889.

Senator Hobbs spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hobbs that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5889.

The motion by Senator Hobbs carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5889 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5889, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5889, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

ENGROSSED SUBSTITUTE SENATE BILL NO. 5889, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House receded in its amendment to ENGROSSED SUBSTITUTE SENATE BILL NO. 5811. Under suspension of rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5811-S.E AMH KAGI H3432.4, and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 13.34.065 and 2008 c 267 s 2 are each amended to read as follows:

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

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

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

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

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

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

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

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

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

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the

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court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

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

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

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

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

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

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

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

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

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

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

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

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

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

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

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

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

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

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

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

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

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

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1).

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

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

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

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

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

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

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon.

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The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

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

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

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

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

Sec. 2. RCW 13.34.130 and 2007 c 413 s 6 and 2007 c 412 s 2 are each reenacted and amended to read as follows:

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

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

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose those services, including housing assistance, that least interfere with family autonomy and are adequate to protect the child.

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

(2) Placement of the child with a relative ~~((under this subsection))~~ or other suitable person as described in subsection

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

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

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

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

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

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

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

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

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

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

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

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

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with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court.

Sec. 3. RCW 13.34.138 and 2007 c 413 s 8 and 2007 c 410 s 1 are each reenacted and amended to read as follows:

(1) ~~((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. The purpose of the hearing shall be to review the progress of the parties and determine whether court supervision should continue.

(a) The initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The requirements for the initial review hearing, including the in-court review requirement, shall be accomplished within existing resources.

(b) The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145 (1)(a) or 13.34.134.

(2)(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 RCW 13.34.130 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) Prior to the child returning home, the department must complete the following:

(i) Identify all adults residing in the home and conduct background checks on those persons;

(ii) Identify any persons who may act as a caregiver for the child in addition to the parent with whom the child is being placed and determine whether such persons are in need of any services in order to ensure the safety of the child, regardless of whether such persons are a party to the dependency. The department or supervising agency may recommend to the court and the court may order that placement of the child in the parent's home be contingent on or delayed based on the need for such persons to engage in or complete services to ensure the safety of the child prior to placement. If services are recommended for the caregiver, and the caregiver fails to engage in or follow through with the recommended services, the department or supervising agency must promptly notify the court; and

(iii) Notify the parent with whom the child is being placed that he or she has an ongoing duty to notify the department or supervising agency of all persons who reside in the home or who may act as a caregiver for the child both prior to the placement of the child in the home and subsequent to the placement of the child in the home as long as the court retains jurisdiction of the dependency proceeding or the department is providing or monitoring either remedial services to the parent or services to ensure the safety of the child to any caregivers.

Caregivers may be required to engage in services under this subsection solely for the purpose of ensuring the present and future safety of a child who is a ward of the court. This subsection does not grant party status to any individual not already a party to the dependency proceeding, create an entitlement to services or a duty on the part of the department or supervising agency to provide services, or create judicial authority to order the provision of services to any person other than for the express purposes of this section or RCW 13.34.025 or if the services are unavailable or unsuitable or the person is not eligible for such services.

(c) If the child is not returned home, the court shall establish in writing:

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(i) Whether the agency is making reasonable efforts to provide services to the family and eliminate the need for placement of the child. If additional services, including housing assistance, are needed to facilitate the return of the child to the child's parents, the court shall order that reasonable services be offered specifying such services;

(ii) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(iii) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(iv) Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;

(v) Whether there is a continuing need for placement;

(vi) Whether the child is in an appropriate placement which adequately meets all physical, emotional, and educational needs;

(vii) Whether preference has been given to placement with the child's relatives if such placement is in the child's best interests;

(viii) Whether both in-state and, where appropriate, out-of-state placements have been considered;

(ix) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(x) Whether terms of visitation need to be modified;

(xi) Whether the court-approved long-term permanent plan for the child remains the best plan for the child;

(xii) Whether any additional court orders need to be made to move the case toward permanency; and

(xiii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(d) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

(3)(a) In any case in which the court orders that a dependent child may be returned to or remain in the child's home, the in-home placement shall be contingent upon the following:

(i) The compliance of the parents with court orders related to the care and supervision of the child, including compliance with an agency case plan; and

(ii) The continued participation of the parents, if applicable, in available substance abuse or mental health treatment if substance abuse or mental illness was a contributing factor to the removal of the child.

(b) The following may be grounds for removal of the child from the home, subject to review by the court:

(i) Noncompliance by the parents with the agency case plan or court order;

(ii) The parent's inability, unwillingness, or failure to participate in available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect; or

(iii) The failure of the parents to successfully and substantially complete available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect.

(c) In a pending dependency case in which the court orders that a dependent child may be returned home and that child is later removed from the home, the court shall hold a review hearing within thirty days from the date of removal to determine whether the permanency plan should be changed, a termination petition should be filed, or other action is warranted. The best interests of the child shall be the court's primary consideration in the review hearing.

(4) The court's ability to order housing assistance under RCW 13.34.130 and this section is: (a) Limited to cases in which homelessness or the lack of adequate and safe housing is the primary reason for an out-of-home placement; and (b)

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subject to the availability of funds appropriated for this specific purpose.

(5) The court shall consider the child's relationship with siblings in accordance with RCW 13.34.130(3).

Sec. 4. RCW 13.34.145 and 2008 c 152 s 3 are each amended to read as follows:

(1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-

of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

At this hearing, the court shall order the department to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child. For purposes of this section, "good cause exception" includes but is not limited to the following: The child is being cared for by a relative; the department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; or the department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests.

(c)(i) If the permanency plan identifies independent living as a goal, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care.

(ii) The permanency plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living.

(iii) The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(d) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall ~~(also):~~

(i) Enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(5), and 13.34.096; and

(ii) If the department or supervising agency is recommending a placement other than the child's current placement with a foster parent, relative, or other suitable person, enter a finding as to the reasons for the recommendation for a change in placement.

(4) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(5) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in

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accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(6) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (8) of this section are met.

(10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

Sec. 5. RCW 13.34.260 and 2003 c 226 s 2 are each amended to read as follows:

(1) In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child with a relative or other suitable person pursuant to RCW 13.34.130. Preferences such as family constellation, sibling relationships, ethnicity, and religion shall be considered when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and shall be integrated through the foster care team.

(2) When a child is placed in out-of-home care, relatives, other suitable persons, and foster parents are encouraged to:

(a) Provide consultation to the foster care team based upon their experience with the child placed in their care;

(b) Assist the birth parents by helping them understand their child's needs and correlating appropriate parenting responses;

(c) Participate in educational activities, and enter into community-building activities with birth families and other foster families;

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(d) Transport children to family time visits with birth families and assist children and their families in maximizing the purposefulness of family time.

(3) For purposes of this section, "foster care team" means the relative, other suitable person, or foster parent currently providing care, the currently assigned social worker, and the parent or parents; and "birth family" means the persons described in RCW 74.15.020(2)(a).

NEW SECTION. Sec. 6. A new section is added to chapter 13.34 RCW to read as follows:

(1) The administrative office of the courts shall develop standard court forms and format rules for mandatory use by parties in dependency matters commenced under this chapter or chapter 26.44 RCW. Forms shall be developed not later than November 1, 2009, and the mandatory use requirement shall be effective January 1, 2010. The administrative office of the courts has continuing responsibility to develop and revise mandatory forms and format rules as appropriate.

(2) According to rules established by the administrative office of the courts, a party may delete unnecessary portions of the forms and may supplement the mandatory forms with additional material.

(3) Failure by a party to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. The court may, however, require the party to submit a corrected pleading and may impose terms payable to the opposing party or payable to the court, or both.

(4) The administrative office of the courts shall distribute a master copy of the mandatory forms to all county court clerks. Upon request, the administrative office of the courts and county clerks must distribute the forms to the public and may charge for the cost of production and distribution of the forms. Private vendors also may distribute the forms. Distribution of forms may be in printed or electronic form.

Sec. 7. RCW 74.13.031 and 2008 c 267 s 6 are each amended to read as follows:

The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

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(5) Monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. The policy for monitoring placements under this section shall require that children in out-of-home care and in-home dependencies and their caregivers receive a private and individual face-to-face visit each month.

(a) The department shall conduct the monthly visits with children and caregivers required under this section unless the child's placement is being supervised under a contract between the department and a private agency accredited by a national child welfare accrediting entity, in which case the private agency shall, within existing resources, conduct the monthly visits with the child and with the child's caregiver according to the standards described in this subsection and shall provide the department with a written report of the visits within fifteen days of completing the visits.

(b) In cases where the monthly visits required under this subsection are being conducted by a private agency, the department shall conduct a face-to-face health and safety visit with the child at least once every ninety days.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(a) Have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(b)(i) Beginning in 2006, the department has the authority to allow up to fifty youth reaching age eighteen to continue in foster care or group care as needed to participate in or complete a posthigh school academic or vocational program, and to receive necessary support and transition services.

(ii) In 2007 and 2008, the department has the authority to allow up to fifty additional youth per year reaching age eighteen to remain in foster care or group care as provided in (b)(i) of this subsection.

(iii) A youth who remains eligible for such placement and services pursuant to department rules may continue in foster care or group care until the youth reaches his or her twenty-first birthday. Eligibility requirements shall include active enrollment in a posthigh school academic or vocational program and maintenance of a 2.0 grade point average.

(11) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW,

unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(12) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(13) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(14) Have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(15) Consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(16)(a) Within current funding levels, place on the public web site maintained by the department a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

(i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;

(ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);

(iii) Parent-child visits;

(iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and

(v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed.

NEW SECTION. Sec. 8. A new section is added to chapter 74.13 RCW to read as follows:

Once a dependency is established under chapter 13.34 RCW, the social worker assigned to the case shall provide the dependent child age twelve years and older with a document containing the information described in RCW 74.13.031(16). The social worker shall explain the contents of the document to the child and direct the child to the department's web site for further information. The social worker shall document, in the electronic data system, that this requirement was met.

Sec. 9. RCW 74.13.109 and 1990 c 285 s 7 are each amended to read as follows:

(1) The secretary shall issue rules and regulations to assist in the administration of the program of adoption support

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authorized by RCW 26.33.320 and 74.13.100 through 74.13.145.

(2) Disbursements from the appropriations available from the general fund shall be made pursuant to such rules and regulations and pursuant to agreements conforming thereto to be made by the secretary with parents for the purpose of supporting the adoption of children in, or likely to be placed in, foster homes or child caring institutions who are found by the secretary to be difficult to place in adoption because of physical or other reasons; including, but not limited to, physical or mental handicap, emotional disturbance, ethnic background, language, race, color, age, or sibling grouping.

(3) Such agreements shall meet the following criteria:

~~((1))~~ (a) The child whose adoption is to be supported pursuant to such agreement shall be or have been a child hard to place in adoption.

~~((2))~~ (b) Such agreement must relate to a child who was or is residing in a foster home or child-caring institution or a child who, in the judgment of the secretary, is both eligible for, and likely to be placed in, either a foster home or a child-caring institution.

~~((3))~~ (c) Such agreement shall provide that adoption support shall not continue beyond the time that the adopted child reaches eighteen years of age, becomes emancipated, dies, or otherwise ceases to need support, provided that if the secretary shall find that continuing dependency of such child after such child reaches eighteen years of age warrants the continuation of support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may do so, subject to all the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, including annual review of the amount of such support.

~~((4))~~ (d) Any prospective parent who is to be a party to such agreement shall be a person who has the character, judgment, sense of responsibility, and disposition which make him or her suitable as an adoptive parent of such child.

(4) At least six months before an adoption is finalized under chapter 26.33 RCW and RCW 74.13.100 through 74.13.145, the department must provide to the prospective adoptive parent, in writing, information describing the limits of the adoption support program including the following information:

(a) The limits on monthly cash payments to adoptive families;

(b) The limits on the availability of children's mental health services and the funds with which to pay for these services;

(c) The process for accessing mental health services for children receiving adoption support services;

(d) The limits on the one-time cash payments to adoptive families for expenses related to their adopted children; and

(e) That payment for residential or group care is not available for adopted children under the adoption support program.

Sec. 10. RCW 74.13.250 and 1990 c 284 s 2 are each amended to read as follows:

(1) Preservice training is recognized as a valuable tool to reduce placement disruptions, the length of time children are in care, and foster parent turnover rates. Preservice training also assists potential foster parents in making their final decisions about foster parenting and assists social service agencies in obtaining information about whether to approve potential foster parents.

(2) Foster parent preservice training shall include information about the potential impact of placement on foster children; social service agency administrative processes; the requirements, responsibilities, expectations, and skills needed to be a foster parent; attachment, separation, and loss issues faced by birth parents, foster children, and foster parents; child management and discipline; birth family relationships; information on the limits of the adoption support program as provided in RCW 74.13.109(4); and helping children leave foster care. Preservice training shall assist applicants in making

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informed decisions about whether they want to be foster parents. Preservice training shall be designed to enable the agency to assess the ability, readiness, and appropriateness of families to be foster parents. As a decision tool, effective preservice training provides potential foster parents with enough information to make an appropriate decision, affords potential foster parents an opportunity to discuss their decision with others and consider its implications for their family, clarifies foster family expectations, presents a realistic picture of what foster parenting involves, and allows potential foster parents to consider and explore the different types of children they might serve.

(3) Preservice training shall be completed prior to the issuance of a foster care license, except that the department may, on a case by case basis, issue a written waiver that allows the foster parent to complete the training after licensure, so long as the training is completed within ninety days following licensure.

Sec. 11. RCW 74.13.333 and 2004 c 181 s 1 are each amended to read as follows:

(1) A foster parent who believes that a department employee has retaliated against the foster parent or in any other manner discriminated against the foster parent because:

~~((1))~~ (a) The foster parent made a complaint with the office of the family and children's ombudsman, the attorney general, law enforcement agencies, or the department, provided information, or otherwise cooperated with the investigation of such a complaint;

~~((2))~~ (b) The foster parent has caused to be instituted any proceedings under or related to Title 13 RCW;

~~((3))~~ (c) The foster parent has testified or is about to testify in any proceedings under or related to Title 13 RCW;

~~((4))~~ (d) The foster parent has advocated for services on behalf of the foster child;

~~((5))~~ (e) The foster parent has sought to adopt a foster child in the foster parent's care; or

~~((6))~~ (f) The foster parent has discussed or consulted with anyone concerning the foster parent's rights under this chapter or chapter 74.15 or 13.34 RCW, may file a complaint with the office of the family and children's ombudsman.

(2) The ombudsman may investigate the allegations of retaliation. The ombudsman shall have access to all relevant information and resources held by or within the department by which to conduct the investigation. Upon the conclusion of its investigation, the ombudsman shall provide its findings in written form to the department.

(3) The department shall notify the office of the family and children's ombudsman in writing, within thirty days of receiving the ombudsman's findings, of any personnel action taken or to be taken with regard to the department employee.

(4) The office of the family and children's ombudsman shall also include its recommendations regarding complaints filed under this section in its annual report pursuant to RCW 43.06A.030. The office of the family and children's ombudsman shall identify trends which may indicate a need to improve relations between the department and foster parents."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5811.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the

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House amendment(s) to Engrossed Substitute Senate Bill No. 5811.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5811 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5811, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5811, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

ENGROSSED SUBSTITUTE SENATE BILL NO. 5811, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House receded in its amendment to SUBSTITUTE SENATE BILL NO. 5777. Under suspension of rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5777-S AMH CODY H3433.1 and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** A new section is added to chapter 48.66 RCW to read as follows:

Any medicare eligible person who is rejected for medical reasons, is required to accept restrictive riders, an up-rated premium, or preexisting conditions limitations, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member as defined in RCW 48.41.030(14) shall be provided written notice from the issuer of medicare supplement coverage to whom application was made of the decision not to accept the person's application for enrollment, or to require such restrictions. The notice shall further state that the person is eligible for medicare part C coverage offered in the person's geographic area or coverage provided by the Washington state health insurance pool for Washington residents, and shall include information about medicare part C plans offered in the person's geographic area, about the Washington state health insurance pool, and about available resources to assist the person in choosing appropriate coverage.

Sec. 2. RCW 48.41.060 and 2008 c 217 s 47 are each amended to read as follows:

(1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds

of health coverage defined under this title. In addition thereto, the board shall:

(a) Designate or establish the standard health questionnaire to be used under RCW 48.41.100 and 48.43.018, including the form and content of the standard health questionnaire and the method of its application. The questionnaire must provide for an objective evaluation of an individual's health status by assigning a discreet measure, such as a system of point scoring to each individual. The questionnaire must not contain any questions related to pregnancy, and pregnancy shall not be a basis for coverage by the pool. The questionnaire shall be designed such that it is reasonably expected to identify the eight percent of persons who are the most costly to treat who are under individual coverage in health benefit plans, as defined in RCW 48.43.005, in Washington state or are covered by the pool, if applied to all such persons;

(b) Obtain from a member of the American academy of actuaries, who is independent of the board, a certification that the standard health questionnaire meets the requirements of (a) of this subsection;

(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every ~~((eighteen))~~ thirty-six months. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after March 23, 2000, may be used immediately following public notice of such approval;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

(e)(i) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year.

(ii) Self-funded multiple employer welfare arrangements are subject to assessment under this subsection only in the event that assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing assessments on these arrangements before imposing the assessment. Once the legality of the assessments has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these assessments.

(iii) If there has not been a final determination of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been

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certified by the insurance commissioner, or (B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;

(f) Issue policies of health coverage in accordance with the requirements of this chapter;

(g) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(h) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii);

(i) Set a reasonable fee to be paid to an insurance producer licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(j) Provide certification to the commissioner when assessments will exceed the threshold level established in RCW 48.41.037.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW.

Sec. 3. RCW 48.41.100 and 2007 c 259 s 30 are each amended to read as follows:

(1)(a) The following persons who are residents of this state are eligible for pool coverage:

~~((a))~~ (i) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

~~((b))~~ (ii) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

~~((c))~~ (iii) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool; ~~(and~~

~~((d))~~ (iv) Any ~~((medicare eligible))~~ person ~~((upon providing))~~ becoming eligible for medicare before August 1, 2009, who provides evidence of (A) a rejection for medical

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reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, ~~((or))~~ (D) a preexisting conditions limitation ~~((or a))~~, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application; and

(v) Any person becoming eligible for medicare on or after August 1, 2009, who does not have access to a reasonable choice of comprehensive medicare part C plans, as defined in (b) of this subsection, and who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(b) For purposes of (a)(v) of this subsection (1), a person does not have access to a reasonable choice of plans unless the person has a choice of health maintenance organization or preferred provider organization medicare part C plans offered by at least three different carriers that have had provider networks in the person's county of residence for at least five years. The plan options must include coverage at least as comprehensive as a plan F medicare supplement plan combined with medicare parts A and B. The plan options must also provide access to adequate and stable provider networks that make up- to-date provider directories easily accessible on the carrier web site, and will provide them in hard copy, if requested. In addition, if no health maintenance organization or preferred provider organization plan includes the health care provider with whom the person has an established care relationship and from whom he or she has received treatment within the past twelve months, the person does not have reasonable access.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Any person on whose behalf the pool has paid out two million dollars in benefits;

(c) Inmates of public institutions and those persons ~~((whose benefits are duplicated under public programs))~~ who become eligible for medical assistance after June 30, 2008, as defined in RCW 74.09.010. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(d) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)~~((d))~~ (a)(iv) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a

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county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(~~(a)~~) (a)(iii) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(~~(a)~~) (a)(iii) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(~~(a)~~) (a)(iii) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a)(i), (~~(b)~~) (ii), or (~~(d)~~) (iv) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(~~(b)~~) (a)(ii) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

(4) The board shall ensure that an independent analysis of the eligibility standards for the pool coverage is conducted, including examining the eight percent eligibility threshold, eligibility for medicaid enrollees and other publicly sponsored enrollees, and the impacts on the pool and the state budget. The board shall report the findings to the legislature by December 1, 2007.

Sec. 4. RCW 48.41.100 and 2008 c 317 s 4 are each amended to read as follows:

(1)(a) The following persons who are residents of this state are eligible for pool coverage:

(~~(a)~~) (i) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

(~~(b)~~) (ii) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(~~(c)~~) (iii) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool; (~~and~~

~~(d) Any medicare eligible person upon providing~~) (iv) Any person becoming eligible for medicare before August 1, 2009, who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (~~(D)~~) (D) a preexisting conditions limitation (~~(en a)~~), or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a

person considered a standard risk by at least one member within six months of the date of application; and

(v) Any person becoming eligible for medicare on or after August 1, 2009, who does not have access to a reasonable choice of comprehensive medicare part C plans, as defined in (b) of this subsection, and who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(b) For purposes of (a)(v) of this subsection (1), a person does not have access to a reasonable choice of plans unless the person has a choice of health maintenance organization or preferred provider organization medicare part C plans offered by at least three different carriers that have had provider networks in the person's county of residence for at least five years. The plan options must include coverage at least as comprehensive as a plan F medicare supplement plan combined with medicare parts A and B. The plan options must also provide access to adequate and stable provider networks that make up- to-date provider directories easily accessible on the carrier web site, and will provide them in hard copy, if requested. In addition, if no health maintenance organization or preferred provider organization plan includes the health care provider with whom the person has an established care relationship and from whom he or she has received treatment within the past twelve months, the person does not have reasonable access.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Any person on whose behalf the pool has paid out two million dollars in benefits;

(c) Inmates of public institutions, and those persons who become eligible for medical assistance after June 30, 2008, as defined in RCW 74.09.010. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(d) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(~~(d)~~) (a)(iv) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(~~(c)~~) (a)(iii) of this section in that county shall no longer be eligible

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for coverage under that plan pursuant to subsection (1)((~~te~~)) (a)(iii) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)((~~te~~)) (a)(iii) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a)(i), ((~~tb~~)) (ii), or ((~~td~~)) (iv) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)((~~tb~~)) (a)(ii) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

(4) The board shall ensure that an independent analysis of the eligibility standards for the pool coverage is conducted, including examining the eight percent eligibility threshold, eligibility for medicaid enrollees and other publicly sponsored enrollees, and the impacts on the pool and the state budget. The board shall report the findings to the legislature by December 1, 2007.

NEW SECTION. Sec. 5. The board of the Washington state health insurance pool shall conduct a study of options for equitable, stable, and broad-based funding sources for the operation of the pool. The board is authorized to solicit funds to conduct the study. The board shall report its findings and recommendations to the appropriate committees of the senate and house of representatives by December 15, 2009.

NEW SECTION. Sec. 6. Section 3 of this act takes effect if section 4, chapter 317, Laws of 2008 is null and void on the effective date of this act; otherwise section 3 of this act is null and void.

NEW SECTION. Sec. 7. Section 4 of this act takes effect if section 4, chapter 317, Laws of 2008 is in effect on the effective date of this act; otherwise section 4 of this act is null and void."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Keiser moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5777.

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

The President declared the question before the Senate to be the motion by Senator Keiser that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5777.

The motion by Senator Keiser carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5777 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5777, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5777, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

SUBSTITUTE SENATE BILL NO. 5777, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 24, 2009

MR. PRESIDENT:

The House receded in its amendment to SENATE BILL NO. 5554. Under suspension of rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5554 AMH HASE CLYN 128 and passed the bill as amended by the House.

On page 4, at the beginning of line 12, insert the following:

"(a) Proposing training that leads to transferable skills that are interchangeable among different jobs, employers, or workplaces;"

Renumber the remaining subsections consecutively and correct any internal references accordingly. and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kilmer moved that the Senate concur in the House amendment(s) to Senate Bill No. 5554.

Senator Kilmer spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kilmer that the Senate concur in the House amendment(s) to Senate Bill No. 5554.

The motion by Senator Kilmer carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5554 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5554, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5554, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Voting yea: Senators Becker, Benton, Berkey, Brandland,

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Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Brown

SENATE BILL NO. 5554, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House receded in its amendment to SUBSTITUTE SENATE BILL NO. 5431. Under suspension of rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5431-S AMH KAGI H3436.1

On page 1, line 9, after "child." insert "Pursuant to RCW 13.34.060 and 13.34.130, placement of the child with a relative or other suitable person is the preferred option."

Beginning on page 1, line 14, after "care." strike all material through "and the" on page 2, line 3, and insert "and the department cannot locate an appropriate and available relative or other suitable person, the preferred placement for the child is in a foster family home where the child previously was placed, if the following conditions are met:

- (a) The foster family home is available and willing to care for the child;
- (b) The foster family is appropriate and able to meet the child's needs; and
- (c) The"

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

"NEW SECTION. Sec. 2. A new section is added to chapter 13.34 RCW to read as follows:

If a child has been previously placed in out-of-home care and is subsequently returned to out-of-home care, and the department cannot locate an appropriate and available relative or other suitable person, the preferred placement for the child is in a foster family home where the child previously was placed, if the following conditions are met:

- (1) The foster family home is available and willing to care for the child;
- (2) The foster family is appropriate and able to meet the child's needs; and
- (3) The placement is in the best interest of the child."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5431.

Senators Hargrove and Roach spoke in favor of passage of the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5431.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5431 by voice vote.

MOTION

On motion of Senator Kauffman, Senator Brown was excused.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5431, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5431, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

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

Excused: Senator Brown

SUBSTITUTE SENATE BILL NO. 5431, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House receded in its amendment to SENATE BILL NO. 5354. Under suspension of rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5354 AMH SIMP MOET 395, and passed the bill as amended by the House.

Beginning on page 1, line 18, after "islands" strike all material through "boundaries" on page 2, line 4, and insert "that receives medical services from a hospital district, but is prevented by geography and the absence of contiguous boundaries from annexing to that district"

Beginning on page 2, line 16, strike all of section 3 and insert the following:

"NEW SECTION. Sec. 3. ESTABLISHING A PUBLIC HOSPITAL CAPITAL FACILITY AREA--BALLOT PROPOSITIONS. (1)(a) Upon receipt of a completed petition to both establish a public hospital capital facility area and submit a ballot proposition under section 7 of this act to finance public hospital capital facilities and other capital health care facilities, the legislative authority of the county in which a proposed public hospital capital facility area is to be established shall submit separate ballot propositions to voters to authorize establishing the proposed public hospital capital facility area and authorizing the public hospital capital facility area, if established, to finance public hospital capital facilities or other capital health care facilities by issuing general indebtedness and

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imposing excess levies to retire the indebtedness. A petition submitted under this section must be accompanied by a written request to establish a public hospital capital facility area that is signed by a majority of the commissioners of the public hospital district serving the proposed area.

(b) The ballot propositions must be submitted to voters of the proposed public hospital capital facility area at a general or special election. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed public hospital capital facility area is already holding a special election under RCW 29A.04.330. Approval of the ballot proposition to create a public hospital capital facility area requires a simple majority vote by the voters participating in the election.

(2) A completed petition submitted under this section must include:

(a) A description of the boundaries of the public hospital capital facility area; and

(b) A copy of a resolution of the legislative authority of each city, town, and hospital district with territory in the proposed public hospital capital facility area indicating both: (i) Approval of the creation of the proposed public hospital capital facility area; and (ii) agreement on how election costs will be paid for ballot propositions to voters that authorize the public hospital capital facility area to incur general indebtedness and impose excess levies to retire the general indebtedness."

On page 3, line 16, after "facility" insert "area"

On page 3, line 21, after "proposed" strike "district" and insert "public hospital capital facility area"

On page 5, at the beginning of line 36, strike "chapter 70.44 RCW" and insert "this chapter" and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Haugen moved that the Senate concur in the House amendment(s) to Senate Bill No. 5354.

Senator Haugen spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Haugen that the Senate concur in the House amendment(s) to Senate Bill No. 5354.

The motion by Senator Haugen carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5354 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5354, as amended by the House.

Senator Roach spoke against passage of the bill.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5354, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 41; Nays, 7; Absent, 0; Excused, 1.

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

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Voting nay: Senators Benton, Carrell, Hewitt, Morton, Pflug, Roach and Stevens

Excused: Senator Brown

SENATE BILL NO. 5354, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 21, 2009

MR. PRESIDENT:

The House has passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5288 with the following amendment: 5288-S.E AMH ENGR H3253.E

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read as follows:

(1) ~~(When the department performs a risk assessment pursuant to RCW 9.94A.500, or to determine a person's conditions of supervision, the risk assessment shall classify the offender or a probationer sentenced in superior court into one of at least four risk categories:~~

~~(2) The department shall supervise every offender sentenced to a term of community custody, community placement, or community supervision and every misdemeanor and gross misdemeanor probationer ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:~~

~~(a) Whose risk assessment places that offender or probationer in one of the two highest risk categories; or~~

~~(b) Regardless of the offender's or probationer's risk category if:~~

~~(i) The offender's or probationer's current conviction is for:~~

~~(A) A sex offense;~~

~~(B) A violent offense;~~

~~(C) A crime against persons as defined in RCW 9.94A.411;~~

~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

~~(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or~~

~~(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

~~(ii) The offender or probationer has a prior conviction for:~~

~~(A) A sex offense;~~

~~(B) A violent offense;~~

~~(C) A crime against persons as defined in RCW 9.94A.411;~~

~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

~~(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or~~

~~(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

~~(iii) The conditions of the offender's community custody, community placement, or community supervision or the probationer's supervision include chemical dependency treatment;~~

~~(iv) The offender) The department shall supervise every offender convicted of a misdemeanor or gross misdemeanor offense who is sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for an~~

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offense included in (a) and (b) of this subsection. The superior court shall order probation for:

~~(a) Offenders convicted of fourth degree assault, violation of a domestic violence court order pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, and who also have a prior conviction for one or more of the following:~~

- ~~(i) A violent offense;~~
- ~~(ii) A sex offense;~~
- ~~(iii) A crime against a person as provided in RCW 9.94A.411;~~
- ~~(iv) Fourth degree assault; or~~
- ~~(v) Violation of a domestic violence court order; and~~
- ~~(b) Offenders convicted of:~~
 - ~~(i) Sexual misconduct with a minor second degree;~~
 - ~~(ii) Custodial sexual misconduct second degree;~~
 - ~~(iii) Communication with a minor for immoral purposes; and~~
 - ~~(iv) Failure to register pursuant to RCW 9A.44.130.~~

~~(2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.~~

~~(3) The department shall supervise every felony offender sentenced to community custody whose risk assessment, conducted pursuant to subsection (6) of this section, places the offender in one of the two highest risk categories.~~

~~(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:~~

- ~~(a) Has a current conviction for a sex offense;~~
- ~~(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;~~
- ~~(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;~~
- ~~(d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or~~

~~((v) The offender) (e) Is subject to supervision pursuant to RCW 9.94A.745.~~

~~((3)) (5) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody, community placement, or community supervision or any probationer unless the offender or probationer is one for whom supervision is required under subsection (1), (2), (3), or (4) of this section.~~

~~((4) This section expires July 1, 2010) (6) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody, community placement, or community supervision who may be subject to supervision under this section.~~

Sec. 2. RCW 9.94A.501 and 2008 c 231 s 24 are each amended to read as follows:

~~(1) (When the department performs a risk assessment pursuant to RCW 9.94A.500, or to determine a person's conditions of supervision, the risk assessment shall classify the offender or a probationer sentenced in superior court into one of at least four risk categories.~~

~~(2) The department shall supervise every offender sentenced to a term of community custody and every misdemeanor and gross misdemeanor probationer ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:~~

- ~~(a) Whose risk assessment places that offender or probationer in one of the two highest risk categories; or~~
- ~~(b) Regardless of the offender's or probationer's risk category if:~~

- ~~(i) The offender's or probationer's current conviction is for:~~
 - ~~(A) A sex offense;~~
 - ~~(B) A violent offense;~~
 - ~~(C) A crime against persons as defined in RCW 9.94A.411;~~
 - ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~
 - ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

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~~(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or~~

~~(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

~~(ii) The offender or probationer has a prior conviction for:~~

- ~~(A) A sex offense;~~
- ~~(B) A violent offense;~~
- ~~(C) A crime against persons as defined in RCW 9.94A.411;~~
- ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

~~(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or~~

~~(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

~~(iii) The conditions of the offender's community custody or the probationer's supervision include chemical dependency treatment;~~

~~(iv) The offender) The department shall supervise every offender convicted of a misdemeanor or gross misdemeanor offense who is sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this subsection. The superior court shall order probation for:~~

~~(a) Offenders convicted of fourth degree assault, violation of a domestic violence court order pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, and who also have a prior conviction for one or more of the following:~~

- ~~(i) A violent offense;~~
- ~~(ii) A sex offense;~~
- ~~(iii) A crime against a person as provided in RCW 9.94A.411;~~

~~(iv) Fourth degree assault; or~~

~~(v) Violation of a domestic violence court order; and~~

- ~~(b) Offenders convicted of:~~
 - ~~(i) Sexual misconduct with a minor second degree;~~
 - ~~(ii) Custodial sexual misconduct second degree;~~
 - ~~(iii) Communication with a minor for immoral purposes; and~~
 - ~~(iv) Failure to register pursuant to RCW 9A.44.130.~~

~~(2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.~~

~~(3) The department shall supervise every felony offender sentenced to community custody whose risk assessment, conducted pursuant to subsection (6) of this section, classifies the offender as one who is at a high risk to reoffend.~~

~~(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:~~

- ~~(a) Has a current conviction for a sex offense;~~
- ~~(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;~~
- ~~(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;~~
- ~~(d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or~~

~~((v) The offender) (e) Is subject to supervision pursuant to RCW 9.94A.745.~~

~~((3)) (5) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under subsection (1), (2), (3), or (4) of this section.~~

~~((4) This section expires July 1, 2010) (6) The department shall conduct a risk assessment for every felony offender~~

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sentenced to a term of community custody who may be subject to supervision under this section.

Sec. 3. RCW 9.94A.030 and 2008 c 276 s 309 and 2008 c 7 s 1 are each reenacted and amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed (~~pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545;~~) as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(8) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(9) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(10) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(11) "Confinement" means total or partial confinement.

(12) "Conviction" means an adjudication of guilt pursuant to Title(§) 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

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(13) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(14) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(15) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(16) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(17) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

(18) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(19) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities

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and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(20) "Department" means the department of corrections.

(21) "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 restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(22) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(23) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(24) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(25) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(26) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(27) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(28) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(29) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(30) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(31) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(32) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988,

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through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(33) "Nonviolent offense" means an offense which is not a violent offense.

(34) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(35) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(36) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in ((RCW 9.94A.030)) this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by ((RCW 9.94A.030)) this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

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(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(37) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (37)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(38) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(39) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

(40) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(41) "Public school" has the same meaning as in RCW 28A.150.010.

(42) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

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(43) "Risk assessment" means the application of ~~((an objective)) the risk instrument ((supported by research and adopted by)) recommended to the department ((for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations)) by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.~~

(44) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(45) "Serious violent offense" is a subcategory of violent offense and means:

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;
- (v) Assault in the first degree;
- (vi) Kidnapping in the first degree;
- (vii) Rape in the first degree;
- (viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(46) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

(47) "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.

(48) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(49) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(50) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(51) "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.

(52) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(53) "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.

(54) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(55) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(56) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(57) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 4. RCW 9.94A.030 and 2009 c 28 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) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current

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law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

~~(6) ("Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.701, as established by the commission or the legislature under RCW 9.94A.850.~~

~~(7))~~ (7) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

~~((8))~~ (7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

~~((9))~~ (8) "Confinement" means total or partial confinement.

~~((10))~~ (9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

~~((11))~~ (10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

~~((12))~~ (11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

~~((13))~~ (12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

~~((14))~~ (13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

~~((15))~~ (14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is

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committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

~~((16))~~ (15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

~~((17))~~ (16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

~~((18))~~ (17) "Department" means the department of corrections.

~~((19))~~ (18) "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 custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

~~((20))~~ (19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

~~((21))~~ (20) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

~~((22))~~ (21) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

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~~((23))~~ (22) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

~~((24))~~ (23) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

~~((25))~~ (24) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

~~((26))~~ (25) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

~~((27))~~ (26) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

~~((28))~~ (27) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

~~((29))~~ (28) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

~~((30))~~ (29) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

~~((34))~~ (30) "Nonviolent offense" means an offense which is not a violent offense.

~~((32))~~ (31) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer convicted of an offense included in RCW 9.94A.501(1) and ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((33))~~ (32) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

~~((34))~~ (33) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in ~~((RCW 9.94A.030))~~ this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

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(ii) Any "violent" offense as defined by ~~(RCW 9.94A.030)~~ this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

~~((35))~~ (34) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection ~~((35))~~ (34)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the

offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

~~((36))~~ (35) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

~~((37))~~ (36) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

~~((38))~~ (37) "Public school" has the same meaning as in RCW 28A.150.010.

~~((39))~~ (38) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

~~((40))~~ (39) "Risk assessment" means the application of ~~((an objective))~~ the risk instrument ~~((supported by research and adopted by))~~ recommended to the department ~~((for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations))~~ by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

~~((41))~~ (40) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

~~((42))~~ (41) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

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~~((43))~~ (42) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

~~((44))~~ (43) "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.

~~((45))~~ (44) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((46))~~ (45) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

~~((47))~~ (46) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

~~((48))~~ (47) "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.

~~((49))~~ (48) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

~~((50))~~ (49) "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.

~~((51))~~ (50) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

~~((52))~~ (51) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

~~((53))~~ (52) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

~~((54))~~ (53) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 5. RCW 9.94A.701 and 2009 c 28 s 10 are each amended to read as follows:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall ~~(impose a term of community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer)~~, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

(a) A sex offense not sentenced under RCW 9.94A.507;

(b) A serious violent offense; or

(c) ~~(A crime against persons under RCW 9.94A.411(2);~~

~~(d) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate;~~

~~(e) A felony offender under chapter 69.50 or 69.52 RCW) A violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006, when a court sentences the person to a term of confinement of one year or less.~~

(2) ~~(If an offender is sentenced to a term of confinement of one year or less for a violation of RCW 9A.44.130(11)(a), the court shall impose a term of community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.~~

(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

(a) Any crime against persons under RCW 9.94A.411(2);

~~(b) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate; or~~

~~(c) A felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000.~~

~~((3))~~ (4) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.

~~((4))~~ (5) If an offender is sentenced under the special sexual offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

~~((5))~~ (6) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

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~~((6))~~ (7) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.507, the court shall impose community custody as provided in that section.

~~((7) If the offender is a criminal street gang associate or member and is found guilty of unlawful possession of a firearm under RCW 9.41.040, the court shall impose a term of community custody under subsection (1)(d) of this section))~~ (8) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

Sec. 6. RCW 9.94A.704 and 2009 c 28 s 12 are each amended to read as follows:

(1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions ~~((and duration of community custody))~~ on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

- (a) Report as directed to a community corrections officer;
- (b) Remain within prescribed geographical boundaries;
- (c) Notify the community corrections officer of any change in the offender's address or employment;
- (d) Pay the supervision fee assessment; and
- (e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(9)(a) When a sex offender has been sentenced pursuant to RCW 9.94A.507, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to

community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

- (i) The crime of conviction;
- (ii) The offender's risk of reoffending;
- (iii) The safety of the community.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(10) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

Sec. 7. RCW 9.94A.707 and 2008 c 231 s 12 are each amended to read as follows:

(1) Community custody shall begin: (a) Upon completion of the term of confinement; or (b) ~~((at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) or (2), or (c)))~~ at the time of sentencing if no term of confinement is ordered.

(2) When an offender is sentenced to community custody, the offender is subject to the conditions of community custody as of the date of sentencing, unless otherwise ordered by the court.

~~((3) When an offender is sentenced to a community custody range pursuant to RCW 9.94A.701 (1) or (2), the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.))~~

Sec. 8. RCW 9.94A.850 and 2009 c 28 s 17 are each amended to read as follows:

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of

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standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The administrative office of the courts shall provide the commission with available data on diversion, including the use of youth court programs, and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community restitution, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

~~(5)((a) Not later than December 31 of each year, the commission may propose modifications to the community custody ranges to be included in sentences under RCW 9.94A.701. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.~~

~~(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.~~

~~(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.~~

~~(6))~~ The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW.

NEW SECTION. Sec. 9. The department of corrections shall recalculate the term of community custody and reset the date that community custody will end for each offender currently in confinement or serving a term of community custody for a crime specified in RCW 9.94A.701. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject.

Sec. 10. 2008 c 231 s 6 (uncodified) is amended to read as follows:

The existing sentencing reform act contains numerous provisions for supervision of different types of offenders. This duplication has caused great confusion for judges, lawyers, offenders, and the department of corrections, and often results in inaccurate sentences. The clarifications in this act are intended to support continued discussions by the sentencing guidelines commission with the courts and the criminal justice community to identify and propose policy changes that will further simplify and improve the sentencing reform act relating to the supervision of offenders. The sentencing guidelines commission shall submit policy change proposals to the legislature on or before December 1, 2008.

Sections 7 through 58 of this act are intended to simplify the supervision provisions of the sentencing reform act and increase the uniformity of its application. These sections are not intended to either increase or decrease the authority of sentencing courts or the department relating to supervision, except for those provisions instructing the court to apply the provisions of the current community custody law to offenders sentenced after July 1, 2009, but who committed their crime prior to August 1, 2009, to the extent that such application is constitutionally permissible.

This will effect a change for offenders who committed their crimes prior to the offender accountability act, chapter 196, Laws of 1999. These offenders will be ordered to a term of community custody rather than community placement or community supervision. To the extent constitutionally permissible, the terms of the offender's supervision will be as provided in current law. With the exception of this change, the legislature does not intend to make, and no provision of sections 7 through 58 of this act may be construed as making, a substantive change to the supervision provisions of the sentencing reform act.

~~((It is the intent of the legislature to reaffirm that section 3, chapter 379, Laws of 2003, expires July 1, 2010.))~~

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Sec. 11. RCW 9.95.220 and 1957 c 227 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, whenever the state parole officer or other officer under whose supervision the probationer has been placed shall have reason to believe such probationer is violating the terms of his or her probation, or engaging in criminal practices, or is abandoned to improper associates, or living a vicious life, he or she shall cause the probationer to be brought before the court wherein the probation was granted. For this purpose any peace officer or state parole officer may rearrest any such person without warrant or other process. The court may thereupon in its discretion without notice revoke and terminate such probation. In the event the judgment has been pronounced by the court and the execution thereof suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory as the case may be. If the judgment has not been pronounced, the court shall pronounce judgment after such revocation of probation and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory, in accordance with the sentence imposed.

(2) If a probationer is being supervised by the department of corrections pursuant to RCW 9.95.204, the department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. The department shall provide a copy of the violation hearing report to the sentencing court in a timely manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

Sec. 12. RCW 9.94A.633 and 2009 c 28 s 7 are each amended to read as follows:

(1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned with up to sixty days' confinement for each violation.

(b) In lieu of confinement, an offender may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned as follows:

(a) If the offender was transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728(2), the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(b) If the offender was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the offender may be sanctioned in accordance with that section.

(c) If the offender was sentenced under the special sexual offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the offender committed to serve the original sentence of confinement.

(d) If the offender was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the offender may be reclassified to serve the unexpired term of his or her sentence in total confinement.

(e) If a sex offender was sentenced pursuant to RCW 9.94A.507, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(3) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. The department shall provide a copy of the violation hearing report to the sentencing court in a timely manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

Sec. 13. RCW 9.94A.737 and 2007 c 483 s 305 are each amended to read as follows:

(1) If an offender violates any condition or requirement of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (3) of this section.

(2) If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing for any violation of community custody and is found to have committed the violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.

(3)(a) For a sex offender sentenced to a term of community custody under RCW 9.94A.670 who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.

(b) For a sex offender sentenced to a term of community custody under RCW 9.94A.710 who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in a local correctional facility for each violation.

(c) For an offender sentenced to a term of community custody under RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545, for a crime committed on or after July 1, 2000, who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(d) For an offender sentenced to a term of community placement under RCW 9.94A.705 who violates any condition of community placement after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions,

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supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(e) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned by the department pursuant to (c) of this subsection. The department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.740. The department shall provide a copy of the violation hearing report to the sentencing court in a timely manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

(4) If an offender has been arrested for a new felony offense while under community supervision, community custody, or community placement, the department shall hold the offender in total confinement until a hearing before the department as provided in this section or until the offender has been formally charged for the new felony offense, whichever is earlier. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community supervision, community custody, or community placement.

(5) The department shall be financially responsible for any portion of the sanctions authorized by this section that are served in a local correctional facility as the result of action by the department.

(6) If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and a structure of graduated sanctions.

(7) The hearing procedures required under subsection (6) of this section shall be developed by rule and include the following:

(a) Hearing officers shall report through a chain of command separate from that of community corrections officers;

(b) The department shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours, after notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours, after notice of the violation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; and (v) question witnesses who appear and testify; and

(e) The sanction shall take effect if affirmed by the hearing officer. Within seven days after the hearing officer's decision, the offender may appeal the decision to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

(8) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

(9) The department shall work with the Washington association of sheriffs and police chiefs to establish and operate an electronic monitoring program for low-risk offenders who violate the terms of their community custody. Between January 1, 2006, and December 31, 2006, the department shall endeavor to place at least one hundred low-risk community custody violators on the electronic monitoring program per day if there are at least that many low-risk offenders who qualify for the electronic monitoring program.

(10) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees shall be immune from civil liability for damages arising from incidents involving low-risk offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith.

Sec. 14. RCW 9.94A.6332 and 2009 c 28 s 8 are each amended to read as follows:

The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the special sexual offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

(3) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(4) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.

(5) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

NEW SECTION. Sec. 15. The legislature directs the sentencing guidelines commission to include in its biennial report to the legislature, as required by RCW 9.94A.850(2)(h)(iii), and due no later than December 1, 2011, an analysis of the impact on recidivism of the following:

(1) The supervision of offenders pursuant to sections 1 and 2 of this act;

(2) The department's authority to issue warrants for offenders under its supervision who are sentenced for misdemeanor and gross misdemeanor offenses in superior court; and

(3) The community custody terms of supervision pursuant to section 5 of this act.

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

16.1.1.1. RCW 9.95.206 (Misdemeanant probation services--Offender classification system--Supervision standards) and 1996 c 298 s 2; and

16.1.1.2. RCW 9.95.212 (Standards for supervision of misdemeanor probationers) and 1998 c 245 s 2 & 1995 1st sp.s. c 19 s 31.

NEW SECTION. Sec. 17. 2008 c 231 s 60 (uncodified) is repealed.

NEW SECTION. Sec. 18. (1) Sections 1, 3, 11, 13, 16, 17, and 20 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 take effect immediately.

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(2) Sections 2, 4 through 10, 12, and 14 of this act take effect August 1, 2009.

NEW SECTION. Sec. 19. Sections 1, 3, and 13 of this act expire August 1, 2009.

NEW SECTION. Sec. 20. This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after the effective date of this section."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5288.

Senator Hargrove spoke in favor of the motion.
Senator Carrell spoke against the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5288.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5288 by voice vote.

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

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

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5288, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5288, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 26; Nays, 23; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brandland, Brown, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Jacobsen, Jarrett, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Benton, Carrell, Delvin, Eide, Hewitt, Hobbs, Holmquist, Honeyford, Kauffman, Kilmer, King, Marr, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

ENGROSSED SUBSTITUTE SENATE BILL NO. 5288, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

Senator Eide, pursuant to Rule 48, moved that the Committee on Rules be relieved of further consideration of Senate Bill No. 6160 and the measure be placed on the day's second reading calendar.

The President declared the question before the Senate to be the motion by Senator Eide that the Committee on Rules be relieved of further consideration of Senate Bill No. 6160 and the measure be placed on the day's second reading calendar.

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The motion by Senator Eide carried and Senate Bill No. 6160 was placed on the day's second reading calendar by voice vote.

MOTION

At 3:05 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 4:13 p.m. by President Owen.

MESSAGE FROM THE HOUSE

April 25, 2009

MR. PRESIDENT:

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

SUBSTITUTE HOUSE BILL NO. 1332,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1701,
SUBSTITUTE HOUSE BILL NO. 1751,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 2211,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 2254,
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

SIGNED BY THE PRESIDENT

The President signed:

SENATE BILL NO. 5359,
SENATE BILL NO. 5470,
SENATE BILL NO. 5525,
SUBSTITUTE SENATE BILL NO. 5684,
SUBSTITUTE SENATE BILL NO. 5734,
ENGROSSED SUBSTITUTE SENATE BILL NO. 5768,
ENGROSSED SUBSTITUTE SENATE BILL NO. 5892,
ENGROSSED SENATE BILL NO. 5894,
ENGROSSED SUBSTITUTE SENATE BILL NO. 6108,
ENGROSSED SUBSTITUTE SENATE BILL NO. 6169,

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House has receded in its amendment to SUBSTITUTE SENATE BILL NO. 5285. Under suspension of rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5285-S AMH GOOD TANG 107, and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 26.44.030 and 2008 c 211 s 5 are each amended to read as follows:

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has

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reasonable cause to believe that a child 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.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the 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.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court appointed special advocates, appointed under Titles 11, 13, and 26 RCW, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The report must 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 has suffered abuse or neglect. The report must 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 are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child 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.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child 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 alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child'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 must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child 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 alleged 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'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.

(6) Any county prosecutor or city attorney receiving a report under subsection (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.

(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. 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. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(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.

(9) Persons or agencies exchanging information under subsection (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.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(12) In conducting an investigation of alleged abuse or neglect, the department or law enforcement agency:

(a) 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 must 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; and

(b) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(13) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department

within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombudsman of the contents of the report. The department shall also notify the ombudsman of the disposition of the report.

(14) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(15) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(16) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. 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.

(17) Upon receipt of a report of alleged abuse or neglect 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.

(18) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030.

Sec. 2. RCW 13.34.100 and 2000 c 124 s 2 are each amended to read as follows:

(1) The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by independent counsel in the proceedings. The court shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs.

(2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person to act as guardian ad litem for the child under this chapter. Another party to the proceeding or the party's employee or representative shall not be so appointed.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background ~~((f))~~ information record shall include, but is not limited to, the following information:

(a) Level of formal education;

(b) General training related to the guardian~~((s))~~ ad litem's duties;

(c) Specific training related to issues potentially faced by children in the dependency system;

(d) Specific training or education related to child disability or developmental issues;

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

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

~~((g))~~ (g) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; ~~((and~~

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~~(f)) (h) Founded allegations of abuse or neglect as defined in RCW 26.44.020;~~

~~(i) The results of an examination of state and national criminal identification data. The examination shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. The background check shall be done through the Washington state patrol criminal identification section and must include a national check from the federal bureau of investigation based on the submission of fingerprints; and~~

~~(j) Criminal history, as defined in RCW 9.94A.030, for the period covering ten years prior to the appointment.~~

The background information ~~((report))~~ record shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program ~~((the))~~ a suitable person appointed by the court to act as guardian ad litem shall provide the background information record to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a ~~((statement containing: His or her training relating to the duties as a guardian ad litem; the name of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment))~~ copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall not be disclosed to the parties or their attorneys. The background ~~((statement))~~ information record shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.

(5) A guardian ad litem through counsel, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.

(6) If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position.

(7) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to represent the best interests of the minor in proceedings before the court.

(8) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends ~~((and the~~

~~appointment shall be effective immediately)). The program shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs. The court shall immediately appoint the person recommended by the program.~~

(9) If a party in a case reasonably believes the court-appointed special advocate or volunteer guardian ad litem is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate or volunteer guardian ad litem on the grounds the advocate or volunteer is inappropriate or unqualified.

Sec. 3. RCW 26.12.175 and 2000 c 124 s 6 are each amended to read as follows:

(1)(a) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child in any proceeding under this chapter. The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county. The court shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs. The family court services professionals may also make a recommendation to the court regarding whether a guardian ad litem should be appointed for the child. ~~((The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county:))~~

(b) ~~((Unless otherwise ordered,))~~ The guardian ad litem's role is to investigate and report factual information regarding the issues ordered to be reported or investigated to the court (concerning parenting arrangements for the child, and to represent the child's best interests). The guardian ad litem shall always represent the best interests of the child. Guardians ad litem and investigators under this title may make recommendations based upon ~~((an independent investigation regarding the best interests of the child))~~ his or her investigation, which the court may consider and weigh in conjunction with the recommendations of all of the parties. If a child expresses a preference regarding the parenting plan, the guardian ad litem shall report the preferences to the court, together with the facts relative to whether any preferences are being expressed voluntarily and the degree of the child's understanding. The court may require the guardian ad litem to provide periodic reports to the parties regarding the status of his or her investigation. The guardian ad litem shall file his or her report at least sixty days prior to trial.

(c) The parties to the proceeding may file with the court written responses to any report filed by the guardian ad litem or investigator. The court shall consider any written responses to a report filed by the guardian ad litem or investigator, including any factual information or recommendations provided in the report.

(d) The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. The court may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay. If both parents are indigent, the county shall bear the cost of the guardian, subject to appropriation for guardians' ad litem services by the county legislative authority. Guardians ad litem who are not volunteers shall provide the parties with an itemized accounting of their time and billing for services each month.

(2)(a) If the guardian ad litem appointed is from the county court-appointed special advocate program, the program shall supervise any guardian ad litem assigned to the case. The court-appointed special advocate program shall be entitled to notice of all proceedings in the case.

(b) The legislative authority of each county may authorize creation of a court-appointed special advocate program. The county legislative authority may adopt rules of eligibility for court-appointed special advocate program services that are not inconsistent with this section.

(3) Each guardian ad litem program for compensated guardians ad litem and each court-appointed special advocate program shall maintain a background information record for each guardian ad litem in the program. The background ~~((f))~~ information record shall include, but is not limited to, the following information:

(a) Level of formal education;

(b) General training related to the guardian ~~((s))~~ ad litem's duties;

(c) Specific training related to issues potentially faced by children in dissolution, custody, paternity, and other family law proceedings;

(d) Specific training or education related to child disability or developmental issues;

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

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

~~((e))~~ (g) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; ~~((and~~

~~((f))~~ (h) Founded allegations of abuse or neglect as defined in RCW 26.44.020;

(i) The results of an examination that shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050 and the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834. This background check shall be done through the Washington state patrol criminal identification section; and

(j) Criminal history, as defined in RCW 9.94A.030, for the period covering ten years prior to the appointment.

The background information ~~((report))~~ record shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person appointed as guardian ad litem shall provide the background information record to the court.

Upon appointment, the guardian ad litem, court-appointed special advocate program or guardian ad litem program, shall provide the parties or their attorneys with a ~~((statement containing: His or her training relating to the duties as a guardian ad litem; the name of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment))~~ copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall not be disclosed to the parties or their attorneys. The background ((statement)) information record shall not

include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends ~~((and the appointment shall be effective immediately))~~. The court shall immediately appoint the person recommended by the program.

(5) If a party in a case reasonably believes the court-appointed special advocate or volunteer guardian ad litem is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate or volunteer guardian ad litem on the grounds the advocate or volunteer is inappropriate or unqualified.

Sec. 4. RCW 26.12.177 and 2007 c 496 s 305 are each amended to read as follows:

(1) All guardians ad litem and investigators appointed under this title must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements. In cases involving allegations of limiting factors under RCW 26.09.191, the guardians ad litem and investigators appointed under this title must have additional relevant training under RCW 2.56.030(15) and as recommended under RCW 2.53.040, when it is available.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem and investigators under this title. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem and investigators under this title shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information record as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem ~~((lacks the necessary expertise for the proceeding))~~ is inappropriate or unqualified, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in

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state-initiated paternity cases only.

(e) The superior court shall remove any person from the guardian ad litem registry who ~~((misrepresents))~~ has been found to have misrepresented his or her qualifications ((pursuant to a grievance procedure established by the court)).

(3) The rotational registry system shall not apply to court-appointed special advocate programs." and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Regala moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5285.

Senators Regala and Roach spoke in favor of passage of the motion.

The President declared the question before the Senate to be the motion by Senator Regala that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5285.

The motion by Senator Regala carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5285 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5285, as amended by the House.

Senator Roach spoke in favor of passage of the bill.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5285, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

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

Voting nay: Senator Holmquist

SUBSTITUTE SENATE BILL NO. 5285, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

REMARKS BY THE PRESIDENT

President Owen: "Ladies and gentlemen of the Senate. The President is going to ask you for a point of personal privilege at this time if he may. I know that things are going to get a little crazy as we're trying to wrap up, possibly get out of order so, I brought a little help with me today. I would like you to say hello to my little friend. Hopefully, that will help but on a serious note and it has been brought to my attention by different members and both leadership and other members. We have a lot of difficult issues to finish to get out of here by tomorrow. There's going to be a lot of passion. There's going to be a lot of emotions. There's going to be a lot of differences. I would ask, you that you respect not only the differences of each other philosophies but also respect each other. That you avoid rancor and assaults against each other, that you recognize that we don't always agree but we have a very important job to get done. I will

do my best to keep order and I will do my best to not allow personal assaults and I'd appreciate your help in that way. It's not only my request but it's a request of many of you that have come and talked to me in the last couple of days. So, if we could respect that, we can do everything that we need to do to finish this incredible job. I have been here for thirty-three session, thirty-three years. One year we didn't have a session but thirty-two sessions. I know that you have the single most difficult task of all the years that I have ever been here and so I know it's going to get very passionate. It's going to get very emotional. So I ask your help in recognizing that we don't always agree, that we have significant differences, but that we respect each other. Thank you."

MOTION

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

SECOND READING

HOUSE BILL NO. 1287, by Representatives Morris, Bailey, Ericks, Hinkle, Sullivan and Priest

Concerning sales and use tax exemptions in respect to aircraft used in intrastate commuter operations.

The measure was read the second time.

MOTION

On motion of Senator Prentice, the rules were suspended, House Bill No. 1287 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Prentice and Hewitt spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1287.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1287 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

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

Voting nay: Senators Fraser and Tom

HOUSE BILL NO. 1287, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

REMARKS BY THE PRESIDENT

President Owen: "There was an error in the reading of the message from the House on the bills that were passed by the House. One of them was stated as 2245. It should of been 2254. We will correct that in the record."

SECOND READING

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ENGROSSED SUBSTITUTE HOUSE BILL NO. 2344, by House Committee on Ways & Means (originally sponsored by Representative Haigh)

Regarding resident undergraduate tuition.

The measure was read the second time.

MOTION

Senator Sheldon moved that the following amendment by Senator Sheldon be adopted.

On page 2, line 4, after "(2)" insert "Tuition fees charged to resident undergraduates for the 2011-12 academic year shall not exceed the maximum of tuition fees that could have been charged in 2011-12 had the cap imposed under RCW 28B.15.068 remained in effect for the 2009-10 and 2010-11 academic years.

(3)"

On page 3, at the beginning of line 27 strike "(3)" and insert "(((3))) (4)"

On page 2, at the beginning of line 35, strike "(4)" and insert "(((4))) (5)"

On page 3, at the beginning of line 5, strike "(5)" and insert "(6)"

Senators Sheldon, Pflug, Shin and Roach spoke in favor of adoption of the amendment.

Senators Kilmer and Jacobsen spoke against adoption of the amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

POINT OF ORDER

Senator Brown: "Mr. President, I wonder if you could remind us again that we're to address the President and not to people who may or may not be listening in."

REPLY BY THE PRESIDENT

President Owen: "Senator Brown, your point is well taken. Senator Jarrett."

Senators Jarrett and Kohl-Welles spoke against the adoption of the amendment.

Senator Carrell spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Sheldon on page 2, line 4 to Engrossed Substitute House Bill No. 2344.

ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Sheldon and the amendment was adopted by the following vote: Yeas, 20; Nays, 29; Absent, 0; Excused, 0.

Voting yea: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Shin, Stevens, Swecker and Zarelli

Voting nay: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-

Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller and Tom

MOTION

Senator Pflug moved that the following amendment by Senator Pflug and others be adopted.

On page 2, line 4, after "(2)" insert "Tuition fees charged to resident undergraduates for the 2011-12 academic year shall not exceed the maximum of tuition fees that could have been charged in 2011-12 had the cap imposed under this section remained in effect for the 2009-10 and 2010-11 academic years.

(3)"

Correct any internal references accordingly.

On page 2, at the beginning of line 27, strike "(3)" and insert "(((3))) (4)"

On page 2, at the beginning of line 35, strike "(4)" and insert "(((4))) (5)"

On page 3, at the beginning of line 5, strike "(5)" and insert "(6)"

On page 4, line 25, after "chapter ____" strike "RCW"

WITHDRAWAL OF AMENDMENT

On motion of Senator Pflug, the amendment by Senator Pflug and others on page 2, line 4 to Engrossed Substitute House Bill No. 2344 was withdrawn.

MOTION

On motion of Senator Kilmer, the rules were suspended, Engrossed Substitute House Bill No. 2344 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kilmer, Hargrove, Jacobsen and Kohl-Welles spoke in favor of passage of the bill.

Senators Schoesler, Pflug and Carrell spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2344.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2344 and the bill passed the Senate by the following vote: Yeas, 29; Nays, 20; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Shin, Stevens, Swecker and Zarelli

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2344, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

HOUSE BILL NO. 2331, by Representatives Darneille, Dickerson, Pettigrew, Kenney, Williams, Simpson, Nelson and Ormsby.

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Concerning the existing document recording fee for services for the homeless.

The President declared the question before the Senate to be the final passage of House Bill No. 2331 as amended by the Senate.

The bill was read on Third Reading.

ROLL CALL

MOTION

On motion of Senator Prentice, the rules were suspended and House Bill No. 2331 was returned to second reading for the purpose of amendment.

The Secretary called the roll on the final passage of House Bill No. 2331 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 25; Nays, 24; Absent, 0; Excused, 0.

MOTION

Senator Haugen moved that the following amendment by Senators Haugen and Fraser be adopted.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Jacobsen, Jarrett, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Shin and Tom

On page 1, line 8, strike "~~ten~~ thirty" and insert "ten"
On page 1, line 10, after "law." Insert "During the 2009-11 and 2011-13 biennia, the surcharge shall be thirty dollars."

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Hobbs, Holmquist, Honeyford, Kauffman, Kilmer, King, Marr, McCaslin, Morton, Parlette, Pflug, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Senators Haugen and Prentice spoke in favor of adoption of the amendment.

HOUSE BILL NO. 2331 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

The President declared the question before the Senate to be the adoption of the amendment by Senators Haugen and Fraser on page 1, line 8 to House Bill No. 2331.

SECOND READING

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

SUBSTITUTE HOUSE BILL NO. 2346, by House Committee on Ways & Means (originally sponsored by Representative Kagi)

MOTION

Senator Prentice moved that the following amendment by Senator Prentice be adopted.

Concerning crisis residential centers.

On page 2, after "to" on line 25, insert "(a)"
On page 2, after "trust" on line 26, insert ", or (b) documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state law"

The measure was read the second time.

MOTION

Senator Prentice spoke in favor of adoption of the amendment.

Senator Prentice moved that the following committee striking amendment by the Committee on Ways & Means be not adopted.

The President declared the question before the Senate to be the adoption of the amendment by Senator Prentice on page 2, line 25 to House Bill No. 2331.

Strike everything after the enacting clause and insert the following:

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

Sec. 1. RCW 13.32A.130 and 2000 c 162 s 13 are each amended to read as follows:

MOTION

On motion of Senator Prentice, the rules were suspended, House Bill No. 2331 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

(1) A child admitted to a secure facility shall remain in the facility for at least twenty-four hours after admission but for not more than five consecutive days. ~~((If the child admitted under this section is transferred between secure and semi-secure facilities, the aggregate length of time spent in all such centers or facilities may not exceed five consecutive days per admission))~~ A child admitted to a semi-secure facility may remain for not more than fifteen consecutive days. If a child is transferred between a secure and semi-secure facility, the aggregate length of time a child may remain in both facilities shall not exceed fifteen consecutive days per admission and in no event can the child's length of stay in a secure facility exceed five days per admission.

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

POINT OF INQUIRY

Senator Benton: "Would Senator Fraser yield to a question?"

(2)(a)(i) The facility administrator shall determine within twenty-four hours after a child's admission to a secure facility whether the child is likely to remain in a semi-secure facility and may transfer the child to a semi-secure facility or release the child to the department. The determination shall be based on: (A) The need for continued assessment, protection, and treatment of the child in a secure facility; and (B) the likelihood the child would remain at a semi-secure facility until his or her parents can take the child home or a petition can be filed under this title.

President Owen: "She does not."

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

(ii) In making the determination the administrator shall consider the following information if known: (A) The child's age and maturity; (B) the child's condition upon arrival at the center; (C) the circumstances that led to the child's being taken to the center; (D) whether the child's behavior endangers the health, safety, or welfare of the child or any other person; (E) the child's history of running away; and (F) the child's willingness to cooperate in the assessment.

(b) If the administrator of a secure facility determines the child is unlikely to remain in a semi-secure facility, the administrator shall keep the child in the secure facility pursuant to this chapter and in order to provide for space for the child may transfer another child who has been in the facility for at least seventy-two hours to a semi-secure facility. The administrator shall only make a transfer of a child after determining that the child who may be transferred is likely to remain at the semi-secure facility.

(c) A crisis residential center administrator is authorized to transfer a child to a crisis residential center in the area where the child's parents reside or where the child's lawfully prescribed residence is located.

(d) An administrator may transfer a child from a semi-secure facility to a secure facility whenever he or she reasonably believes that the child is likely to leave the semi-secure facility and not return and after full consideration of all factors in (a)(i) and (ii) of this subsection.

(3) If no parent is available or willing to remove the child during the first seventy-two hours following admission, the department shall consider the filing of a petition under RCW 13.32A.140.

(4) Notwithstanding the provisions of subsection (1) of this section, the parents may remove the child at any time (~~during the five-day period~~) unless the staff of the crisis residential center has reasonable cause to believe that the child is absent from the home because he or she is abused or neglected or if allegations of abuse or neglect have been made against the parents. The department or any agency legally charged with the supervision of a child may remove a child from a crisis residential center at any time after the first twenty-four-hour period after admission has elapsed and only after full consideration by all parties of the factors in subsection (2)(a) of this section.

(5) Crisis residential center staff shall make reasonable efforts to protect the child and achieve a reconciliation of the family. If a reconciliation and voluntary return of the child has not been achieved within forty-eight hours from the time of admission, and if the administrator of the center does not consider it likely that reconciliation will be achieved within (~~the five-day period~~) five days of the child's admission to the center, then the administrator shall inform the parent and child of: (a) The availability of counseling services; (b) the right to file a child in need of services petition for an out-of-home placement, the right of a parent to file an at-risk youth petition, and the right of the parent and child to obtain assistance in filing the petition; (c) the right to request the facility administrator or his or her designee to form a multidisciplinary team; (d) the right to request a review of any out-of-home placement; (e) the right to request a mental health or chemical dependency evaluation by a county-designated professional or a private treatment facility; and (f) the right to request treatment in a program to address the child's at-risk behavior under RCW 13.32A.197.

(6) At no time shall information regarding a parent's or child's rights be withheld. The department shall develop and distribute to all law enforcement agencies and to each crisis

residential center administrator a written statement delineating the services and rights. The administrator of the facility or his or her designee shall provide every resident and parent with a copy of the statement.

(7) A crisis residential center and any person employed at the center acting in good faith in carrying out the provisions of this section are immune from criminal or civil liability for such actions.

Sec. 2. RCW 74.13.0321 and 1995 c 312 s 61 are each amended to read as follows:

No contract may provide reimbursement or compensation to:

(1) A crisis residential center's secure facility for any service delivered or provided to a resident child after five consecutive days of residence; or

(2) A semi-secure crisis residential center facility for any service delivered or provided to a resident child after fifteen consecutive days of residence.

Sec. 3. RCW 74.13.033 and 2000 c 162 s 16 are each amended to read as follows:

(1) If a resident of a crisis residential center becomes by his or her behavior disruptive to the facility's program, such resident may be immediately removed to a separate area within the facility and counseled on an individual basis until such time as the child regains his or her composure. The department may set rules and regulations establishing additional procedures for dealing with severely disruptive children on the premises.

(2) When the juvenile resides in this facility, all services deemed necessary to the juvenile's reentry to normal family life shall be made available to the juvenile as required by chapter 13.32A RCW. In assessing the child and providing these services, the facility staff shall:

(a) Interview the juvenile as soon as possible;

(b) Contact the juvenile's parents and arrange for a counseling interview with the juvenile and his or her parents as soon as possible;

(c) Conduct counseling interviews with the juvenile and his or her parents, to the end that resolution of the child/parent conflict is attained and the child is returned home as soon as possible;

(d) Provide additional crisis counseling as needed, to the end that placement of the child in the crisis residential center will be required for the shortest time possible, but not to exceed five consecutive days if the juvenile resides in a secure crisis residential center; and

(e) Convene, when appropriate, a multidisciplinary team.

(3) Based on the assessments done under subsection (2) of this section the (~~facility~~) center staff may refer any child who, as the result of a mental or emotional disorder, or intoxication by alcohol or other drugs, is suicidal, seriously assaultive, or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency medical evaluation and possible care, for evaluation pursuant to chapter 71.34 RCW, to a mental health professional pursuant to chapter 71.05 RCW, or to a chemical dependency specialist pursuant to chapter 70.96A RCW whenever such action is deemed appropriate and consistent with law.

(4) A juvenile taking unauthorized leave from a facility shall be apprehended and returned to it by law enforcement officers or other persons designated as having this authority as provided in RCW 13.32A.050. If returned to the facility after having taken unauthorized leave for a period of more than twenty-four hours a juvenile shall be supervised by such a facility for a period, pursuant to this chapter, which, unless where otherwise provided, may not exceed five consecutive days (~~on the~~

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premises)) in a secure facility or fifteen days in a semi-secure facility. Costs of housing juveniles admitted to crisis residential centers shall be assumed by the department for a period not to exceed five consecutive days.

NEW SECTION, Sec. 4. A new section is added to chapter 13.32A RCW to read as follows:

The department may take a runaway youth to a secure facility after attempting to notify the parent of the child's whereabouts. The department may not take a child to a secure facility if the department has reasonable cause to believe that the reason for the child's runaway status is the result of abuse or neglect.

The President declared the question before the Senate to be the motion by Senator Prentice to not adopt the committee striking amendment by the Committee on Ways & Means to Substitute House Bill No. 2346.

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

MOTION

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

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 13.32A.130 and 2000 c 162 s 13 and 2000 c 123 s 15 are each reenacted and amended to read as follows:

(1) A child admitted to a secure facility located in a juvenile detention center shall remain in the facility for at least twenty-four hours after admission but for not more than five consecutive days. ~~((If the child admitted under this section is transferred between secure and semi-secure facilities, the aggregate length of time spent in all such centers or facilities may not exceed five consecutive days per admission.))~~ A child admitted to a secure facility not located in a juvenile detention center or a semi-secure facility may remain for not more than fifteen consecutive days. If a child is transferred between a secure and semi-secure facility, the aggregate length of time a child may remain in both facilities shall not exceed fifteen consecutive days per admission, and in no event may a child's stay in a secure facility located in a juvenile detention center exceed five days per admission.

(2)(a)(i) The facility administrator shall determine within twenty-four hours after a child's admission to a secure facility whether the child is likely to remain in a semi-secure facility and may transfer the child to a semi-secure facility or release the child to the department. The determination shall be based on: (A) The need for continued assessment, protection, and treatment of the child in a secure facility; and (B) the likelihood the child would remain at a semi-secure facility until his or her parents can take the child home or a petition can be filed under this title.

(ii) In making the determination the administrator shall consider the following information if known: (A) The child's age and maturity; (B) the child's condition upon arrival at the center; (C) the circumstances that led to the child's being taken to the center; (D) whether the child's behavior endangers the health, safety, or welfare of the child or any other person; (E) the child's history of running away; and (F) the child's willingness to cooperate in the assessment.

(b) If the administrator of a secure facility determines the child is unlikely to remain in a semi-secure facility, the administrator shall keep the child in the secure facility pursuant to this chapter and in order to provide for space for the child may transfer another child who has been in the facility for at least seventy-two hours to a semi-secure facility. The administrator shall only make a transfer of a child after

determining that the child who may be transferred is likely to remain at the semi-secure facility.

(c) A crisis residential center administrator is authorized to transfer a child to a crisis residential center in the area where the child's parents reside or where the child's lawfully prescribed residence is located.

(d) An administrator may transfer a child from a semi-secure facility to a secure facility whenever he or she reasonably believes that the child is likely to leave the semi-secure facility and not return and after full consideration of all factors in (a)(i) and (ii) of this subsection.

(3) If no parent is available or willing to remove the child during the first seventy-two hours following admission, the department shall consider the filing of a petition under RCW 13.32A.140.

(4) Notwithstanding the provisions of subsection (1) of this section, the parents may remove the child at any time ~~((during the five-day period))~~ unless the staff of the crisis residential center has reasonable cause to believe that the child is absent from the home because he or she is abused or neglected or if allegations of abuse or neglect have been made against the parents. The department or any agency legally charged with the supervision of a child may remove a child from a crisis residential center at any time after the first twenty-four-hour period after admission has elapsed and only after full consideration by all parties of the factors in subsection (2)(a) of this section.

(5) Crisis residential center staff shall make reasonable efforts to protect the child and achieve a reconciliation of the family. If a reconciliation and voluntary return of the child has not been achieved within forty-eight hours from the time of admission, and if the administrator of the center does not consider it likely that reconciliation will be achieved within ~~((the five-day period))~~ five days of the child's admission to the center, then the administrator shall inform the parent and child of: (a) The availability of counseling services; (b) the right to file a child in need of services petition for an out-of-home placement, the right of a parent to file an at-risk youth petition, and the right of the parent and child to obtain assistance in filing the petition; (c) the right to request the facility administrator or his or her designee to form a multidisciplinary team; (d) the right to request a review of any out-of-home placement; (e) the right to request a mental health or chemical dependency evaluation by a county-designated professional or a private treatment facility; and (f) the right to request treatment in a program to address the child's at-risk behavior under RCW 13.32A.197.

(6) At no time shall information regarding a parent's or child's rights be withheld. The department shall develop and distribute to all law enforcement agencies and to each crisis residential center administrator a written statement delineating the services and rights. The administrator of the facility or his or her designee shall provide every resident and parent with a copy of the statement.

(7) A crisis residential center and any person employed at the center acting in good faith in carrying out the provisions of this section are immune from criminal or civil liability for such actions.

Sec. 2. RCW 74.13.0321 and 1995 c 312 s 61 are each amended to read as follows:

No contract may provide reimbursement or compensation to:

(1) A ~~((crisis residential center's))~~ secure facility located in a juvenile detention center for any service delivered or provided to a resident child after five consecutive days of residence; or

(2) A secure facility not located in a juvenile detention center or a semi-secure crisis residential center facility for any service delivered or provided to a resident child after fifteen consecutive days of residence.

Sec. 3. RCW 74.13.033 and 2000 c 162 s 16 are each amended to read as follows:

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(1) If a resident of a crisis residential center becomes by his or her behavior disruptive to the facility's program, such resident may be immediately removed to a separate area within the facility and counseled on an individual basis until such time as the child regains his or her composure. The department may set rules and regulations establishing additional procedures for dealing with severely disruptive children on the premises.

(2) When the juvenile resides in this facility, all services deemed necessary to the juvenile's reentry to normal family life shall be made available to the juvenile as required by chapter 13.32A RCW. In assessing the child and providing these services, the facility staff shall:

(a) Interview the juvenile as soon as possible;

(b) Contact the juvenile's parents and arrange for a counseling interview with the juvenile and his or her parents as soon as possible;

(c) Conduct counseling interviews with the juvenile and his or her parents, to the end that resolution of the child/parent conflict is attained and the child is returned home as soon as possible;

(d) Provide additional crisis counseling as needed, to the end that placement of the child in the crisis residential center will be required for the shortest time possible, but not to exceed ~~((five))~~ fifteen consecutive days; and

(e) Convene, when appropriate, a multidisciplinary team.

(3) Based on the assessments done under subsection (2) of this section the ~~((facility))~~ center staff may refer any child who, as the result of a mental or emotional disorder, or intoxication by alcohol or other drugs, is suicidal, seriously assaultive, or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency medical evaluation and possible care, for evaluation pursuant to chapter 71.34 RCW, to a mental health professional pursuant to chapter 71.05 RCW, or to a chemical dependency specialist pursuant to chapter 70.96A RCW whenever such action is deemed appropriate and consistent with law.

(4) A juvenile taking unauthorized leave from a facility shall be apprehended and returned to it by law enforcement officers or other persons designated as having this authority as provided in RCW 13.32A.050. If returned to the facility after having taken unauthorized leave for a period of more than twenty-four hours a juvenile shall be supervised by such a facility for a period, pursuant to this chapter, which, unless where otherwise provided, may not exceed ~~((five))~~ fifteen consecutive days ~~((on the premises))~~. Costs of housing juveniles admitted to crisis residential centers shall be assumed by the department for a period not to exceed ~~((five))~~ fifteen consecutive days.

Sec. 4. RCW 74.13.034 and 2000 c 162 s 17 are each amended to read as follows:

(1) A child taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032 may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center, the nearest regional secure crisis residential center, or a secure facility with which it is collocated under RCW 74.13.032. Placement in both locations shall not exceed ~~((five))~~ fifteen consecutive days from the point of intake as provided in RCW 13.32A.130.

(2) A child taken into custody and taken to a crisis residential center established by this chapter may be placed physically by the department or the department's designee and, at departmental expense and approval, in a secure juvenile detention facility operated by the county in which the center is located for a maximum of forty-eight hours, including Saturdays, Sundays, and holidays, if the child has taken unauthorized leave from the center and the person in charge of the center determines that the center cannot provide supervision and structure adequate to ensure that the child will not again take unauthorized leave. Juveniles placed in such a facility pursuant to this section may not, to the extent possible, come in contact with alleged or convicted juvenile or adult offenders.

(3) Any child placed in secure detention pursuant to this section shall, during the period of confinement, be provided with appropriate treatment by the department or the department's designee, which shall include the services defined in RCW 74.13.033(2). If the child placed in secure detention is not returned home or if an alternative living arrangement agreeable to the parent and the child is not made within twenty-four hours after the child's admission, the child shall be taken at the department's expense to a crisis residential center. Placement in the crisis residential center or centers plus placement in juvenile detention shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130.

(4) Juvenile detention facilities used pursuant to this section shall first be certified by the department to ensure that juveniles placed in the facility pursuant to this section are provided with living conditions suitable to the well-being of the child. Where space is available, juvenile courts, when certified by the department to do so, shall provide secure placement for juveniles pursuant to this section, at department expense.

NEW SECTION. Sec. 5. A new section is added to chapter 13.32A RCW to read as follows:

The department may take a runaway youth to a secure facility after attempting to notify the parent of the child's whereabouts. The department may not take a child to a secure facility if the department has reasonable cause to believe that the reason for the child's runaway status is the result of abuse or neglect."

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

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Hargrove and Stevens to Substitute House Bill No. 2346.

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

MOTION

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

On page 1, line 1 of the title, after "centers;" strike the remainder of the title and insert "amending RCW 74.13.0321, 74.13.033, and 74.13.034; reenacting and amending RCW 13.32A.130; and adding a new section to chapter 13.32A RCW."

MOTION

On motion of Senator Prentice, the rules were suspended, Substitute House Bill No. 2346 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2346 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2346 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice,

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

SUBSTITUTE HOUSE BILL NO. 2346, as amended by the Senate having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2356, by House Committee on Ways & Means (originally sponsored by Representative Haigh)

Revising student achievement fund allocations.

The measure was read the second time.

MOTION

On motion of Senator Prentice, the rules were suspended, Substitute House Bill No. 2356 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2356.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2356 and the bill passed the Senate by the following vote: Yeas, 28; Nays, 20; Absent, 1; Excused, 0.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, Kilmer, King, Marr, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Stevens, Swecker and Zarelli

Absent: Senator Kline

SUBSTITUTE HOUSE BILL NO. 2356, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Marr, Senator Kline was excused.

SECOND READING

ENGROSSED HOUSE BILL NO. 2358, by Representative Conway

Increasing liquor license fees limited to fees for beer and/or wine restaurants; taverns; snack bars; combined beer and wine retailers; grocery stores; beer and/or wine specialty shops; passenger trains, vessels, and airplanes; spirits, beer, and wine restaurants; spirits, beer, and wine private clubs; beer and wine private clubs; and public houses.

The measure was read the second time.

MOTION

On motion of Senator Prentice, the rules were suspended, Engrossed House Bill No. 2358 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2358.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 2358 and the bill passed the Senate by the following vote: Yeas, 29; Nays, 20; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Morton, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, Kilmer, King, Marr, McCaslin, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

ENGROSSED HOUSE BILL NO. 2358, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 5421, by Senators Parlette, Jacobsen, Rockefeller, Swecker, Hargrove, Shin and Marr

Establishing the upper Columbia river recreational salmon and steelhead pilot stamp program. Revised for 1st Substitute: Creating the Columbia river recreational salmon and steelhead pilot stamp program.

MOTION

On motion of Senator Parlette, Substitute Senate Bill No. 5421 was substituted for Senate Bill No. 5421 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Parlette moved that the following amendment by Senators Parlette and McCaslin be adopted.

On page 3, beginning on line 4, after "(2)" strike all material through "river." on line 8 and insert "The department shall solicit recommendations for membership on the Columbia river salmon and steelhead recreational anglers board from recognized recreational fishing organizations of the Columbia river, and the director or director's designee shall give deference to such recommendations when selecting board members. In making these selections, the director or director's designee shall seek to provide equitable representation from the various geographic areas of the Columbia river."

Senators Parlette and Jacobsen spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Parlette and McCaslin on page 3, line 4 to Substitute Senate Bill No. 5421.

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

MOTION

Senator Parlette moved that the following amendment by Senators Parlette and Jacobsen be adopted.

On page 4, after line 14, insert the following:

"NEW SECTION. Sec. 11. A Columbia river salmon and steelhead stamp or endorsement is not subject to the additional ten percent transaction fee on recreational licenses, permits, tags, stamps, or raffle tickets to be charged during the 2009-2011 biennium under chapter . . . (Substitute House Bill No. 1778), Laws of 2009 if it or a subsequent version thereof becomes law."

Senator Parlette spoke in favor of adoption of the amendment.

MOTION

On motion of Senator Eide, further consideration of Substitute Senate Bill No. 5421 was deferred and the bill held its place on the second reading calendar.

MOTION

On motion of Senator Marr, Senator Prentice was excused.

RULING BY THE PRESIDENT

President Owen: "In ruling upon the point of order raised by Senator Keiser as to the scope and object of Amendment #474, by Senator Holmquist and others, to Senate Bill 6158, the President finds and rules as follows:

SB 6158 is a bill that is necessary to implement the budget. It reduces government expenditures by delaying the implementation of payment of benefits under the Family Leave Insurance Program from 2009 until 2012. Amendment #474 would address the same budget issue by repealing the Family Leave Insurance Program.

While the President finds that Amendment #474 is a more drastic approach to the problem addressed by SB 6158, he believes that it does fall within the scope and object of SB 6158.

For this reason, the President finds that Senator Keiser's point is not well-taken. Amendment #474 is properly before the body for consideration."

MOTION

On motion of Senator Eide, further consideration of Senate Bill No. 6158 was deferred and the bill held its place on the second reading calendar.

The Senate resumed consideration of Substitute Senate Bill No. 5421.

Senator Tom spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Parlette and Jacobsen on page 4, after line 14 to Substitute Senate Bill No. 5421.

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

MOTION

On motion of Senator Parlette, the rules were suspended, Engrossed Substitute Senate Bill No. 5421 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Parlette, Jacobsen and Haugen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5421.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5421 and the bill passed the Senate by the following vote: Yeas, 38; Nays, 11; Absent, 0; Excused, 0.

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

Voting nay: Senators Benton, Carrell, Holmquist, Honeyford, Marr, McCaslin, Pflug, Roach, Schoesler, Sheldon and Stevens

ENGROSSED SUBSTITUTE SENATE BILL NO. 5421, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2361, by House Committee on Ways & Means (originally sponsored by Representative Cody)

Concerning modifying state payments for in-home care by prohibiting payment for services provided by agency employees who are related to or live with the client. Revised for 1st Substitute: Concerning modifying state payments for in-home care by prohibiting payment for services provided by agency employees who are related to the client.

The measure was read the second time.

MOTION

Senator Zarelli moved that the following amendment by Senators Zarelli and Fairley be adopted.

On page 1, line 11, after "the client." insert the following:

"To the extent permitted under federal law, the provisions of this subsection shall not apply if the family member providing care is older than the client."

On page 2, after line 15, insert the following:

"NEW SECTION. Sec. 2. A new section is added to chapter 74.39A RCW to read as follows:

(1) Beginning July 1, 2010, the department shall not pay a home care agency licensed under chapter 70.127 RCW for in-home personal care or respite services provided under this chapter, Title 71A RCW, or chapter 74.39 RCW if the home care agency does not verify agency employee hours by electronic time keeping.

(2) For purposes of this section, "electronic time keeping" means an electronic, verifiable method of recording an

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employee's presence in the client's home at the beginning and end of the employee's client visit workday."

SECOND READING

Renumber the sections consecutively and correct any internal references accordingly.

SENATE BILL NO. 6180, by Senators Keiser, Tom and Prentice

Senators Zarelli and Prentice spoke in favor of adoption of the amendment.

Relating to home care workers. Revised for 1st Substitute: Concerning the training and background checks of long-term care workers.

The President declared the question before the Senate to be the adoption of the amendment by Senators Zarelli and Fairley on page 1, line 11 to Substitute House Bill No. 2361.

MOTION

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

MOTION

There being no objection, the following amendment was adopted:

On motion of Senator Keiser, Substitute Senate Bill No. 6180 was substituted for Senate Bill No. 6180 and the substitute bill was placed on the second reading and read the second time.

MOTION

On page 1, line 1 of the title, after "care", strike the remainder of the title and insert "; adding new sections to chapter 74.39A RCW; creating a new section; and declaring an emergency."

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

MOTION

Senator Parlette moved that the following amendment by Senator Parlette be adopted.

Strike everything after the enacting clause and insert the following:

On page 2, line 7, after "Family member", strike all material through "grandnephew" on line 9 and insert "means a parent, child, or sibling"

"Sec. 1. RCW 74.39A.009 and 2009 c 2 s 2 (Initiative Measure No. 1029) are each amended to read as follows:

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

WITHDRAWAL OF AMENDMENT

On motion of Senator Parlette, the amendment by Senator Parlette on page 2, line 7 to Substitute House Bill No. 2361 was withdrawn.

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

MOTION

On motion of Senator Prentice, the rules were suspended, Substitute House Bill No. 2361 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) "Core competencies" means basic training topics, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2361, as amended by the Senate.

(6) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2361 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 29; Nays, 20; Absent, 0; Excused, 0.

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

(8) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Shin and Tom

(9) "Direct care worker" means a paid caregiver who provides direct, hands-on personal care services to persons with disabilities or the elderly requiring long-term care.

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hatfield, Hewitt, Hobbs, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Pflug, Schoesler, Sheldon, Stevens, Swecker and Zarelli

(10) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

SUBSTITUTE HOUSE BILL NO. 2361, as amended by the Senate having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

(11) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or

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developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(12) "Home and community services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

(13) "Home care aide" means a long-term care worker who has obtained certification as a home care aide by the department of health.

(14) "Individual provider" is defined according to RCW 74.39A.240.

(15) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(16)(a) "Long-term care workers for the elderly or persons with disabilities" or "long-term care workers" includes all persons who are long-term care workers for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, community residential service providers, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include: (i) Persons employed ~~((m))~~ by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 CFR, Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(17) "Nursing home" means a facility licensed under chapter 18.51 RCW.

(18) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

(19) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

(20) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care and other assistance services to the elderly or persons with disabilities requiring long-term care.

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

(22) "Secretary of health" means the secretary of health or the secretary's designee.

(23) "Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

(24) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW.

Sec. 2. RCW 74.39A.055 and 2009 c 2 s 3 (Initiative Measure No. 1029) are each amended to read as follows:

(1) All long-term care workers for the elderly or persons with disabilities hired after January 1, ~~((2010))~~ 2012, shall be screened through state and federal background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. These background checks shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(2) To allow the department of health to satisfy its certification responsibilities under chapter 18.88B RCW, the department shall share ((this information)) state and federal background check results with the department of health. Neither department may share the federal background check results with any other state agency or person.

(3) The department shall not pass on the cost of these criminal background checks to the workers or their employers.

(4) The department shall adopt rules to implement the provisions of this section by August 1, ~~((2009))~~ 2010.

Sec. 3. RCW 18.20.125 and 2004 c 140 s 4 are each amended to read as follows:

(1) Inspections must be outcome based and responsive to resident complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to facilities, residents, and other interested parties. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, and advocates in addition to interviewing appropriate staff.

(2) Prompt and specific enforcement remedies shall also be implemented without delay, consistent with RCW 18.20.190, for facilities found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(3)(a) To the extent funding is available, the licensee, administrator, and their staff should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable adults. Employees may be provisionally hired pending the results of the background check if they have been given three positive references.

(b) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(4) No licensee, administrator, or staff, or prospective licensee, administrator, or staff, with a stipulated finding of fact, conclusion of law, and agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining

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authority, a court of law, or entered into the state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

Sec. 4. RCW 18.88B.030 and 2009 c 2 s 6 (Initiative Measure No. 1029) are each amended to read as follows:

(1) Effective January 1, (~~2010~~) 2011, except as provided in RCW 18.88B.040, the department of health shall require that all long-term care workers successfully complete a certification examination. Any long-term care worker failing to make the required grade for the examination will not be certified as a home care aide.

(2) The department of health, in consultation with consumer and worker representatives, shall develop a home care aide certification examination to evaluate whether an applicant possesses the skills and knowledge necessary to practice competently. Unless excluded by RCW 18.88B.040 (1) and (2), only those who have completed the training requirements in RCW 74.39A.073 shall be eligible to sit for this examination.

(3) The examination shall include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a period of not less than one year. The department of health shall establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.

(4) All examinations shall be conducted by fair and wholly impartial methods. The certification examination shall be administered and evaluated by the department of health or by a contractor to the department of health that is neither an employer of long-term care workers or private contractors providing training services under this chapter.

(5) The department of health has the authority to:

(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;

(b) Hire clerical, administrative, and investigative staff as needed to implement this section;

(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination;

(d) Maintain the official record of all applicants and persons with certificates;

(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and

(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements for certification.

(6) The department of health shall adopt rules by August 1, (~~2009~~) 2010, that establish the procedures, including criteria for reviewing an applicant's state and federal background checks, and examinations necessary to carry this section into effect.

Sec. 5. RCW 43.20A.710 and 2001 c 296 s 5 are each amended to read as follows:

(1) The secretary shall investigate the conviction records, pending charges and disciplinary board final decisions of:

(a) Any current employee or applicant seeking or being considered for any position with the department who will or may have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities. This includes, but is not limited to, positions conducting comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(b) Individual providers who are paid by the state and providers who are paid by home care agencies to provide in-home services involving unsupervised access to persons with

physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW; and

(c) Individuals or businesses or organizations for the care, supervision, case management, or treatment of children, (~~developmentally disabled~~) persons with developmental disabilities, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, (~~18.48;~~) 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

(2) The investigation may include an examination of state and national criminal identification data. The secretary shall use the information solely for the purpose of determining the character, suitability, and competence of these applicants.

(3) Except as provided in subsection (4) of this section, an individual provider or home care agency provider who has resided in the state less than three years before applying for employment involving unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must be fingerprinted for the purpose of investigating conviction records (~~both~~) through both the Washington state patrol and the federal bureau of investigation. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110. However, this subsection does not supersede RCW 74.15.030(2)(b).

(4) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055, except that the department may require a background check at any time under RCW 43.43.837. For the purposes of this subsection, "background check" includes, but is not limited to, a fingerprint check submitted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(5) An individual provider or home care agency provider hired to provide in-home care for and having unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must have no conviction for a disqualifying crime under RCW 43.43.830 and 43.43.842. An individual or home care agency provider must also have no conviction for a crime relating to drugs as defined in RCW 43.43.830. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110.

(~~(5)~~) (6) The secretary shall provide the results of the state background check on long-term care workers, including individual providers, to the persons hiring them or to their legal guardians, if any, for their determination of the character, suitability, and competence of the applicants. If the person elects to hire or retain an individual provider after receiving notice from the department that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, then the secretary shall deny payment for any subsequent services rendered by the disqualified individual provider.

(~~(6)~~) (7) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose.

Sec. 6. RCW 43.43.837 and 2007 c 387 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access, the secretary may require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation at any time, but shall require a fingerprint-based

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background check when the applicant or service provider has resided in the state less than three consecutive years before application, and:

(a) Is an applicant or service provider providing services to children or people with developmental disabilities under RCW 74.15.030;

(b) Is an individual residing in an applicant or service provider's home, facility, entity, agency, or business or who is authorized by the department to provide services to children or people with developmental disabilities under RCW 74.15.030; or

(c) Is an applicant or service provider providing in-home services funded by:

(i) Medicaid personal care under RCW 74.09.520;

(ii) Community options program entry system waiver services under RCW 74.39A.030;

(iii) Chore services under RCW 74.39A.110; or

(iv) Other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department.

(2) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(3) The secretary shall require a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law.

~~((3))~~ (4) Any secure facility operated by the department under chapter 71.09 RCW shall require applicants and service providers to undergo a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation.

~~((4))~~ (5) Service providers and service provider applicants who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The applicant or service provider is not disqualified based on the immediate result of the background check.

~~((5))~~ (6) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the department for applicants or service providers providing:

(a) Services to people with a developmental disability under RCW 74.15.030;

(b) In-home services funded by medicaid personal care under RCW 74.09.520;

(c) Community options program entry system waiver services under RCW 74.39A.030;

(d) Chore services under RCW 74.39A.110;

(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department;

(f) Services in, or to residents of, a secure facility under RCW 71.09.115; and

(g) Foster care as required under RCW 74.15.030.

~~((6))~~ (7) Service providers licensed under RCW 74.15.030 must pay fees charged by the Washington state patrol and the federal bureau of investigation for conducting fingerprint-based background checks.

~~((7))~~ (8) Children's administration service providers licensed under RCW 74.15.030 may not pass on the cost of the background check fees to their applicants unless the individual is determined to be disqualified due to the background information.

~~((8))~~ (9) The department shall develop rules identifying the financial responsibility of service providers, applicants, and the department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a

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Washington state patrol or federal bureau of investigation fingerprint-based background check.

~~((9))~~ (10) For purposes of this section, unless the context plainly indicates otherwise:

(a) "Applicant" means a current or prospective department or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant" includes but is not limited to any individual who will or may have unsupervised access and is:

(i) Applying for a license or certification from the department;

(ii) Seeking a contract with the department or a service provider;

(iii) Applying for employment, promotion, reallocation, or transfer;

(iv) An individual that a department client or guardian of a department client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered; or

(v) A department applicant who will or may work in a department-covered position.

(b) "Authorized" means the department grants an applicant, home, or facility permission to:

(i) Conduct licensing, certification, or contracting activities;

(ii) Have unsupervised access to vulnerable adults, juveniles, and children;

(iii) Receive payments from a department program; or

(iv) Work or serve in a department-covered position.

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

(d) "Secretary" means the secretary of the department of social and health services.

(e) "Secure facility" has the meaning provided in RCW 71.09.020.

(f) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department client or guardian of a department client may choose to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered. "Service provider" does not include those certified under chapter 70.96A RCW.

Sec. 7. RCW 74.39A.050 and 2009 c 2 s 14 (Initiative Measure No. 1029) are each amended to read as follows:

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

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(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) All long-term care workers shall be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Long-term care workers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055. This information will be shared with the department of health in accordance with RCW 74.39A.055 to advance the purposes of chapter 2, Laws of 2009.

(8) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information will also be shared with the department of health to advance the purposes of chapter 2, Laws of 2009.

(10) Until December 31, ~~((2009))~~ 2010, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

(11) Until December 31, ~~((2009))~~ 2010, in an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training.

(13) The department shall establish, by rule, background checks and other quality assurance requirements for long-term care workers who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community

options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers. Long-term care workers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(14) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

(15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.

Sec. 8. RCW 74.39A.095 and 2004 c 141 s 1 are each amended to read as follows:

(1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide oversight of the care being provided to consumers receiving services under this section to the extent of available funding. Case management responsibilities incorporate this oversight, and include, but are not limited to:

(a) Verification that any individual provider who has not been referred to a consumer by the authority (~~established under chapter 3, Laws of 2002~~) has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets;

(c) Monitoring the consumer's plan of care to verify that it adequately meets the needs of the consumer, through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging indicating that a consumer may be experiencing problems relating to his or her home care;

(d) ~~((Reassessment and reauthorization of))~~ Reassessing and reauthorizing services;

(e) Monitoring of individual provider performance. If, in the course of its case management activities, the area agency on aging identifies concerns regarding the care being provided by an individual provider who was referred by the authority, the

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area agency on aging must notify the authority regarding its concerns; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted for any individual provider who has not been referred to a consumer by the authority. Individual providers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

(a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement by the individual provider that he or she has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the department or area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The consumer may request a fair hearing to contest the planned action of the case manager, as

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provided in chapter 34.05 RCW. When the department or area agency on aging terminates or summarily suspends a contract under this subsection, it must provide oral and written notice of the action taken to the authority. The department may by rule adopt guidelines for implementing this subsection.

(8) The department or area agency on aging may reject a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the family member or other person will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection.

Sec. 9. RCW 74.39A.260 and 2002 c 3 s 5 are each amended to read as follows:

The department must perform criminal background checks for individual providers and prospective individual providers and ensure that the authority has ready access to any long-term care abuse and neglect registry used by the department. Individual providers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

Sec. 10. RCW 74.39A.073 and 2009 c 2 s 5 (Initiative Measure No. 1029) are each amended to read as follows:

(1) Effective January 1, (~~2010~~) 2011, except as provided in RCW 18.88B.040, all persons employed as long-term care workers for the elderly or persons with disabilities must meet the minimum training requirements in this section within one hundred twenty calendar days of employment.

(2) All persons employed as long-term care workers must obtain seventy-five hours of entry-level training approved by the department. A long-term care worker must accomplish five of these seventy-five hours before becoming eligible to provide care.

(3) Training required by subsection (4)(c) of this section will be applied towards training required under RCW 18.20.270 or 70.128.230 as well as any statutory or regulatory training requirements for long-term care workers employed by supportive living providers.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The seventy-five hours of entry-level training required shall be as follows:

(a) Before a long-term care worker is eligible to provide care, he or she must complete two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment;

(b) Before a long-term care worker is eligible to provide care, he or she must complete three hours of safety training, including basic safety precautions, emergency procedures, and infection control; and

(c) All long-term care workers must complete seventy hours of long-term care basic training, including training related to core competencies and population specific competencies.

(5) The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors on the competencies and training topics in this section.

(6) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(7) The department of health shall adopt rules by August 1, (~~2009~~) 2010, to implement subsections (1), (2), and (3) of this section.

(8) The department shall adopt rules by August 1, (~~2009~~) 2010, to implement subsections (4) and (5) of this section.

Sec. 11. RCW 74.39A.075 and 2009 c 2 s 8 (Initiative Measure No. 1029) are each amended to read as follows:

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(1) Effective January 1, ~~((2010))~~ 2011, a biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days of becoming an individual provider.

(2) Effective January 1, ~~((2010))~~ 2011, individual providers identified in (a) and (b) of this subsection must complete thirty-five hours of training within the first one hundred twenty days of becoming an individual provider. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

(a) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by subsection (1) of this section; and

(b) Before January 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(4) The department shall adopt rules by August 1, ~~((2009))~~ 2010, to implement this section.

Sec. 12. RCW 74.39A.340 and 2009 c 2 s 9 (Initiative Measure No. 1029) are each amended to read as follows:

(1) The department of health shall ensure that all long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning on ~~((January))~~ July 1, ~~((2010))~~ 2011.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under chapter 2, Laws of 2009.

(3) Unless voluntarily certified as a home care aide under chapter 2, Laws of 2009, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child; and

(b) Before June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(5) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(6) The department of health shall adopt rules by August 1, ~~((2009))~~ 2010, to implement subsections (1), (2), and (3) of this section.

(7) The department shall adopt rules by August 1, ~~((2009))~~ 2010, to implement subsection (4) of this section.

Sec. 13. RCW 74.39A.350 and 2009 c 2 s 10 (Initiative Measure No. 1029) are each amended to read as follows:

The department shall offer, directly or through contract, training opportunities sufficient for a long-term care worker to accumulate seventy hours of training within a reasonable time

period. For individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, the training opportunities shall be offered through the training partnership established under RCW 74.39A.360. Training topics shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training. The department may not require long-term care workers to obtain the training described in this section. This requirement to offer advanced training applies beginning January 1, ~~((2011))~~ 2012.

Sec. 14. RCW 74.39A.085 and 2009 c 2 s 12 (Initiative Measure No. 1029) are each amended to read as follows:

(1) The department shall deny payment to any individual provider of home care services who has not been certified by the department of health as a home care aide as required under chapter 2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(2) The department may terminate the contract of any individual provider of home care services, or take any other enforcement measure deemed appropriate by the department if the individual provider's certification is revoked under chapter 2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(3) The department shall take appropriate enforcement action related to the contract of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under chapter 2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(4) Chapter 34.05 RCW shall govern actions by the department under this section.

(5) The department shall adopt rules by August 1, ~~((2009))~~ 2010, to implement this section.

Sec. 15. RCW 18.88B.040 and 2009 c 2 s 7 (Initiative Measure No. 1029) are each amended to read as follows:

The following long-term care workers are not required to become a certified home care aide pursuant to this chapter.

(1) Registered nurses, licensed practical nurses, certified nursing assistants, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary of health, or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary of health determines that the circumstances do not require certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in RCW 74.39A.073 but must successfully complete a certification examination pursuant to RCW 18.88B.030.

(2) A person already employed as a long-term care worker prior to January 1, ~~((2010))~~ 2011, who completes all of his or her training requirements in effect as of the date he or she was hired, is not required to obtain certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in RCW 74.39A.073 but must successfully complete a certification examination pursuant to RCW 18.88B.030.

(3) All long-term care workers employed by supported living providers are not required to obtain certification under this chapter.

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(4) An individual provider caring only for his or her biological, step, or adoptive child or parent is not required to obtain certification under this chapter.

(5) Prior to June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month is not required to obtain certification under this chapter.

(6) A long-term care worker exempted by this section from the training requirements contained in RCW 74.39A.073 may not be prohibited from enrolling in training pursuant to that section.

(7) The department of health shall adopt rules by August 1, ~~((2009))~~ 2010, to implement this section.

Sec. 16. RCW 18.88A.115 and 2009 c 2 s 11 (Initiative Measure No. 1029) are each amended to read as follows:

By August 1, ~~((2009))~~ 2010, the department of health shall develop, in consultation with the nursing care quality assurance commission and consumer and worker representatives, rules permitting reciprocity to the maximum extent possible under federal law between home care aide certification and nursing assistant certification.

Sec. 17. RCW 18.88B.050 and 2009 c 2 s 13 (Initiative Measure No. 1029) are each amended to read as follows:

(1) The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, issuance of certificates, and the discipline of persons with certificates under this chapter. The secretary of health shall be the disciplinary authority under this chapter.

(2) The secretary of health may take action to immediately suspend the certification of a long-term care worker upon finding that conduct of the long-term care worker has caused or presents an imminent threat of harm to a functionally disabled person in his or her care.

(3) If the secretary of health imposes suspension or conditions for continuation of certification, the suspension or conditions for continuation are effective immediately upon notice and shall continue in effect pending the outcome of any hearing.

(4) The department of health shall take appropriate enforcement action related to the licensure of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under this chapter or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to this chapter.

(5) Chapter 34.05 RCW shall govern actions by the department of health under this section.

(6) The department of health shall adopt rules by August 1, ~~((2009))~~ 2010, to implement this section.

Sec. 18. RCW 18.88B.020 and 2009 c 2 s 4 (Initiative Measure No. 1029) are each amended to read as follows:

(1) Effective January 1, ~~((2010))~~ 2011, except as provided in RCW 18.88B.040, the department of health shall require that any person hired as a long-term care worker for the elderly or persons with disabilities must be certified as a home care aide within one hundred fifty days from the date of being hired.

(2) Except as provided in RCW 18.88B.040, certification as a home care aide requires both completion of seventy-five hours of training and successful completion of a certification examination pursuant to RCW 74.39A.073 and 18.88B.030.

(3) No person may practice or, by use of any title or description, represent himself or herself as a certified home care aide without being certified pursuant to this chapter.

(4) The department of health shall adopt rules by August 1, ~~((2009))~~ 2010, to implement this section.

NEW SECTION. Sec. 19. Section 16 of this act takes effect September 1, 2009."

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

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The President declared the question before the Senate to be the adoption of the striking amendment by Senator Keiser to Substitute Senate Bill No. 6180.

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

MOTION

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

On page 1, line 2 of the title, after "workers;" strike the remainder of the title and insert "amending RCW 74.39A.009, 74.39A.055, 18.20.125, 18.88B.030, 43.20A.710, 43.43.837, 74.39A.050, 74.39A.095, 74.39A.260, 74.39A.073, 74.39A.075, 74.39A.340, 74.39A.350, 74.39A.085, 18.88B.040, 18.88A.115, 18.88B.050, and 18.88B.020; and providing an effective date."

MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed Substitute Senate Bill No. 6180 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Keiser spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6180.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6180 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 4; Absent, 0; Excused, 0.

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

Voting nay: Senators Holmquist, King, Schoesler and Stevens

ENGROSSED SUBSTITUTE SENATE BILL NO. 6180, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, Engrossed Substitute Senate Bill No. 6180 and Engrossed Substitute Senate Bill No. 5421 were immediately transmitted to the House of Representatives.

MOTION

At 6:23 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

EVENING SESSION

The Senate was called to order at 7:35 p.m. by President Owen.

MOTION

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

MESSAGE FROM THE HOUSE

April 25, 2009

MR. PRESIDENT:

The House has passed the following bills:
ENGROSSED HOUSE BILL NO. 2357,
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 25, 2009

MR. PRESIDENT:

The House has passed the following bills:
ENGROSSED SUBSTITUTE SENATE BILL NO. 5073,
SENATE BILL NO. 6002,
SENATE BILL NO. 6121,
SENATE BILL NO. 6165,
SENATE BILL NO. 6168,
SENATE BILL NO. 6179,
SENATE BILL NO. 6181,
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 25, 2009

MR. PRESIDENT:

The House has passed the following bills:
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1614,
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

INTRODUCTION AND FIRST READING OF HOUSE BILLS

ESHB 1216 by House Committee on Capital Budget (originally sponsored by Representatives Dunshee, Warnick and Ormsby)

AN ACT Relating to the capital budget; making appropriations and authorizing expenditures for capital improvements; amending RCW 28B.15.210, 28B.15.310, 28B.35.370, 28B.50.360, 43.63A.125, 79.17.010, 79.17.020, 43.99N.060, 28A.335.210, 28B.10.027, and 43.17.200; amending 2008 c 328 ss 6001, 1004, 3003, 3006, 3008, and 3010 (uncodified); amending 2007 c 520 ss 2020, 2023, 2046, 2085, 2083, 2084, 3026, 3042, 3022, 3041, 3135, and 5137 (uncodified); creating new sections; repealing 2007 c 520 s 6006 (uncodified); providing an effective date; providing expiration dates; and declaring an emergency.

Referred to Committee on Ways & Means.

ESHB 1614 by House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Ormsby, Priest, Rodne, Eddy, Hunt, Pettigrew, Upthegrove, Blake, Nelson, Appleton, Pedersen, Simpson, Darneille, Williams, Hudgins, Dunshee, McCoy and Wood)

AN ACT Relating to petroleum pollution in storm water; adding new sections to chapter 90.48 RCW; and creating a new section.

Referred to Committee on Ways & Means.

EHB 2357 by Representative Cody

AN ACT Relating to modifying nursing facility medicaid payments by clarifying legislative intent regarding the statewide weighted average, freezing case mix indices, and revising the use of the economic trends and conditions factor; amending RCW 74.46.431 and 74.46.485; and declaring an emergency.

Referred to Committee on Ways & Means.

MOTION

On motion of Senator Eide, all measures listed on the Introduction and First Reading report were referred to the committees as designated.

MOTION

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

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1244, by House Committee on Ways & Means (originally sponsored by Representatives Linville, Alexander and Ericks)

Making 2009-2011 operating appropriations. Revised for 1st Substitute: Making operating appropriations for fiscal years 2007-2009 and 2009-2011.

The measure was read the second time.

MOTION

Senator Swecker moved that the following amendment by Senator Swecker be adopted.

On page 28, line 34, strike "Green Hill school and Maple Lane school" and insert "facilities"

Senators Swecker and Zarelli spoke in favor of adoption of the amendment.

Senator Hargrove spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Swecker on page 28, line 34 to Engrossed Substitute House Bill No. 1244.

The motion by Senator Swecker failed and the amendment was not adopted by voice vote.

MOTION

Senator Zarelli moved that the following amendment by Senator Zarelli be adopted.

MENTAL HEALTH:

On page 52, line 26, increase the general fund--state appropriation for fiscal year 2010 by \$10,972,000 and adjust the totals accordingly.

On page 52, line 27, increase the general fund--state appropriation for fiscal year 2011 by \$11,405,000 and adjust the totals accordingly.

On page 52, line 28, increase the general fund--federal appropriation by \$8,977,000 and adjust the totals accordingly.

On page 52, line 33, strike "\$113,689,000" and insert "\$122,763,000".

On page 52, line 34, strike "\$113,689,000" and insert "\$122,763,000".

On page 52, line 37, strike "\$11,606,000" and insert "\$2,532,000".

On page 53, line 2, strike "\$11,606,000" and insert "\$2,532,000".

MEDICAID PERSONAL CARE HOURS AND VENDOR RATES:

On page 58, line 25, increase the general fund-state appropriation for fiscal year 2010 by \$5,027,000 and adjust the totals accordingly.

On page 58, line 26, increase the general fund-state appropriation for fiscal year 2011 by \$6,030,000 and adjust the totals accordingly.

On page 58, line 27, increase the general fund-federal appropriation by \$16,377,000 and adjust the totals accordingly.

On page 58, line 35, strike all material beginning with "(b)" through "act." on page 59, line 5.

On page 64, line 27, increase the general fund-state appropriation for fiscal year 2010 by \$26,042,000 and adjust the totals accordingly.

On page 64, line 28, increase the general fund-state appropriation for fiscal year 2011 by \$31,067,000 and adjust the totals accordingly.

On page 64, line 29, increase the general fund-federal appropriation by \$84,626,000 and adjust the totals accordingly.

On page 64, on line 36, strike "\$156.37" and insert "\$165.59"

On page 65, line 1, strike "\$158.74" and insert "168.09"

On page 66, line 6, strike all material beginning with "(5)" through "act." on line 13.

HOSPITAL & PEDIATRIC RATES:

On page 73, line 36, increase the FY 2010 general fund--state appropriation by \$19,079,000 and

On page 74, line 1, increase the FY 2011 general fund--state appropriation by \$29,091,000 and

On page 74, line 2, increase the general fund--federal appropriation by \$50,617,000 and adjust the totals accordingly

EMPLOYEE HEALTH BENEFITS:

On page 142, on line 17, strike "\$745.00" and insert "\$709.00".

On page 142, on line 18, strike "\$768.00" and insert "\$709.00".

On page 142, on line 19, after "school year.", strike everything through line 26.

On page 214, on line 28, strike "\$745" and insert "\$709".

On page 214, on line 30, strike "\$768" and insert "\$709".

On page 201, after line 20, insert the following:

NEW SECTION. Sec. 723. FOR THE OFFICE OF FINANCIAL MANAGEMENT--STATE EMPLOYEES--INSURANCE BENEFITS

General Fund--State Appropriation (FY 2010)	(\$24,742,000)
General Fund--State Appropriation (FY 2011)	(\$40,550,000)
General Fund--Federal Appropriation	(\$9,500,000)
General Fund--Private/Local Appropriation	(\$669,000)
Dedicated Funds and Accounts Appropriation	(\$26,358,000)
TOTAL APPROPRIATION	(\$101,819,000)

The appropriations in this section are subject to the following conditions and limitations:

(1) The appropriations in this section are provided solely to reduce agency and institution appropriations to reflect the reduced insurance premium rates specified in part 9 of this act.

(2) The office of financial management shall reduce allotments for all agencies and institutions by these amounts to reflect the amounts identified in LEAP document 6M2 - 2009, a computerized tabulation developed by the legislative evaluation and accountability program committee on April 25, 2009. The allotment reductions under this section shall be placed in unallotted status and remain unexpended.

NEW SECTION. Sec. 724. FOR THE OFFICE OF FINANCIAL MANAGEMENT--SCHOOL EMPLOYEES--CONTRIBUTIONS TO RETIREMENT SYSTEMS

General Fund--State Appropriation (FY 2010)	(\$27,031,000)
General Fund--State Appropriation (FY 2011)	(\$63,073,000)
General Fund--Federal Appropriation	(\$39,000)
TOTAL APPROPRIATION	(\$90,143,000)

The appropriations in this section are subject to the following conditions and limitations:

(1) The appropriations in this section are provided solely for adjustments to allocations to reflect the reduced insurance premium rates specified in part 9 of this act.

(2) The office of financial management shall reduce allotments for the office of the superintendent of public instruction by these amounts. The allotment reductions under this section shall be placed in unallotted status and remain unexpended."

Senators Zarelli and Pflug spoke in favor of adoption of the amendment.

Senators Fraser and Brown spoke against adoption of the amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator Zarelli on page 52, line 26 to Engrossed Substitute House Bill No. 1244.

ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Zarelli and the amendment was not adopted by the following vote: Yeas, 18; Nays, 31; Absent, 0; Excused, 0.

Voting yea: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Stevens, Swecker and Zarelli

Voting nay: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-

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Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin and Tom

MOTION

Senator Hewitt moved that the following amendment by Senator Hewitt be adopted.

On page 69, line 31, decrease the general fund-state appropriation by \$22,347,000

On page 69, line 32, decrease the general fund-state appropriation by \$25,533,000

On page 69, line 37, correct the total appropriation

On page 71, line 1, strike "84,856,000" and insert "62,509,000"

On page 71, line 2, strike "95,173,000" and insert "69,640,000"

On page 72, after line 8, insert the following:

"(g) Pursuant to RCW 74.04.005 (6)(g), the department shall not use vocational factors in determining a finding of incapacity."

On page 73, line 36, decrease the general fund-state appropriation by \$29,443,000

On page 74, line 1, decrease the general fund-state appropriation by \$32,014,000

On page 74, line 8, correct the total appropriation

On page 77, line 32, strike "166,875,000" and insert "116,912,000"

On page 77, line 33, strike "38,389,000" and insert "26,895,000"

On page 77, line 36, strike "10,749,000" and insert "7,531,000"

On page 77, line 37, strike "10,892,000" and insert "7,631,000"

On page 169, line 20, increase the budgeted enrollment target for the University of Washington by 914 full-time equivalent (FTE) students for each year and adjust the totals accordingly.

On page 169, line 21, increase the budgeted enrollment target for Washington State University by 587 FTE students for each year and adjust the totals accordingly.

On page 169, line 22, increase the budgeted enrollment target for Central Washington University by 224 FTE students for each year and adjust the totals accordingly.

On page 169, line 23, increase the budgeted enrollment target for Eastern Washington University by 224 FTE students for each year and adjust the totals accordingly.

On page 159, line 24, increase the budgeted enrollment target for The Evergreen State College by 111 FTE students for each year and adjust the totals accordingly.

On page 169, line 25, increase the budgeted enrollment target for Western Washington University by 300 FTE students for each year and adjust the totals accordingly.

On page 169, line 28, increase the budgeted enrollment target for the State Board for Community and Technical Colleges by 3,673 FTE students for each year and adjust the totals accordingly.

On page 170, line 23, after "more than", strike "fourteen", and insert "seven".

On page 171, beginning on line 13, strike all material down through and including "purpose." on line 23.

On page 175, line 21, increase the general fund--state appropriation for fiscal year 2010 by \$13,443,000 and adjust the totals accordingly.

On page 175, line 22, increase the general fund--state appropriation for fiscal year 2011 by \$23,183,000 and adjust the

totals accordingly.

On page 176, line 34, increase the general fund--state appropriation for fiscal year 2010 by \$8,632,000 and adjust the totals accordingly.

On page 176, line 35, increase the general fund--state appropriation for fiscal year 2011 by \$14,846,000 and adjust the totals accordingly.

On page 178, line 2, increase the general fund--state appropriation for fiscal year 2010 by \$3,115,000 and adjust the totals accordingly.

On page 178 line 3, increase the general fund--state appropriation for fiscal year 2011 by \$5,286,000 and adjust the totals accordingly.

On page 178, line 26, increase the general fund--state appropriation for fiscal year 2010 by \$3,596,000 and adjust the totals accordingly.

On page 178, line 27, increase the general fund--state appropriation for fiscal year 2011 by \$6,318,000 and adjust the totals accordingly.

On page 179, line 10, increase the general fund--state appropriation for fiscal year 2010 by \$1,434,000 and adjust the totals accordingly.

On page 179, line 11, increase the general fund--state appropriation for fiscal year 2011 by \$2,355,000 and adjust the totals accordingly.

On page 181, line 36, increase the general fund--state appropriation for fiscal year 2010 by \$4,678,000 and adjust the totals accordingly.

On page 181, line 37, increase the general fund--state appropriation for fiscal year 2011 by \$8,191,000 and adjust the totals accordingly.

On page 183, line 35, reduce the general fund--state appropriation for fiscal year 2010 by \$9,021,000, and adjust the totals accordingly.

On page 183, line 36, reduce the general fund--state appropriation for fiscal year 2011 by \$19,937,000 and adjust the totals accordingly.

On page 184, line 5, strike "\$191,704,000" and insert "\$182,633,000".

On page 184, line 6, strike "\$232,929,000" and insert "\$212,992,000".

Renumber the sections consecutively and correct any internal references accordingly.

Senators Hewitt and Zarelli spoke in favor of adoption of the amendment.

Senators Brown and Prentice spoke against adoption of the amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator Hewitt on page 69, line 31 to Engrossed Substitute House Bill No. 1244.

ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Hewitt and the amendment was adopted by the following vote: Yeas, 22; Nays, 27; Absent, 0; Excused, 0.

Voting yea: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Hobbs, Holmquist, Honeyford, Kilmer, King, Marr, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

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Voting nay: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

On page 206, strike all of lines 33 through 35.
Senators Holmquist and Benton spoke in favor of adoption of the amendment.

Senators Tom and Marr spoke against adoption of the amendment.

MOTION

Senator Zarelli moved that the following amendment by Senator Zarelli be adopted.

On page 85, on line 9, strike everything after "2010." and through line 14, and insert the following:

"This enrollment target shall be achieved pursuant to the parameters defined in Senate Bill No. 6154 (basic health plan). Non-citizens will not be eligible for the basic health plan and asset tests will be established. New enrollees must be uninsured for at least four months prior to application, with exemptions for serious medical conditions. The authority shall require income tax returns as part of the eligibility verification process for any new applicant."

Senator Zarelli spoke in favor of adoption of the amendment.

Senator Keiser spoke against adoption of the amendment.

Senator Zarelli demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator Zarelli on page 85, line 9 to Engrossed Substitute House Bill No. 1244.

ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Zarelli and the amendment was not adopted by the following vote: Yeas, 22; Nays, 27; Absent, 0; Excused, 0.

Voting yea: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Hobbs, Holmquist, Honeyford, Kilmer, King, Marr, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Voting nay: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

MOTION

Senator Holmquist moved that the following amendment by Senators Holmquist and Benton be adopted.

On page 97, line 16, decrease the General Fund—State appropriation for FY 2010 by \$7,250,000 and adjust the total appropriation accordingly.

On page 97, line 17, decrease the General Fund—State appropriation by 2011 \$7,250,000 and adjust the total appropriation accordingly.

On page 205, line 15, strike "\$26,000,000" and insert "\$40,200,000"

On page 205, line 16, strike "\$204,098,000" and insert "\$218,298,000"

On page 205, line 19, strike "\$26,000,000" and insert "\$40,200,000"

On page 205, line 21, strike "\$39,170,000" and insert "\$24,970,000"

The President declared the question before the Senate to be the adoption of the amendment by Senators Holmquist and Benton on page 97, line 16 to Engrossed Substitute House Bill No. 1244.

The motion by Senator Holmquist failed and the amendment was not adopted by voice vote.

MOTION

Senator Schoesler moved that the following amendment by Senator Schoesler and others be adopted.

On page 131, line 6, decrease general fund—state appropriation for fiscal year 2010 by \$15,814,000

On page 131, line 7, decrease general fund—state appropriation for fiscal year 2011 by \$19,854,000

On page 131, line 8, correct the total

On page 140, beginning on line 12, strike all of subsection (7) through line 30 and replace with new subsection:

"(7) The certificated instructional staff base salary specified for each district in LEAP Document 2 and the salary schedules in subsection (4) (a) of this section include no learning improvement days."

On page 150, line 24, increase general fund—state appropriation for fiscal year 2010 by \$21,102,000

On page 150, line 25, increase general fund—state appropriation for fiscal year 2011 by \$39,190,000

On page 150, line 27, correct the total

On page 160, line 14, decrease general fund—state appropriation for fiscal year 2010 by \$17,182,000

On page 160, line 15, decrease general fund—state appropriation for fiscal year 2011 by \$21,629,000

On page 160, line 17, correct the total

On page 160, line 23 and line 24, adjust per eligible bilingual student rates accordingly

On page 161, after line 2, add new subsections (6) and (7):

"(6) Eligibility for transitional bilingual programs shall be limited to five years of instruction for each student.

(7) Successful completion of the Washington Assessment of Student Learning shall qualify students for exit from the transitional bilingual program of instruction."

Adjust appropriate compensation allocation factors and sections and LEAP documents accordingly.

Senators Schoesler and Honeyford spoke in favor of adoption of the amendment.

Senator McAuliffe spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Schoesler and others on page 131, line 6 to Engrossed Substitute House Bill No. 1244.

The motion by Senator Schoesler failed and the amendment was not adopted by voice vote.

MOTION

Senator Zarelli moved that the following amendment by Senator Zarelli be adopted.

On page 169, line 20, increase the budgeted enrollment

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target for the University of Washington by 1,175 full-time equivalent (FTE) students for each year of the biennium, and adjust the totals accordingly.

On page 169, line 22, increase the budgeted enrollment target for Central Washington University by 293 FTE students for each year of the biennium, and adjust the totals accordingly.

On page 169, line 23, increase the budgeted enrollment target for Eastern Washington University by 125 FTE students for each year of the biennium and adjust the totals accordingly.

On page 169, line 25, increase the budgeted enrollment target for Western Washington University by 165 FTE students for each year of the biennium, and adjust the totals accordingly.

On page 264, after line 19, insert the following:

" **Sec. 962.** RCW 28B.10.695 and 2003 c 407 s 1 are each amended to read as follows:

(1) Each four-year institution of higher education and the state board for community and technical colleges shall develop policies that ensure undergraduate students enrolled in degree or certificate programs complete their programs in a timely manner in order to make the most efficient use of instructional resources and provide capacity within the institution for additional students.

(2) Policies adopted under this section shall address, but not be limited to, undergraduate students in the following circumstances:

(a) Students who accumulate more than one hundred twenty-five percent of the number of credits required to complete their respective baccalaureate or associate degree or certificate programs;

(b) Students who drop more than twenty-five percent of their course load before the grading period for the quarter or semester, which prevents efficient use of instructional resources; and

(c) Students who remain on academic probation for more than one quarter or semester.

(3) Policies adopted under this section ~~((may))~~ shall include assessment by the institution of a surcharge in addition to regular tuition and fees to be paid by a student for continued enrollment. The amount of the surcharge shall result in a tuition fees assessment for that student equivalent to the full cost of instruction for the subsequent quarter or semester after a finding that a policy under subsection (2) of this section has been violated. The surcharge shall continue to be assessed until the institution of higher education determines that the policy is no longer being violated.

(4) It is presumed that the surcharge shall apply to all students described in subsection (2) of this section unless the student presents to his or her registrar evidence that one or more of the following exemptions apply:

(a) The student is a dislocated worker as defined by RCW 50.04.075 or a person engaging in a job training program under the purview of the workforce training and education coordinating board;

(b) The student participates in the border county higher education opportunity project under RCW 28B.76.685;

(c) The student is a certificated teacher of the K-12 school system pursuing continuing education credits according to certification requirements; or

(d) The student has not been enrolled in an institution of higher education during the preceding five years.

(5) Students who believe they are under extraordinary or unforeseen academic or personal circumstances or were unable to complete their baccalaureate degree program within the number of credits specified due to institutional constraints may petition the institution of higher education for a special waiver

from the tuition surcharge provisions of subsection (3) of this section. The institution of higher education shall create a process through which student petitions may be fairly processed, heard, and determined. The process shall include a one hundred dollar administrative fee. The entire amount of the fee shall be refunded for those students who make a successful petition.

(6) For the purposes of this section, "full cost of instruction" means the average instructional support in state general funds and tuition fees, as defined in RCW 28B.15.020, per full-time equivalent undergraduate at each institution of higher education for that academic year.

Sec. 963. RCW 28B.15.910 and 2008 c 188 s 3 are each amended to read as follows:

(1) For the purpose of providing state general fund support to public institutions of higher education, except for revenue waived under programs listed in subsections (3) and (4) of this section, and unless otherwise expressly provided in the omnibus state appropriations act, the total amount of operating fees revenue waived, exempted, or reduced by a state university, a regional university, The Evergreen State College, or the community colleges as a whole, shall not exceed the percentage of total gross authorized operating fees revenue in this subsection. As used in this section, "gross authorized operating fees revenue" means the estimated gross operating fees revenue as estimated under RCW 82.33.020 or as revised by the office of financial management, before granting any waivers. This limitation applies to all tuition waiver programs established before or after July 1, 1992.

- (a) University of Washington ((2+)) 18 percent
- (b) Washington State University ((20)) 14 percent
- (c) Eastern Washington University ((+)) 6.5 percent
- (d) Central Washington University ((+0)) 8 percent
- (e) Western Washington University ((+0-)) 9 percent
- (f) The Evergreen State College ((+0)) 6 percent
- (g) Community colleges as a whole ((35)) 20 percent

(2) The limitations in subsection (1) of this section apply to waivers, exemptions, or reductions in operating fees contained in the following:

- (a) RCW 28B.15.014;
- (b) RCW 28B.15.100;
- (c) RCW 28B.15.225;
- (d) RCW 28B.15.380;
- (e) RCW 28B.15.520;
- (f) RCW 28B.15.526;
- (g) RCW 28B.15.527;
- (h) RCW 28B.15.543;
- (i) RCW 28B.15.545;
- (j) RCW 28B.15.555;
- (k) RCW 28B.15.556;
- (l) RCW 28B.15.615;
- (m) RCW 28B.15.621 (2) and (4);
- (n) RCW 28B.15.730;
- (o) RCW 28B.15.740;
- (p) RCW 28B.15.750;
- (q) RCW 28B.15.756;
- (r) RCW 28B.50.259; and
- (s) RCW 28B.70.050.

(3) The limitations in subsection (1) of this section do not apply to waivers, exemptions, or reductions in services and activities fees contained in the following:

- (a) RCW 28B.15.522;
- (b) RCW 28B.15.540;
- (c) RCW 28B.15.558; and
- (d) RCW 28B.15.621(3).

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(4) The total amount of operating fees revenue waived, exempted, or reduced by institutions of higher education participating in the western interstate commission for higher education western undergraduate exchange program under RCW 28B.15.544 shall not exceed the percentage of total gross authorized operating fees revenue in this subsection.

- (a) Washington State University 1 percent
- (b) Eastern Washington University 3 percent
- (c) Central Washington University 3 percent

(5) The institutions of higher education will participate in outreach activities to increase the number of veterans who receive tuition waivers. Colleges and universities shall revise the application for admissions so that all applicants shall have the opportunity to advise the institution that they are veterans who need assistance. If a person indicates on the application for admissions that the person is a veteran who is in need of assistance, then the institution of higher education shall ask the person whether they have any funds disbursed in accordance with the Montgomery GI Bill available to them. Each institution shall encourage veterans to utilize funds available to them in accordance with the Montgomery GI Bill prior to providing the veteran a tuition waiver.

Renumber the sections consecutively and correct any internal references accordingly.

Senator Zarelli spoke in favor of adoption of the amendment.

Senator Kohl-Welles spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Zarelli on page 169, line 20 to Engrossed Substitute House Bill No. 1244.

The motion by Senator Zarelli failed and the amendment was not adopted by voice vote.

MOTION

Senator Zarelli moved that the following amendment by Senator Zarelli be adopted.

On page 216, after line 14, insert the following:

"NEW SECTION. Sec. 917. COLLECTIVE BARGAINING AGREEMENTS. No moneys appropriated in this act may be expended for any salary or wage increases, including annual merit increments, under any collective bargaining agreement authorized under chapter 41.80 RCW unless the agreement has been submitted to, and approved by, the legislature under RCW 41.80.010."

Senator Zarelli spoke in favor of adoption of the amendment.

Senator Tom spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Zarelli on page 216, after line 14 to Engrossed Substitute House Bill No. 1244.

The motion by Senator Zarelli failed and the amendment was not adopted by voice vote.

MOTION

On motion of Senator Prentice, the rules were suspended, Engrossed Substitute House Bill No. 1244 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Prentice, Franklin, Hargrove, Kastama, McAuliffe, Kohl-Welles and Tom spoke in favor of passage of the bill.

Senators King and Zarelli spoke on final passage.

Senators Carrell, Parlette, Jacobsen, Becker, Holmquist and Pflug spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1244.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1244 and the bill passed the Senate by the following vote: Yeas, 29; Nays, 20; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, Jacobsen, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1244, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

PERSONAL PRIVILEGE

Senator Prentice: "We've all just had long debate and we spoke about a budget but I would like to particularly thank the very gifted staff-and I would like for you to come out here,-very gifted staff that takes us in and those of us who were inexperienced at writing staffs and they're kind of bashful now. How they do I don't know and I think one of the things that we forget is that, the long hours that they put in, to the extent that after we get the budget developed and they're finally working on it and proof reading it and crushing it into the proper language it's extremely difficult. They go without sleep. I don't know how they do it. Here they are. Thank you very much. All of you come out please. Come on. Ok. Now remember they have to work with, attempt to work with, folks like us who come without the kind of expertise they have. They have to deal with, believe it or not, some rather difficult characters and that's everybody in this room, and but to the extent that they do their jobs sometimes I'm of bewildered as to how they're able to do it. I just cannot express how much I truly appreciate all of your attempts at making us look good. It's genuinely appreciated. I'd also, Claire. Where are you? Claire Hesselholt. Come out here, there's someone also. What's kind of frightening is when you're working with someone and they know you better than you know yourself. Just as I'm about to ask for something, she has it in her hand already. That is truly amazing. I want you to know, I had a rather rough start of the beginning of this session and I want to thank everyone of you for having made it more easy for me. It was a little rough, rougher than I had thought it was but I also want to thank the folks that we have up here. Folks in Security. I can't describe to you how they looked after me. How they would go out of their way just making sure that I was ok and I can't tell you how grateful I am. I will always be grateful, always remember your kindnesses this year. I couldn't have had two finer vice chairs, Senator Karen Fraser and Senator Rodney Tom. It is was his first year and just think of how magnificantly he did it and the folks on the opposite side of the aisle, members of our committee. You know one of the best things I enjoy is the very spirited but good natured kind displays that we have. We do truly value each other. We sometimes like to act as if we

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don't but it's a better committee than any of you that aren't on it actually realize. There's a lot of good natured fun on it but we're here to do serious work. I just want to thank everyone of you for having made this, what could have been a very difficult year, just make it possible."

PERSONAL PRIVILEGE

Senator Hewitt: "Thank you Mr. President. I was sitting here a minute ago and my alert went off. Was sure I didn't have any more appointments tonight but I'm glad to tell you that it says, 'Mike Hewitt, this is a reminder for Sunday, April 26, 2009 Sine Die,' tomorrow."

REPLY BY THE PRESIDENT

President Owen: "Senator, I think we're all pretty much aware of that."

PERSONAL PRIVILEGE

Senator Tom: "Thank you Mr. President. First of all I just want to thank the good Chair of Ways & Means. She has a rare combination that you find in very few individuals and that is she has a passion for those less fortunate but she also has some street smarts. She has a lot of financial capability. She really understands the realities of what we were facing. The other thing that I would like to mention, Senator Zarelli. You truly have been the utmost in professionalism. He showed a lot of class. Not that I ever want to be in the minority party again but, if we ever are, I hope we treat the majority like you have treated us. You truly have been very respectful. When it comes to the Ways & Means staff. You guys still need to come back out here. We got to embarrass you a little more. Come on. Come on, But you know often what you hear is you know government needs to be more like business but I will tell you there is nineteen individuals here in our Ways & Means staff that you can put that nineteen individuals up against any business in Washington State. I always tell them this and I said again this morning, I said 'I hope their spouses aren't watching' because I dealt with some pretty high-powered attorneys and accountants and different individuals in the private sector but these individuals they can hold a candle to anyone. They can go out in the private sector and probably make two or three times of what they are making today but they have that passion for public service and we owe them a great debt of gratitude. I'd also like to thank the leader of the gang, Mike Wills. Any great organization, has a great leader and Mike is fabulous, fabulous leader. There's always unique individuals. You know, there's Steve Jones. My son is in to dinosaurs and if you've ever wanted to know what PERSI looks like it's Steve Jones. Then you also have to thank these individuals because if you look at Richard Ramsey. This poor individual has to wake up every morning, and guess what he has to look forward too. Dealing with Senator Hargrove. So we owe these individuals a great debt of gratitude. They do an incredible job for us and they are the ultimate in professionalism. Thank you Mr. President."

PERSONAL PRIVILEGE

Senator McAuliffe: "Thank you Mr. President. You know there are many people who are our state employees who have done wonderful jobs for us and many of them you have seen in our wings tonight. They stand by us. Our Education staff helped us write a basic education bill this year that I think holds the

record for the number of times that it was written. It was written over one hundred different times and they did it because they believe so strongly in what the education for our children means to all of us. In talking about education, I want to take this one second to recognize the heroes in our class rooms. The superintendents, the principals, the teachers, the para educators regardless of the cuts we make in this budget, show up every day and take care of our children and care about each and every one of them. So, thank you very much for giving me this opportunity to recognize our heroes."

MOTION

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

MESSAGE FROM THE HOUSE

April 25, 2009

MR. PRESIDENT:

The House has adopted the report of Conference Committee on ENGROSSED SUBSTITUTE SENATE BILL NO. 5352, and has passed the bill as recommended by the Conference Committee. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

REPORT OF THE CONFERENCE COMMITTEE

Engrossed Substitute Senate Bill No. 5352

April 25, 2009

MR. PRESIDENT:

MR. SPEAKER:

We of your conference committee, to whom was referred Engrossed Substitute Senate Bill No. 5352, have had the same under consideration and recommend that all previous amendments not be adopted and that the following striking amendment be adopted:

Strike everything after the enacting clause and insert the following:

"2009-11 FISCAL BIENNIUM

NEW SECTION. **Sec. 1.** (1) The transportation budget of the state is hereby adopted and, subject to the provisions set forth, the several amounts specified, or as much thereof as may be necessary to accomplish the purposes designated, are hereby appropriated from the several accounts and funds named to the designated state agencies and offices for employee compensation and other expenses, for capital projects, and for other specified purposes, including the payment of any final judgments arising out of such activities, for the period ending June 30, 2011.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this act.

(a) "Fiscal year 2010" or "FY 2010" means the fiscal year ending June 30, 2010.

(b) "Fiscal year 2011" or "FY 2011" means the fiscal year ending June 30, 2011.

(c) "FTE" means full-time equivalent.

(d) "Lapse" or "revert" means the amount shall return to an unappropriated status.

(e) "Provided solely" means the specified amount may be spent only for the specified purpose. Unless otherwise specifically authorized in this act, any portion of an amount provided solely for a specified purpose that is not expended subject to the specified conditions and limitations to fulfill the specified purpose shall lapse.

(f) "Reappropriation" means appropriation and, unless the context clearly provides otherwise, is subject to the relevant conditions and limitations applicable to appropriations.

(g) "LEAP" means the legislative evaluation and accountability program committee.

GENERAL GOVERNMENT AGENCIES--OPERATING

NEW SECTION. Sec. 101. FOR THE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION
Motor Vehicle Account--State Appropriation. \$422,000

The appropriation in this section is subject to the following conditions and limitations: The entire appropriation is provided solely for staffing costs to be dedicated to state transportation activities. Staff hired to support transportation activities must have practical experience with complex construction projects.

NEW SECTION. Sec. 102. FOR THE UTILITIES AND TRANSPORTATION COMMISSION
Grade Crossing Protective Account--State Appropriation \$705,000

NEW SECTION. Sec. 103. FOR THE OFFICE OF FINANCIAL MANAGEMENT
Motor Vehicle Account--State Appropriation. \$3,389,000
Puget Sound Ferry Operations Account--State Appropriation. \$100,000
TOTAL APPROPRIATION. \$3,489,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,699,000 of the motor vehicle account--state appropriation is provided solely for the office of regulatory assistance integrated permitting project.

(2) \$1,004,000 of the motor vehicle account--state appropriation is provided solely for the continued maintenance and support of the transportation executive information system. Of the amount provided in this subsection, \$502,000 is for two existing FTEs at the department of transportation to maintain and support the system.

NEW SECTION. Sec. 104. FOR THE MARINE EMPLOYEES COMMISSION
Puget Sound Ferry Operations Account--State Appropriation. \$446,000

NEW SECTION. Sec. 105. FOR THE STATE PARKS AND RECREATION COMMISSION
Motor Vehicle Account--State Appropriation. \$986,000

The appropriation in this section is subject to the following conditions and limitations: The entire appropriation in this section is provided solely for road maintenance purposes.

NEW SECTION. Sec. 106. FOR THE DEPARTMENT OF AGRICULTURE
Motor Vehicle Account--State Appropriation. \$1,507,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$351,000 of the motor vehicle account--state appropriation is provided solely for costs associated with the motor fuel quality program.

(2) \$1,004,000 of the motor vehicle account--state appropriation is provided solely to test the quality of biofuel.

The department must test fuel quality at the biofuel manufacturer, distributor, and retailer.

NEW SECTION. Sec. 107. FOR THE LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM COMMITTEE

Motor Vehicle Account--State Appropriation. \$502,000

NEW SECTION. Sec. 108. FOR THE JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

(1) As part of its 2009-11 fiscal biennium work plan, the joint legislative audit and review committee shall audit the capital cost accounting practices of the Washington state ferries. The audit must review the following and provide a report on its findings and any related recommendations to the legislature by January 2011:

(a) Costs assigned to capital accounts to determine whether they are capital costs that meet the statutory requirements for preservation and improvement activities and whether they are within the scope of legislative appropriations;

(b) Implementation of the life-cycle cost model required under RCW 47.60.345 to determine if it was developed as required and is maintained and updated when asset inspections are made; and

(c) Washington state ferries' implementation of the cost allocation methodology evaluated under section 205, chapter 518, Laws of 2007, assessing whether actual costs are allocated consistently with the methodology, whether there are sufficient internal controls to ensure proper allocation, and the adequacy of staff training.

(2) The joint legislative audit and review committee shall use existing staff and resources to conduct a review of scoping and cost estimates for transportation highway improvement and preservation projects funded in whole, or in part, by transportation partnership account--state and transportation 2003' account (nickel account)--state funds, excluding mega-projects. The review will examine whether the scoping and cost estimates guidelines used by the department of transportation are consistent with general construction industry practices and other appropriate standards. The review will include an analysis of a sample of scope and cost estimates for future projects. A report on the committee's findings and recommendations must be submitted to the house of representatives and senate transportation committees by December 2009.

(3) As part of its 2009-11 fiscal biennium work plan, the joint legislative audit and review committee shall conduct an analysis of the cost of credit card payment options at the department of transportation. For programs where a credit card payment option is offered, the review must include:

(a) An analysis of the direct and indirect cost per transaction to process customer payments using credit cards;

(b) An analysis of the direct and indirect cost per transaction for other methods of processing customer payments;

(c) An analysis of the historical and projected total aggregate costs for processing all forms of customer payments;

(d) Identification of whether there are customer service, administrative, and revenue collection benefits resulting from credit card usage; and

(e) A review of the use of credit card payment options in other state agencies and in similar transportation programs at other states.

The committee shall provide a report on its findings and any related recommendations to the legislature by January 2010.

TRANSPORTATION AGENCIES--OPERATING

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NEW SECTION. 201. FOR THE WASHINGTON TRAFFIC SAFETY COMMISSION

Highway Safety Account--State Appropriation. . . .	\$2,542,000
Highway Safety Account--Federal Appropriation. . .	\$16,540,000
School Zone Safety Account--State Appropriation. .	\$3,340,000
Highway Safety Account--Local Appropriation.	\$50,000
TOTAL APPROPRIATION.	\$22,472,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$2,670,000 of the highway safety account--federal appropriation is provided solely for a target zero trooper pilot program, which the commission shall develop and implement in collaboration with the Washington state patrol. The pilot program must demonstrate the effectiveness of intense, high visibility, driving under the influence enforcement in Washington. The commission shall apply to the national highway traffic safety administration for federal highway safety grants to cover the cost of the pilot program. If the pilot program is approved for funding by the national highway traffic safety administration, and sufficient federal grants are received, the commission shall provide grants to the Washington state patrol for the purchase of twenty-one fully equipped patrol vehicles in fiscal year 2010, and up to twenty-four months of salaries and benefits for eighteen troopers and three sergeants beginning in fiscal year 2011. The legislature anticipates that an additional \$1,830,000 will be appropriated from the highway safety account--federal in the 2011-13 fiscal biennium to conclude this pilot program.

(2) The commission may oversee pilot projects implementing the use of automated traffic safety cameras to detect speed violations within cities west of the Cascade mountains that have a population over two hundred thousand. For the purposes of pilot projects in this subsection, no more than one automated traffic safety camera may be used to detect speed violations within any one jurisdiction.

(a) The commission shall comply with RCW 46.63.170 in administering the projects.

(b) In order to ensure adequate time in the 2009-11 fiscal biennium to evaluate the effectiveness of the pilot projects, any projects authorized by the commission must be authorized by December 31, 2009.

(c) By January 1, 2011, the commission shall provide a report to the legislature regarding the use, public acceptance, outcomes, and other relevant issues regarding automated traffic safety cameras demonstrated by the projects.

NEW SECTION. Sec. 202. FOR THE COUNTY ROAD ADMINISTRATION BOARD

Rural Arterial Trust Account--State Appropriation. . .	\$920,000
Motor Vehicle Account--State Appropriation.	\$2,129,000
County Arterial Preservation Account--State Appropriation.	\$1,423,000
TOTAL APPROPRIATION.	\$4,472,000

NEW SECTION. Sec. 203. FOR THE TRANSPORTATION IMPROVEMENT BOARD

Urban Arterial Trust Account--State Appropriation..	\$1,824,000
Transportation Improvement Account--State Appropriation.	\$1,827,000
TOTAL APPROPRIATION.	\$3,651,000

NEW SECTION. Sec. 204. FOR THE JOINT TRANSPORTATION COMMITTEE

Motor Vehicle Account--State Appropriation.	\$1,901,000
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The appropriation in this section is subject to the following conditions and limitations:

(1) \$236,000 of the motor vehicle account--state appropriation is a reappropriation from the 2007-09 fiscal

biennium for a comprehensive analysis of mid-term and long-term transportation funding mechanisms and methods. Elements of the study will include existing data and trends, policy objectives, performance and evaluation criteria, incremental transition strategies, and possibly, scaled testing. Baseline data and methods assessment must be concluded by December 31, 2009. Performance criteria must be developed by June 30, 2010, and recommended planning level alternative funding strategies must be completed by December 31, 2010.

(2) \$200,000 of the motor vehicle account--state appropriation is for the joint transportation committee to convene an independent expert review panel to review the assumptions for toll operations costs used by the department to model financial plans for tolled facilities. The joint transportation committee shall work with staff from the senate and the house of representatives transportation committees to identify the scope of the review and to assure that the work performed meets the needs of the house of representatives and the senate. The joint transportation committee shall provide a report to the house of representatives and senate transportation committees by September 1, 2009.

(3) \$300,000 of the motor vehicle account--state appropriation is for an independent analysis of methodologies to value the reversible lanes on Interstate 90 to be used for high capacity transit pursuant to sound transit proposition 1 approved by voters in November 2008. The independent analysis shall be conducted by sound transit and the department of transportation, using consultant resources deemed appropriate by the secretary of the department, the chief executive officer of sound transit, and the cochairs of the joint transportation committee. It shall be conducted in consultation with the federal transit and federal highway administrations and account for applicable federal laws, regulations, and practices. It shall also account for the 1976 Interstate 90 memorandum of agreement and subsequent 2004 amendment and the 1978 federal secretary of transportation's environmental decision on Interstate 90. The department and sound transit must provide periodic reports to the joint transportation committee, the sound transit board of directors, and the governor, and report final recommendations by November 1, 2009.

NEW SECTION. Sec. 205. FOR THE TRANSPORTATION COMMISSION

Motor Vehicle Account--State Appropriation.	\$2,237,000
Multimodal Transportation Account--State Appropriation	\$112,000
TOTAL APPROPRIATION.	\$2,349,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium, the transportation commission shall periodically review and, if necessary, modify the schedule of fares for the Washington state ferry system. The transportation commission may increase ferry fares, except no fare schedule modifications may be made prior to September 1, 2009. For purposes of this subsection, "modify" includes increases or decreases to the schedule. The commission may only approve ferry fare rate changes that have the same proportionate change for passengers as for vehicles.

(2) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium, the transportation commission shall periodically review and, if necessary, modify a schedule of toll charges applicable to the state route number 167 high occupancy toll lane pilot project, as required under RCW 47.56.403. For purposes of this subsection, "modify" includes increases or decreases to the schedule.

(3) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium, the transportation commission shall periodically review and, if necessary, modify the schedule of toll charges applicable to the Tacoma Narrows bridge, taking into consideration the recommendations of the citizen advisory committee created under RCW 47.46.091. For purposes of this subsection, "modify" includes increases or decreases to the schedule.

(4) The commission may name state ferry vessels consistent with its authority to name state transportation facilities under RCW 47.01.420. When naming or renaming state ferry vessels, the commission shall investigate selling the naming rights and shall make recommendations to the legislature regarding this option.

(5) \$350,000 of the motor vehicle account--state appropriation is provided solely for consultant support services to assist the commission in updating the statewide transportation plan. The updated plan must be submitted to the legislature by December 1, 2010.

(6) If the commission considers implementing a ferry fuel surcharge, it must first submit an analysis and business plan to the office of financial management and either the joint transportation committee or the transportation committees of the legislature.

NEW SECTION. Sec. 206. FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD

Motor Vehicle Account--State Appropriation. \$695,000

The appropriation in this section is subject to the following conditions and limitations: The freight mobility strategic investment board shall, on a quarterly basis, provide status reports to the office of financial management and the transportation committees of the legislature on the delivery of projects funded by this act.

NEW SECTION. Sec. 207. FOR THE WASHINGTON STATE PATROL--FIELD OPERATIONS BUREAU

State Patrol Highway Account--State

Appropriation. \$228,024,000

State Patrol Highway Account--Federal

Appropriation. \$10,602,000

State Patrol Highway Account--Private/Local

Appropriation. \$859,000

TOTAL APPROPRIATION. \$239,485,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Washington state patrol officers engaged in off-duty uniformed employment providing traffic control services to the department of transportation or other state agencies may use state patrol vehicles for the purpose of that employment, subject to guidelines adopted by the chief of the Washington state patrol. The Washington state patrol shall be reimbursed for the use of the vehicle at the prevailing state employee rate for mileage and hours of usage, subject to guidelines developed by the chief of the Washington state patrol, and Cessna pilots funded from the state patrol highway account who are certified to fly the King Airs may pilot those aircraft for general fund purposes with the general fund reimbursing the state patrol highway account an hourly rate to cover the costs incurred during the flights since the aviation section will no longer be part of the Washington state patrol cost allocation system as of July 1, 2009.

(2) The patrol shall not account for or record locally provided DUI cost reimbursement payments as expenditure credits to the state patrol highway account. The patrol shall report the amount of expected locally provided DUI cost

reimbursements to the office of financial management and transportation committees of the legislature by September 30th of each year.

(3) During the 2009-11 fiscal biennium, the Washington state patrol shall continue to perform traffic accident investigations on Thurston county roads, and shall work with the county to transition the traffic accident investigations on Thurston county roads to the county by July 1, 2011.

(4) Within existing resources, the Washington state patrol shall make every reasonable effort to increase the enrollment in each academy class that commences during the 2009-11 fiscal biennium to fifty-five cadets.

(5) The Washington state patrol shall collaborate with the Washington traffic safety commission to develop and implement the target zero trooper pilot program referenced in section 201 of this act.

(6) The Washington state patrol shall discuss the implementation of the pilot program described under section 218(2) of this act with any union representing the affected employees.

(7) The Washington state patrol shall assign necessary personnel and equipment to implement and operate the pilot program described under section 218(2) of this act using the portion of the automated traffic safety camera fines deposited into the state patrol highway account, but not to exceed \$370,000. If the fines deposited into the state patrol highway account from automated traffic safety camera infractions do not reach \$370,000, the department of transportation shall remit funds necessary to the Washington state patrol to ensure the completion of the pilot program.

NEW SECTION. Sec. 208. FOR THE WASHINGTON STATE PATROL--INVESTIGATIVE SERVICES BUREAU

State Patrol Highway Account--State Appropriation. \$1,557,000

NEW SECTION. Sec. 209. FOR THE WASHINGTON STATE PATROL--TECHNICAL SERVICES BUREAU

State Patrol Highway Account--State Appropriation

. \$105,680,000

State Patrol Highway Account--Private/Local

Appropriation. \$2,008,000

TOTAL APPROPRIATION. \$107,688,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The Washington state patrol shall work with the risk management division in the office of financial management in compiling the Washington state patrol's data for establishing the agency's risk management insurance premiums to the tort claims account. The office of financial management and the Washington state patrol shall submit a report to the legislative transportation committees by December 31st of each year on the number of claims, estimated claims to be paid, method of calculation, and the adjustment in the premium.

(2) \$8,673,000 of the total appropriation is provided solely for automobile fuel in the 2009-11 fiscal biennium.

(3) \$7,421,000 of the total appropriation is provided solely for the purchase of pursuit vehicles.

(4) \$6,328,000 of the total appropriation is provided solely for vehicle repair and maintenance costs of vehicles used for highway purposes.

(5) \$384,000 of the total appropriation is provided solely for the purchase of mission vehicles used for highway purposes in the commercial vehicle and traffic investigation sections of the Washington state patrol.

(6) The Washington state patrol may submit information technology-related requests for funding only if the patrol has

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coordinated with the department of information services as required under section 601 of this act.

(7) \$345,000 of the state patrol highway account--state appropriation is provided solely for the implementation of Engrossed Substitute House Bill No. 1445 (domestic partners/Washington state patrol retirement system). If Engrossed Substitute House Bill No. 1445 is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

NEW SECTION. Sec. 210. FOR THE DEPARTMENT OF LICENSING

Marine Fuel Tax Refund Account--State Appropriation.	\$32,000
Motorcycle Safety Education Account--State Appropriation.....	\$4,373,000
Wildlife Account--State Appropriation.	\$837,000
Highway Safety Account--State Appropriation. . .	\$145,085,000
Highway Safety Account--Federal Appropriation.	\$8,000
Motor Vehicle Account--State Appropriation. . . .	\$78,805,000
Motor Vehicle Account--Private/Local Appropriation	\$1,372,000
Motor Vehicle Account--Federal Appropriation.	\$242,000
Department of Licensing Services Account--State Appropriation.....	\$3,867,000
Washington State Patrol Highway Account--State Appropriation.....	\$738,000
Ignition Interlock Device Revolving Account--State Appropriation.....	\$2,490,000
TOTAL APPROPRIATION. . . .	\$237,849,000

The appropriations in this section are subject to the following conditions and limitations:

(1)(a) By November 1, 2009, the department of licensing, working with the department of revenue, shall analyze and plan for the transfer by July 1, 2010, of the administration of fuel taxes imposed under chapters 82.36, 82.38, 82.41, and 82.42 RCW and other provisions of law from the department of licensing to the department of revenue. By November 1, 2009, the departments shall report findings and recommendations to the governor and the transportation and fiscal committees of the legislature.

(b) The analysis and planning directed under this subsection must include, but is not limited to, the following:

(i) Outreach to and solicitation of comment from parties affected by the fuel taxes, including taxpayers, industry associations, state and federal agencies, and Indian tribes, and from the transportation and fiscal committees of the legislature;

(ii) Identification and analysis of relevant factors including, but not limited to:

- (A) Taxpayer reporting and payment processes;
- (B) The international fuel tax agreement;
- (C) Proportional registration under the provisions of the international registration plan and chapter 46.87 RCW;
- (D) Computer systems;
- (E) Best management practices and efficiencies;
- (F) Costs; and
- (G) Personnel matters;

(iii) Development of recommended actions to accomplish the transfer; and

(iv) An implementation plan and schedule.

(c) The report must include draft legislation, which transfers administration of fuel taxes as described under (a) of this subsection to the department of revenue on July 1, 2010, and amends existing law as needed.

(2) \$55,845,000 of the highway safety account--state appropriation is provided solely for the driver examining program. In order to reduce costs and make the most efficient

use of existing resources, the department may consolidate licensing service offices by closing the vehicle services counter at the highways licensing building in Olympia and up to twenty-five licensing service offices.

(a) When closing offices, the department may redistribute staff from consolidated offices to neighboring offices and local community supercenters.

(b) In order to mitigate the effects of office consolidations on customers, the department shall, within existing resources, provide the following enhanced services:

(i) Extended daily and weekend hours in regional supercenter offices;

(ii) Staffed greeter stations to improve office work flow; and

(iii) Self-service stations for online transaction access, including vehicle renewal transactions.

(c) In areas that are not consolidated, the department will work to reduce costs by identifying opportunities to share facilities with subagent offices and state, county, or local government offices and by analyzing hours and days of operation to meet demand.

(d) The department shall work with vehicle licensing subagents regarding potential placement of self-service driver licensing kiosks in communities that will be affected by licensing services offices closures. The department may place kiosks in those subagent offices where both parties agree, and may pay the subagents the fair market value for any space used for kiosks.

(e) The department shall report to the joint transportation committee by November 30, 2009, on the department's consolidation implementation to date and its plan for continued implementation.

(3) \$11,688,000 of the highway safety account--state appropriation is provided solely for costs associated with: Issuing enhanced drivers' licenses and identicards at the enhanced licensing services offices; extended hours at those licensing services offices; cross-border tourism education; and other education campaigns. This is the maximum amount the department may expend for this purpose.

(4) \$2,490,000 of the ignition interlock device revolving account--state appropriation is provided solely for the department to assist indigent persons with the costs of installing, removing, and leasing the device, and applicable licensing pursuant to RCW 46.68.340.

(5) By December 31, 2009, the department shall report to the office of financial management and the transportation committees of the legislature a cost-benefit analysis of leasing versus purchasing field office equipment.

(6) By December 31, 2009, the department shall submit to the office of financial management and the transportation committees of the legislature draft legislation that rewrites RCW 46.52.130 (driving record abstracts) in plain language.

(7) The department may seek federal funds to implement a driver's license and identicard biometric matching system pilot program to verify the identity of applicants for, and holders of, drivers' licenses and identicards. If funds are received, the department shall report any benefits or problems identified during the course of the pilot program to the transportation committees of the legislature upon the completion of the program.

(8) The department may submit information technology-related requests for funding only if the department has coordinated with the department of information services as required under section 601 of this act.

(9) Consistent with the authority delegated to the director of licensing under RCW 46.01.100, the department may adopt a

new organizational structure that includes the following programs: (a) Driver and vehicle services, which must encompass services relating to driver licensing customers, vehicle industry and fuel tax licensees, and vehicle and vessel licensing and registration; and (b) driver policy and programs, which must encompass policy development for all driver-related programs, including driver examining, driver records, commercial driver's license testing and auditing, driver training schools, motorcycle safety, technical services, hearings, driver special investigations, drivers' data management, central issuance contract management, and state and federal initiatives.

(10) The legislature finds that measuring the performance of the department requires the measurement of quality, timeliness, and unit cost of services delivered to customers. Consequently:

(a) The department shall develop a set of metrics that measure that performance and report to the transportation committees of the house of representatives and the senate and to the office of financial management on the development of these measurements along with recommendations to the 2010 legislature on which measurements must become a part of the next omnibus transportation appropriations act;

(b) The department shall study the process in place at the licensing services office and present to the 2010 legislature recommendations for process changes to improve efficiencies for both the department and the customer; and

(c) The department shall, on a quarterly basis, report to the transportation committees of the legislature the following monthly data by licensing service office locations: (i) Lease costs; (ii) salary and benefit costs; (iii) other costs; (iv) actual FTEs; (v) number of transactions completed, by type of transaction; and (vi) office hours.

NEW SECTION. Sec. 211. FOR THE DEPARTMENT OF TRANSPORTATION--TOLL OPERATIONS AND MAINTENANCE--PROGRAM B

High Occupancy Toll Lanes Operations Account--State	
Appropriation.....	\$2,867,000
Motor Vehicle Account--State Appropriation.....	\$585,000
Tacoma Narrows Toll Bridge Account--State	
Appropriation.....	\$27,358,000
State Route Number 520 Corridor Account--State	
Appropriation.....	\$58,088,000
TOTAL APPROPRIATION.....	\$88,898,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall make detailed quarterly expenditure reports available to the transportation commission and to the public on the department's web site using current department resources. The reports must include a summary of revenue generated by tolls on the Tacoma Narrows bridge and an itemized depiction of the use of that revenue.

(2) The department shall work with the office of financial management to review insurance coverage, deductibles, and limitations on tolled facilities to assure that the assets are well protected at a reasonable cost. Results from this review must be used to negotiate any future new or extended insurance agreements.

(3) \$58,088,000 of the state route number 520 corridor account--state appropriation is provided solely for the costs directly related to tolling the state route number 520 floating bridge. Of this amount, \$175,000 is for the immediate costs necessary to pursue a request for proposal to implement variable, open road tolling on the state route number 520 floating bridge. The request for proposal must include tolling infrastructure and signage, customer service centers, collection and billing procedures, and, to the extent practicable, the

maintenance and dispensing of transponders by the vendor. The remaining \$57,913,000 must be retained in unallotted status, and may only be released by the office of financial management after consultation with the joint transportation committee following the committee's examination of toll operations costs referenced in section 204(2) of this act. The amount provided in this subsection is contingent on the enactment of (a) Engrossed Substitute House Bill No. 2211 and (b) either Engrossed Substitute House Bill No. 2326 or other legislation authorizing bonds for the state route number 520 corridor projects. If the conditions of this subsection are not satisfied, the amount provided in this subsection shall lapse.

NEW SECTION. Sec. 212. FOR THE DEPARTMENT OF TRANSPORTATION--INFORMATION TECHNOLOGY--PROGRAM C

Transportation Partnership Account--State	
Appropriation.....	\$2,675,000
Motor Vehicle Account--State Appropriation.....	\$67,811,000
Motor Vehicle Account--Federal Appropriation.....	\$240,000
Multimodal Transportation Account--State	
Appropriation.....	\$363,000
Transportation 2003 Account (Nickel Account)--State	
Appropriation.....	\$2,676,000
TOTAL APPROPRIATION.....	\$73,765,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall consult with the office of financial management and the department of information services to: (a) Ensure that the department's current and future system development is consistent with the overall direction of other key state systems; and (b) when possible, use or develop common statewide information systems to encourage coordination and integration of information used by the department and other state agencies and to avoid duplication.

(2) \$1,216,000 of the transportation partnership account--state appropriation and \$1,216,000 of the transportation 2003 account (nickel account)--state appropriation are provided solely for the department to develop a project management and reporting system which is a collection of integrated tools for capital construction project managers to use to perform all the necessary tasks associated with project management. The department shall integrate commercial off-the-shelf software with existing department systems and enhanced approaches to data management to provide web-based access for multi-level reporting and improved business work flows and reporting. On a quarterly basis, the department shall report to the office of financial management and the transportation committees of the legislature on the status of the development and integration of the system. At a minimum, the reports shall indicate the status of the work as it compares to the work plan, any discrepancies, and proposed adjustments necessary to bring the project back on schedule or budget if necessary.

(3) The department may submit information technology-related requests for funding only if the department has coordinated with the department of information services as required under section 601 of this act.

NEW SECTION. Sec. 213. FOR THE DEPARTMENT OF TRANSPORTATION--FACILITY MAINTENANCE, OPERATIONS AND CONSTRUCTION--PROGRAM D--OPERATING

Motor Vehicle Account--State Appropriation.....	\$25,501,000
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NEW SECTION. Sec. 214. FOR THE DEPARTMENT OF TRANSPORTATION--AVIATION--PROGRAM F

Aeronautics Account--State Appropriation.....	\$6,009,000
Aeronautics Account--Federal Appropriation.....	\$2,150,000

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TOTAL APPROPRIATION. \$8,159,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$50,000 of the aeronautics account--state appropriation is a reappropriation provided solely to pay any outstanding obligations of the aviation planning council, which expires July 1, 2009.

(2) \$150,000 of the aeronautics account--state appropriation is a reappropriation provided solely to complete runway preservation projects.

NEW SECTION. Sec. 215. FOR THE DEPARTMENT OF TRANSPORTATION--PROGRAM DELIVERY MANAGEMENT AND SUPPORT--PROGRAM H

Motor Vehicle Account--State Appropriation. \$48,032,000

Motor Vehicle Account--Federal Appropriation. \$500,000

Multimodal Transportation Account--State

Appropriation. \$250,000

Water Pollution Account--State Appropriation. \$2,000,000

TOTAL APPROPRIATION. \$50,782,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall develop a plan for all current and future surplus property parcels based on the recommendations from the surplus property legislative work group that were presented to the senate transportation committee on February 26, 2009. The plan must include, at a minimum, strategies for maximizing the number of parcels sold, a schedule that optimizes proceeds, a recommended cash discount, a plan to report to the joint transportation committee, a recommendation for regional incentives, and a recommendation for equivalent value exchanges. This plan must accompany the department's 2010 supplemental budget request.

(2) If the department determines that all or a portion of real property or an interest in real property that was acquired through condemnation or the threat of condemnation is no longer necessary for a public purpose and should be sold as surplus property, the former owner shall have a right of repurchase. "Former owner" means the person or entity from whom the department acquired title and that person's or entity's successors or assigns to the property or property interest subject to the repurchase right. At least ninety days prior to the date on which the property is to be sold by the department, the department must mail notice of the planned sale to the former owner of the property at the former owner's last known address or to a forwarding address if that owner has provided the department with a forwarding address. If the former owner notifies the department within thirty days of the date of the notice that the former owner intends to repurchase the property, the department shall proceed with the sale of the property to the former owner and shall not list the property for sale to other owners. If the former owner does not provide timely written notice to the department of the intent to exercise a repurchase right, or if the sale to the former owner is not completed within one year of the date of notice that the former owner intends to repurchase the property, that right shall be extinguished.

(3) The legislature recognizes that the Dryden pit site (WSDOT Inventory Control (IC) No. 2-04-00103) is unused state-owned real property under the jurisdiction of the department of transportation, and that the public would benefit significantly from the complete enjoyment of the natural scenic beauty and recreational opportunities available at the site. Therefore, pursuant to RCW 47.12.080, the legislature declares that transferring the property to the department of fish and wildlife is consistent with the public interest in order to preserve the area for the use of the public. The department of

transportation shall, as soon as is practicable, transfer and convey the Dryden pit site to the department of fish and wildlife for adequate consideration in the amount of no less than \$600,000, the proceeds of which must be deposited in the motor vehicle fund. By July 1, 2009, the department shall submit a status report regarding the transaction to the chairs of the legislative transportation committees.

(4) \$2,000,000 of the water pollution account--state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit, consistent with the purposes described in Substitute House Bill No. 1614, addressing petroleum pollution in storm water. If Substitute House Bill No. 1614 is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(5) \$750,000 of the motor vehicle account--state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

(6) The department shall provide updated information on six project milestones for all active projects, funded in part or in whole with 2005 transportation partnership account funds or 2003 nickel account funds, on a quarterly basis in the transportation executive information system (TEIS). The department shall also provide updated information on six project milestones for projects, funded with preexisting funds and that are agreed to by the legislature, office of financial management, and the department, on a quarterly basis in TEIS.

NEW SECTION. Sec. 216. FOR THE DEPARTMENT OF TRANSPORTATION -- ECONOMIC PARTNERSHIPS--PROGRAM K

Motor Vehicle Account--State Appropriation. \$615,000

Multimodal Transportation Account--State Appropriation

. \$200,000

TOTAL APPROPRIATION. \$815,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$200,000 of the multimodal transportation account--state appropriation is provided solely for the department to develop and implement public private partnerships at high priority terminals as identified in the January 12, 2009, final report on joint development opportunities at Washington state ferries terminals. The department shall first consider a mutually beneficial agreement at the Edmonds terminal.

(2) \$50,000 of the motor vehicle account--state appropriation is provided solely for the department to investigate the potential to generate revenue from web site sponsorships and similar ventures and, if feasible, pursue partnership opportunities.

NEW SECTION. Sec. 217. FOR THE DEPARTMENT OF TRANSPORTATION--HIGHWAY MAINTENANCE--PROGRAM M

Motor Vehicle Account--State Appropriation. \$347,637,000

Motor Vehicle Account--Federal Appropriation. \$2,000,000

Motor Vehicle Account--Private/Local Appropriation

. \$5,797,000

Water Pollution Account--State Appropriation. \$12,500,000

TOTAL APPROPRIATION. \$367,934,000

The appropriations in this section are subject to the following conditions and limitations:

(1) If portions of the appropriations in this section are required to fund maintenance work resulting from major disasters not covered by federal emergency funds such as fire, flooding, snow, and major slides, supplemental appropriations must be requested to restore state funding for ongoing maintenance activities.

(2) The department shall request an unanticipated receipt for any federal moneys received for emergency snow and ice removal and shall place an equal amount of the motor vehicle account--state into unallotted status. This exchange shall not affect the amount of funding available for snow and ice removal.

(3) The department shall request an unanticipated receipt for any private or local funds received for reimbursements of third party damages that are in excess of the motor vehicle account--private/local appropriation.

(4) \$2,000,000 of the motor vehicle account--federal appropriation is for unanticipated federal funds that may be received during the 2009-11 fiscal biennium. Upon receipt of the funds, the department shall provide a report on the use of the funds to the transportation committees of the legislature and the office of financial management.

(5) The department may incur costs related to the maintenance of the decorative lights on the Tacoma Narrows bridge only if:

(a) The nonprofit corporation, narrows bridge lights organization, maintains an account balance sufficient to reimburse the department for all costs; and

(b) The department is reimbursed from the narrows bridge lights organization within three months from the date any maintenance work is performed. If the narrows bridge lights organization is unable to reimburse the department for any future costs incurred, the lights must be removed at the expense of the narrows bridge lights organization subject to the terms of the contract.

(6) The department may work with the department of corrections to utilize corrections crews for the purposes of litter pickup on state highways.

(7) \$650,000 of the motor vehicle account--state appropriation is provided solely for increased asphalt costs. If Senate Bill No. 5976 is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(8) \$16,800,000 of the motor vehicle account--state appropriation is provided solely for the high priority maintenance backlog. Addressing the maintenance backlog must result in increased levels of service.

(9) \$12,500,000 of the water pollution account--state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit, consistent with the purposes described in Substitute House Bill No. 1614, addressing petroleum pollution in storm water. If Substitute House Bill No. 1614 is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(10) \$750,000 of the motor vehicle account--state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

NEW SECTION. Sec. 218. FOR THE DEPARTMENT OF TRANSPORTATION--TRAFFIC OPERATIONS--PROGRAM Q--OPERATING

Motor Vehicle Account--State Appropriation. . . .	\$51,526,000
Motor Vehicle Account--Federal Appropriation. . .	\$2,050,000
Motor Vehicle Account--Private/Local Appropriation.	\$127,000
TOTAL APPROPRIATION. . . .	\$53,703,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$2,400,000 of the motor vehicle account--state appropriation is provided solely for low-cost enhancements. The department shall give priority to low-cost enhancement projects that improve safety or provide congestion relief. The department shall prioritize low-cost enhancement projects on a statewide rather than regional basis. By September 1st of each even-numbered year, the department shall provide a report to the

legislature listing all low-cost enhancement projects prioritized on a statewide rather than regional basis completed in the prior year.

(2) The department, in consultation with the Washington state patrol, may continue a pilot program for the patrol to issue infractions based on information from automated traffic safety cameras in roadway construction zones on state highways. For the purpose of this pilot program, during the 2009-11 fiscal biennium, a roadway construction zone includes areas where public employees or private contractors are not present but where a driving condition exists that would make it unsafe to drive at higher speeds, such as, when the department is redirecting or realigning lanes on any public roadway pursuant to ongoing construction. The department shall use the following guidelines to administer the program:

(a) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle;

(b) The department shall plainly mark the locations where the automated traffic safety cameras are used by placing signs on locations that clearly indicate to a driver that he or she is entering a roadway construction zone where traffic laws are enforced by an automated traffic safety camera;

(c) Notices of infractions must be mailed to the registered owner of a vehicle within fourteen days of the infraction occurring;

(d) The owner of the vehicle is not responsible for the violation if the owner of the vehicle, within fourteen days of receiving notification of the violation, mails to the patrol, a declaration under penalty of perjury, stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner, or any other extenuating circumstances;

(e) For purposes of the 2009-11 fiscal biennium pilot program, infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras must be processed in the same manner as parking infractions for the purposes of RCW 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3). However, the amount of the fine issued under this subsection (2) for an infraction generated through the use of an automated traffic safety camera is one hundred thirty-seven dollars. The court shall remit thirty-two dollars of the fine to the state treasurer for deposit into the state patrol highway account; and

(f) If a notice of infraction is sent to the registered owner and the registered owner is a rental car business, the infraction must be dismissed against the business if it mails to the patrol, within fourteen days of receiving the notice, a declaration under penalty of perjury of the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred. If the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred, the business must sign a declaration under penalty of perjury to this effect. The declaration must be mailed to the patrol within fourteen days of receiving the notice of traffic infraction. Timely mailing of this declaration to the issuing agency relieves a rental car business of any liability under this section for the notice of infraction. A declaration form suitable for this purpose must be included with each automated traffic infraction notice issued, along with instructions for its completion and use.

(3) The department shall implement a pilot project to evaluate the benefits of using electronic traffic flagging devices.

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Electronic traffic flagging devices must be tested by the department at multiple sites and reviewed for efficiency and safety. The department shall report to the transportation committees of the legislature on the best use and practices involving electronic traffic flagging devices, including recommendations for future use, by June 30, 2010.

(4) \$173,000 of the motor vehicle account--state appropriation is provided solely for the department to continue a pilot tow truck incentive program and to expand the program to other areas of the state. The department may provide incentive payments to towing companies that meet clearance goals on accidents that involve heavy trucks. The department shall report to the office of financial management and the transportation committees of the legislature on the effectiveness of the clearance goals and submit recommendations to improve the pilot program with the department's 2010 supplemental omnibus transportation appropriations act submittal.

NEW SECTION. Sec. 219. FOR THE DEPARTMENT OF TRANSPORTATION--TRANSPORTATION MANAGEMENT AND SUPPORT--PROGRAM S

Motor Vehicle Account--State Appropriation. . . .	\$29,153,000
Motor Vehicle Account--Federal Appropriation. . . .	\$30,000
Multimodal Transportation Account--State	
Appropriation.....	\$973,000
State Route Number 520 Corridor Account--State	
Appropriation.....	\$264,000
TOTAL APPROPRIATION. . . .	\$30,420,000

The appropriations in this section are subject to the following conditions and limitations: \$264,000 of the state route number 520 corridor account--state appropriation is provided solely for the costs directly related to tolling the state route number 520 floating bridge. This amount must be retained in unallotted status, and may only be released by the office of financial management after consultation with the joint transportation committee following the committee's examination of toll operations costs referenced in section 204(2) of this act. The amount provided in this section is contingent on the enactment of (1) Engrossed Substitute House Bill No. 2211 and (2) either Engrossed Substitute House Bill No. 2326 or other legislation authorizing bonds for the state route number 520 corridor projects. If the conditions of this section are not satisfied, the amount provided in this section shall lapse.

NEW SECTION. Sec. 220. FOR THE DEPARTMENT OF TRANSPORTATION--TRANSPORTATION PLANNING, DATA, AND RESEARCH--PROGRAM T

Motor Vehicle Account--State Appropriation. . . .	\$24,724,000
Motor Vehicle Account--Federal Appropriation. . . .	\$19,116,000
Multimodal Transportation Account--State	
Appropriation.....	\$696,000
Multimodal Transportation Account--Federal	
Appropriation.....	\$2,809,000
Multimodal Transportation Account--Private/Local	
Appropriation.....	\$100,000
TOTAL APPROPRIATION. . . .	\$47,445,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$150,000 of the motor vehicle account--federal appropriation is provided solely for the costs to develop an electronic map-based computer application that will enable law enforcement officers and others to more easily locate collisions and other incidents in the field.

(2) \$400,000 of the motor vehicle account--state appropriation is provided solely for a diesel multiple unit feasibility and initial planning study. The study must evaluate potential service on the Stampede Pass line from Maple Valley

to Auburn via Covington. The study must evaluate the potential demand for service, the business model and capital needs for launching and running the line, and the need for improvements in switching, signaling, and tracking. A report on the study must be submitted to the legislature by June 30, 2010.

(3) \$243,000 of the motor vehicle account--state appropriation and \$81,000 of the motor vehicle account--federal appropriation are provided solely for the development of a freight database to help guide freight investment decisions and track project effectiveness. The database must be based on truck movement tracked through geographic information system technology. TransNow shall contribute additional federal funds that are not appropriated in this act. The department shall work with the freight mobility strategic investment board to implement this database.

NEW SECTION. Sec. 221. FOR THE DEPARTMENT OF TRANSPORTATION--CHARGES FROM OTHER AGENCIES--PROGRAM U

Motor Vehicle Account--State Appropriation. . . .	\$87,331,000
Motor Vehicle Account--Federal Appropriation. . . .	\$400,000
Multimodal Transportation Account--State Appropriation	
.....	\$561,000
TOTAL APPROPRIATION. . . .	\$88,292,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The office of financial management must provide a detailed accounting of the revenues and expenditures of the self-insurance fund to the transportation committees of the legislature on December 31st and June 30th of each year.

(2) Payments in this section represent charges from other state agencies to the department of transportation.

(a) FOR PAYMENT OF OFFICE OF FINANCIAL MANAGEMENT

DIVISION OF RISK MANAGEMENT FEES. . . . \$1,639,000

(b) FOR PAYMENT OF COSTS OF THE OFFICE OF THE STATE

AUDITOR. . . . \$937,000

(c) FOR PAYMENT OF COSTS OF THE DEPARTMENT OF GENERAL

ADMINISTRATION. . . . \$6,060,000

(d) FOR PAYMENT OF COSTS OF THE DEPARTMENT OF

PERSONNEL..... \$6,347,000

(e) FOR PAYMENT OF SELF-INSURANCE LIABILITY PREMIUMS AND ADMINISTRATION. . . . \$44,418,000

(f) FOR ARCHIVES AND RECORDS MANAGEMENT

..... \$623,000

(g) FOR OFFICE OF MINORITIES AND WOMEN BUSINESS ENTERPRISES. . . . \$1,008,000

(h) FOR USE OF FINANCIAL AND REPORTING SYSTEMS PROVIDED BY THE OFFICE OF FINANCIAL

MANAGEMENT. . . . \$1,143,000

(i) FOR POLICY AND SYSTEM ASSISTANCE FROM THE DEPARTMENT OF INFORMATION SERVICES

..... \$1,980,000

(j) FOR LEGAL SERVICE PROVIDED BY THE ATTORNEY

GENERAL'S OFFICE. . . . \$8,526,000

(k) FOR LEGAL SERVICE PROVIDED BY THE ATTORNEY GENERAL'S OFFICE FOR THE SECOND

PHASE OF THE BOLDT LITIGATION. . . . \$672,000

NEW SECTION. Sec. 222. FOR THE DEPARTMENT OF TRANSPORTATION--PUBLIC TRANSPORTATION--PROGRAM V
Regional Mobility Grant Program Account--State

Appropriation.....	\$54,677,000
Multimodal Transportation Account--State	
Appropriation.....	\$65,795,000
Multimodal Transportation Account--Federal	
Appropriation.....	\$2,582,000
Multimodal Transportation Account--Private/Local	
Appropriation.....	\$1,027,000
TOTAL APPROPRIATION.	\$124,081,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$25,000,000 of the multimodal transportation account--state appropriation is provided solely for a grant program for special needs transportation provided by transit agencies and nonprofit providers of transportation.

(a) \$5,500,000 of the amount provided in this subsection is provided solely for grants to nonprofit providers of special needs transportation. Grants for nonprofit providers shall be based on need, including the availability of other providers of service in the area, efforts to coordinate trips among providers and riders, and the cost effectiveness of trips provided.

(b) \$19,500,000 of the amount provided in this subsection is provided solely for grants to transit agencies to transport persons with special transportation needs. To receive a grant, the transit agency must have a maintenance of effort for special needs transportation that is no less than the previous year's maintenance of effort for special needs transportation. Grants for transit agencies shall be prorated based on the amount expended for demand response service and route deviated service in calendar year 2007 as reported in the "Summary of Public Transportation - 2007" published by the department of transportation. No transit agency may receive more than thirty percent of these distributions.

(2) Funds are provided for the rural mobility grant program as follows:

(a) \$8,500,000 of the multimodal transportation account--state appropriation is provided solely for grants for those transit systems serving small cities and rural areas as identified in the "Summary of Public Transportation - 2007" published by the department of transportation. Noncompetitive grants must be distributed to the transit systems serving small cities and rural areas in a manner similar to past disparity equalization programs.

(b) \$8,500,000 of the multimodal transportation account--state appropriation is provided solely to providers of rural mobility service in areas not served or underserved by transit agencies through a competitive grant process.

(3) \$7,000,000 of the multimodal transportation account--state appropriation is provided solely for a vanpool grant program for: (a) Public transit agencies to add vanpools or replace vans; and (b) incentives for employers to increase employee vanpool use. The grant program for public transit agencies will cover capital costs only; operating costs for public transit agencies are not eligible for funding under this grant program. Additional employees may not be hired from the funds provided in this section for the vanpool grant program, and supplanting of transit funds currently funding vanpools is not allowed. The department shall encourage grant applicants and recipients to leverage funds other than state funds. At least \$1,600,000 of this amount must be used for vanpool grants in congested corridors.

(4) \$400,000 of the multimodal transportation account--state appropriation is provided solely for a grant for a flexible carpooling pilot project program to be administered and monitored by the department. Funds are appropriated for one time only. The pilot project program must: Test and implement

at least one flexible carpooling system in a high-volume commuter area that enables carpooling without prearrangement; utilize technologies that, among other things, allow for transfer of ride credits between participants; and be a membership system that involves prescreening to ensure safety of the participants. The program must include a pilot project that targets commuter traffic on the state route number 520 bridge. The department shall submit to the legislature by December 2010 a report on the program results and any recommendations for additional flexible carpooling programs.

(5) \$3,318,000 of the multimodal transportation account--state appropriation and \$21,248,000 of the regional mobility grant program account--state appropriation are reappropriated and provided solely for the regional mobility grant projects identified on the LEAP Transportation Document 2007-B, as developed April 20, 2007, or the LEAP Transportation Document 2006-D, as developed March 8, 2006. The department shall continue to review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. The department shall promptly close out grants when projects have been completed, and any remaining funds available to the office of transit mobility must be used only to fund projects on the LEAP Transportation Document 2006-D, as developed March 8, 2006; the LEAP Transportation Document 2007-B, as developed April 20, 2007; or the LEAP Transportation Document 2009-B, as developed April 24, 2009. It is the intent of the legislature to appropriate funds through the regional mobility grant program only for projects that will be completed on schedule.

(6) \$33,429,000 of the regional mobility grant program account--state appropriation is provided solely for the regional mobility grant projects identified in LEAP Transportation Document 2009-B, as developed April 24, 2009. The department shall review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. Any project that has been awarded funds, but does not report activity on the project within one year of the grant award, must be reviewed by the department to determine whether the grant should be terminated. The department shall promptly close out grants when projects have been completed, and any remaining funds available to the office of transit mobility must be used only to fund projects identified in LEAP Transportation Document 2009-B, as developed April 24, 2009. The department shall provide annual status reports on December 15, 2009, and December 15, 2010, to the office of financial management and the transportation committees of the legislature regarding the projects receiving the grants. It is the intent of the legislature to appropriate funds through the regional mobility grant program only for projects that will be completed on schedule.

(7) \$300,000 of the multimodal transportation account--state appropriation is provided solely for a transportation demand management program, developed by the Whatcom council of governments, to further reduce drive-alone trips and maximize the use of sustainable transportation choices. The community-based program must focus on all trips, not only commute trips, by providing education, assistance, and incentives to four target audiences: (a) Large work sites; (b) employees of businesses in downtown areas; (c) school children; and (d) residents of Bellingham.

(8) \$130,000 of the multimodal transportation account--state appropriation is provided solely to the department to distribute to support Engrossed Substitute House Bill No. 2072 (special needs transportation).

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(a) \$80,000 of the amount provided in this subsection is provided solely for implementation of the work group related to federal requirements in section 1, chapter . . . (Engrossed Substitute House Bill No. 2072), Laws of 2009.

(b) \$50,000 of the amount provided in this subsection is provided solely to support the pilot project to be developed or implemented by the local coordinating coalition comprised of a single county, described in sections 9, 10, and 11, chapter . . . (Engrossed Substitute House Bill No. 2072), Laws of 2009. The department shall assist the local coordinating coalition to seek funding sufficient to fully fund the pilot project from a variety of sources including, but not limited to, the regional transit authority serving the county, the regional transportation planning organization serving the county, and other appropriate state and federal agencies and grants. Development or implementation of the pilot project is contingent on securing funding sufficient to fully fund the pilot project.

(c) If Engrossed Substitute House Bill No. 2072 is not enacted by June 30, 2009, the amount provided in this subsection (8) lapses. If Engrossed Substitute House Bill No. 2072 is enacted by June 30, 2009, but a commitment from other sources to fully fund the pilot project described in (b) of this subsection has not been obtained by September 30, 2009, the amount provided in (b) of this subsection lapses.

(9) Funds provided for the commute trip reduction program may also be used for the growth and transportation efficiency center program.

(10) An affected urban growth area that has not previously implemented a commute trip reduction program is exempt from the requirements in RCW 70.94.527 if a solution to address the state highway deficiency that exceeds the person hours of delay threshold has been funded and is in progress during the 2009-11 fiscal biennium.

(11) \$2,309,000 of the multimodal transportation account--state appropriation is provided solely for the tri-county connection service for Island, Skagit, and Whatcom transit agencies.

NEW SECTION. Sec. 223. FOR THE DEPARTMENT OF TRANSPORTATION--MARINE--PROGRAM X

Puget Sound Ferry Operations Account--State
Appropriation \$400,592,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$53,110,560 of the Puget Sound ferry operations account--state appropriation is provided solely for auto ferry vessel operating fuel in the 2009-11 fiscal biennium. This appropriation is contingent upon the enactment of section 716 of this act.

(2) To protect the waters of Puget Sound, the department shall investigate nontoxic alternatives to fuel additives and other commercial products that are used to operate, maintain, and preserve vessels.

(3) If, after the department's review of fares and pricing policies, the department proposes a fuel surcharge, the department must evaluate other cost savings and fuel price stabilization strategies that would be implemented before the imposition of a fuel surcharge.

(4) The department shall strive to significantly reduce the number of injuries suffered by Washington state ferries employees. By December 15, 2009, the department shall submit to the office of financial management and the transportation committees of the legislature its implementation plan to reduce such injuries.

(5) The department shall continue to provide service to Sidney, British Columbia. The department may place a Sidney

terminal departure surcharge on fares for out of state residents riding the Washington state ferry route that runs between Anacortes, Washington and Sidney, British Columbia, if the cost for landing/license fee, taxes, and additional amounts charged for docking are in excess of \$280,000 CDN. The surcharge must be limited to recovering amounts above \$280,000 CDN.

(6) The department shall analyze operational solutions to enhance service on the Bremerton to Seattle ferry run. The Washington state ferries shall report its analysis to the transportation committees of the legislature by December 1, 2009.

(7) The office of financial management budget instructions require agencies to recast enacted budgets into activities. The Washington state ferries shall include a greater level of detail in its 2011-13 omnibus transportation appropriations act request, as determined jointly by the office of financial management, the Washington state ferries, and the legislative transportation committees.

(8) \$3,000,000 of the Puget Sound ferry operations account--state appropriation is provided solely for commercial insurance for ferry assets. The office of financial management, after consultation with the transportation committees of the legislature, must present a business plan for the Washington state ferry system's insurance coverage to the 2010 legislature. The business plan must include a cost-benefit analysis of Washington state ferries' current commercial insurance purchased for ferry assets and a review of self-insurance for noncatastrophic events.

(9) \$1,100,000 of the Puget Sound ferry operations account--state appropriation is provided solely for a marketing program. The department shall present a marketing program proposal to the transportation committees of the legislature during the 2010 legislative session before implementing this program. Of this amount, \$10,000 is for the city of Port Townsend and \$10,000 is for the town of Coupeville for mitigation expenses related to only one vessel operating on the Port Townsend/Keystone ferry route. The moneys provided to the city of Port Townsend and town of Coupeville are not contingent upon the required marketing proposal.

(10) \$350,000 of the Puget Sound ferry operations account--state appropriation is provided solely for two extra trips per day during the summer of 2009 season, beyond the current schedule, on the Port Townsend/Keystone route.

(11) When purchasing uniforms that are required by collective bargaining agreements, the department shall contract with the lowest cost provider.

(12) The legislature finds that measuring the performance of Washington state ferries requires the measurement of quality, timeliness, and unit cost of services delivered to customers. Consequently, the department must develop a set of metrics that measure that performance and report to the transportation committees of the legislature and to the office of financial management on the development of these measurements along with recommendations to the 2010 legislature on which measurements must become a part of the next omnibus transportation appropriations act.

(13) As a priority task, the department is directed to propose a comprehensive incident and accident investigation policy and appropriate procedures, and to provide the proposal to the legislature by November 1, 2009, using existing resources and staff expertise. In addition to consulting with ferry system unions and the United States coast guard, the Washington state ferries is encouraged to solicit independent outside expertise on incident and accident investigation best practices as they may be

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found in other organizations with a similar concern for marine safety. It is the intent of the legislature to enact the policies into law and to publish that law and procedures as a manual for Washington state ferries' accident/incident investigations. Until that time, the Washington state ferry system must exercise particular diligence to assure that any incident or accident investigations are conducted within the spirit of the guidelines of this act. The proposed policy must contain, at a minimum:

(a) The definition of an incident and an accident and the type of investigation that is required by both types of events;

(b) The process for appointing an investigating officer or officers and a description of the authorities and responsibilities of the investigating officer or officers. The investigating officer or officers must:

(i) Have the appropriate training and experience as determined by the policy;

(ii) Not have been involved in the incident or accident so as to avoid any conflict of interest;

(iii) Have full access to all persons, records, and relevant organizations that may have information about or may have contributed to, directly or indirectly, the incident or accident under investigation, in compliance with any affected employee's or employees' respective collective bargaining agreement and state laws and rules regarding public disclosure under chapter 42.56 RCW;

(iv) Be provided with, if requested by the investigating officer or officers, appropriate outside technical expertise; and

(v) Be provided with staff and legal support by the Washington state ferries as may be appropriate to the type of investigation;

(c) The process of working with the affected employee or employees in accordance with the employee's or employees' respective collective bargaining agreement and the appropriate union officials, within protocols afforded to all public employees;

(d) The process by which the United States coast guard is kept informed of, interacts with, and reviews the investigation;

(e) The process for review, approval, and implementation of any approved recommendations within the department; and

(f) The process for keeping the public informed of the investigation and its outcomes, in compliance with any affected employee's or employees' respective collective bargaining agreement and state laws and rules regarding public disclosure under chapter 42.56 RCW.

NEW SECTION. Sec. 224. FOR THE DEPARTMENT OF TRANSPORTATION--RAIL--PROGRAM Y--OPERATING

Multimodal Transportation Account--State Appropriation..... \$34,933,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$29,091,000 of the multimodal transportation account--state appropriation is provided solely for the Amtrak service contract and Talgo maintenance contract associated with providing and maintaining the state-supported passenger rail service. Upon completion of the rail platform project in the city of Stanwood, the department shall provide daily Amtrak Cascades service to the city.

(2) Amtrak Cascade runs may not be eliminated.

(3) The department shall begin planning for a third roundtrip Cascades train between Seattle and Vancouver, B.C. by 2010.

NEW SECTION. Sec. 225. FOR THE DEPARTMENT OF TRANSPORTATION-- LOCAL PROGRAMS--PROGRAM Z--OPERATING

Motor Vehicle Account--State Appropriation. \$8,739,000

Motor Vehicle Account--Federal Appropriation. . . . \$2,567,000
TOTAL APPROPRIATION. . . . \$11,306,000

NEW SECTION. Sec. 226. The legislature recognizes that the department of transportation operates a seventh administrative region, including the urban corridors office. Therefore, the legislature intends that the secretary of the department of transportation identify and implement operational efficiencies. This may result in a decrease in the number of total regions and the amount of regional staff. The secretary shall report to the office of financial management and the joint transportation committee by January 2010 with a report regarding how the operational efficiencies were achieved.

TRANSPORTATION AGENCIES--CAPITAL

NEW SECTION. Sec. 301. FOR THE WASHINGTON STATE PATROL

State Patrol Highway Account--State Appropriation. \$3,126,000
The appropriation in this section is subject to the following conditions and limitations:

(1) \$1,626,000 of the state patrol highway account--state appropriation is provided solely for the following minor works projects: \$450,000 for Shelton training academy roofs; \$150,000 for HVAC control replacements; \$168,000 for upgrades to scales; \$50,000 for Bellevue electrical equipment upgrades; \$90,000 for South King detachment window replacement; \$200,000 for the replacement of the Naselle radio tower, generator shelter, and fence; \$200,000 for unforeseen emergency repairs; and \$318,000 for the Shelton training academy drive course/skid pan repair.

(2) \$1,500,000 of the state patrol highway account--state appropriation is provided solely for the Shelton academy of the Washington state patrol and is contingent upon a signed agreement between the city of Shelton, the department of corrections, and the Washington state patrol that provides for an on-going payment to these three entities, based on their percentage of the total investment in the project, from all hookup fees, late comer fees, LIDS, and all other initial fees collected for the new waste water treatment lines, waste water plants, water lines, and water systems.

NEW SECTION. Sec. 302. FOR THE COUNTY ROAD ADMINISTRATION BOARD

Rural Arterial Trust Account--State Appropriation. \$51,000,000
Motor Vehicle Account--State Appropriation. \$1,048,000
County Arterial Preservation Account--State Appropriation..... \$31,400,000
TOTAL APPROPRIATION. . . . \$83,448,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,048,000 of the motor vehicle account--state appropriation may be used for county ferry projects as developed pursuant to RCW 47.56.725(4).

(2) The appropriations in this section include funding to counties to assist them in efforts to recover from federally declared emergencies, by providing capitalization advances and local match for federal emergency funding as determined by the county road administration board. The county road administration board shall specifically identify any such selected projects and shall include information concerning such selected projects in its next annual report to the legislature.

NEW SECTION. Sec. 303. FOR THE TRANSPORTATION IMPROVEMENT BOARD

Small City Pavement and Sidewalk Account--State Appropriation..... \$5,779,000
Urban Arterial Trust Account--State Appropriation

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.....	\$122,400,000
Transportation Improvement Account--State	
Appropriation.....	\$85,643,000
TOTAL APPROPRIATION. . . .	\$213,822,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The transportation improvement account--state appropriation includes up to \$7,143,000 in proceeds from the sale of bonds authorized in RCW 47.26.500.

(2) The urban arterial trust account--state appropriation includes up to \$15,000,000 in proceeds from the sale of bonds authorized in RCW 47.26.420.

NEW SECTION. Sec. 304. FOR THE DEPARTMENT OF TRANSPORTATION. As part of its budget submittal for the 2011-13 fiscal biennium, the department shall provide an update to the report provided to the legislature in 2008 that:

(1) Compares the original project cost estimates approved in the 2003 and 2005 project lists to the completed cost of the project, or the most recent legislatively approved budget and total project costs for projects not yet completed;

(2) Identifies highway projects that may be reduced in scope and still achieve a functional benefit;

(3) Identifies highway projects that have experienced scope increases and that can be reduced in scope;

(4) Identifies highway projects that have lost significant local or regional contributions that were essential to completing the project; and

(5) Identifies contingency amounts allocated to projects.

NEW SECTION. Sec. 305. FOR THE DEPARTMENT OF TRANSPORTATION--PROGRAM D (DEPARTMENT OF TRANSPORTATION-ONLY PROJECTS)--CAPITAL Motor Vehicle Account--State Appropriation. . . .

(1) \$1,198,000 of the motor vehicle account--state appropriation is provided solely for the Olympic region site acquisition debt service payments and administrative costs associated with capital improvement and preservation project and financial management.

(2) \$3,612,000 of the motor vehicle account--state appropriation is provided solely for high priority safety projects that are directly linked to employee safety, environmental risk, or minor works that prevent facility deterioration. This includes the administrative costs associated with those projects and the reconstruction of the Wandermere facility that was destroyed in the 2008-09 winter storms.

NEW SECTION. Sec. 306. FOR THE DEPARTMENT OF TRANSPORTATION--IMPROVEMENTS--PROGRAM I

Multimodal Transportation Account--State

 Appropriation..... \$1,000

Transportation Partnership Account--State

 Appropriation..... \$1,723,834,000

Motor Vehicle Account--State Appropriation. . . . \$80,735,000

Motor Vehicle Account--Federal Appropriation. . \$410,341,000

Motor Vehicle Account--Private/Local

 Appropriation..... \$65,494,000

Special Category C Account--State Appropriation.. \$24,549,000

Transportation 2003 Account (Nickel Account)--State

 Appropriation..... \$703,708,000

Freight Mobility Multimodal Account--State

 Appropriation..... \$4,422,000

Tacoma Narrows Toll Bridge Account--State Appropriation

 \$788,000

State Route Number 520 Corridor Account--State

 Appropriation..... \$106,000,000

 TOTAL APPROPRIATION. . \$3,119,872,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire transportation 2003 account (nickel account) appropriation and the entire transportation partnership account appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document 2009-1 as developed April 24, 2009, Program - Highway Improvement Program (I). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 603 of this act.

(2) As a result of economic changes since the initial development of the improvement program budget for the 2009-11 fiscal biennium, the department has received bids on construction contracts over the last several months that are favorable with respect to current estimates of project costs. National economic forecasts indicate that inflationary pressures are likely to remain lower than previously expected for the next several years. As a result, the nominal project cost totals shown in LEAP Transportation Document 2009-1 in aggregate for the 2009-11 fiscal biennium and the 2011-13 fiscal biennium are expected to exceed the likely amount necessary to deliver the projects listed within those biennia by \$63,500,000 in the 2009-11 fiscal biennium and \$52,700,000 in the 2011-13 fiscal biennium. The appropriations provided in this section for the projects in those biennia are therefore \$63,500,000 less in the 2009-11 fiscal biennium and \$52,700,000 less in the 2011-13 fiscal biennium than the aggregate total of project costs listed. It is the intent of the legislature that the department shall deliver the projects listed in LEAP Transportation Document 2009-1 within the time, scope, and budgets identified in that document, provided that the prices of commodities used in transportation projects do not differ significantly from those assumed for the 2009-11 and 2011-13 fiscal biennia in the March 2009 forecast of the economic and revenue forecast council.

(3) \$162,900,000 of the transportation partnership account--state appropriation and \$106,000,000 of the state route number 520 corridor account--state appropriation are provided solely for the state route number 520 bridge replacement and HOV project. The department shall submit an application for the eastside transit and HOV project to the supplemental discretionary grant program for regionally significant projects as provided in the American Recovery and Reinvestment Act of 2009. Eastside state route number 520 improvements shall be designed and constructed to accommodate a future full interchange at 124th Avenue Northeast. Concurrent with the eastside transit and HOV project, the department shall conduct engineering design of a full interchange at 124th Avenue Northeast. The amount provided in this subsection is contingent on the enactment of (a) Engrossed Substitute House Bill No. 2211 and (b) either Engrossed Substitute House Bill No. 2326 or other legislation authorizing bonds for the state route number 520 corridor projects. If the conditions of this subsection are not satisfied, the state route number 520 corridor account--state appropriation shall lapse.

(4) As required under section 305(6), chapter 518, Laws of 2007, the department shall report by January 2010 to the transportation committees of the legislature on the findings of the King county noise reduction solutions pilot project.

(5) Funding allocated for mitigation costs is provided solely for the purpose of project impact mitigation, and shall not be used to develop or otherwise participate in the environmental assessment process.

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(6) The department shall apply for surface transportation program (STP) enhancement funds to be expended in lieu of or in addition to state funds for eligible costs of projects in Programs I and P including, but not limited to, the SR 518, SR 520, Columbia river crossing, and Alaskan Way viaduct projects.

(7) The department shall, on a quarterly basis beginning July 1, 2009, provide to the office of financial management and the legislature reports providing the status on each active project funded in part or whole by the transportation 2003 account (nickel account) or the transportation partnership account. Funding provided at a programmatic level for transportation partnership account and transportation 2003 account (nickel account) projects relating to bridge rail, guard rail, fish passage barrier removal, and roadside safety projects should be reported on a programmatic basis. Projects within this programmatic level funding should be completed on a priority basis and scoped to be completed within the current programmatic budget. The department shall work with the office of financial management and the transportation committees of the legislature to agree on report formatting and elements. Elements must include, but not be limited to, project scope, schedule, and costs. For new construction contracts valued at fifteen million dollars or more, the department must also use an earned value method of project monitoring. The department shall also provide the information required under this subsection on a quarterly basis via the transportation executive information systems (TEIS).

(8) The transportation 2003 account (nickel account)--state appropriation includes up to \$628,000,000 in proceeds from the sale of bonds authorized by RCW 47.10.861.

(9) The transportation partnership account--state appropriation includes up to \$1,360,528,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

(10) The special category C account--state appropriation includes up to \$22,127,000 in proceeds from the sale of bonds authorized in RCW 47.10.812.

(11) The motor vehicle account--state appropriation includes up to \$31,500,000 in proceeds from the sale of bonds authorized in RCW 47.10.843.

(12) The department must prepare a tolling study for the Columbia river crossing project. While conducting the study, the department must coordinate with the Oregon department of transportation to perform the following activities:

(a) Evaluate the potential diversion of traffic from Interstate 5 to other parts of the transportation system when tolls are implemented on Interstate 5 in the vicinity of the Columbia river;

(b) Evaluate the most advanced tolling technology to maintain travel time speed and reliability for users of the Interstate 5 bridge;

(c) Evaluate available active traffic management technology to determine the most effective options for technology that could maintain travel time speed and reliability on the Interstate 5 bridge;

(d) Confer with the project sponsor's council, as well as local and regional governing bodies adjacent to the Interstate 5 Columbia river crossing corridor and the Interstate 205 corridor regarding the implementation of tolls, the impacts that the implementation of tolls might have on the operation of the corridors, the diversion of traffic to local streets, and potential mitigation measures;

(e) Regularly report to the Washington transportation commission regarding the progress of the study for the purpose of guiding the commission's potential toll setting on the facility;

(f) Research and evaluate options for a potential toll-setting framework between the Oregon and Washington transportation commissions;

(g) Conduct public work sessions and open houses to provide information to citizens, including users of the bridge and business and freight interests, regarding implementation of tolls on the Interstate 5 and to solicit citizen views on the following items:

(i) Funding a portion of the Columbia river crossing project with tolls;

(ii) Implementing variable tolling as a way to reduce congestion on the facility; and

(iii) Tolling Interstate 205 separately as a management tool for the broader state and regional transportation system; and

(h) Provide a report to the governor and the legislature by January 2010.

(13)(a) By January 2010, the department must prepare a traffic and revenue study for Interstate 405 in King county and Snohomish county that includes funding for improvements and high occupancy toll lanes, as defined in RCW 47.56.401, for traffic management. The department must develop a plan to operate up to two high occupancy toll lanes in each direction on Interstate 405.

(b) For the facility listed in (a) of this subsection, the department must:

(i) Confer with the mayors and city councils of jurisdictions in the vicinity of the project regarding the implementation of high occupancy toll lanes and the impacts that the implementation of these high occupancy toll lanes might have on the operation of the corridor and adjacent local streets;

(ii) Conduct public work sessions and open houses to provide information to citizens regarding implementation of high occupancy toll lanes and to solicit citizen views;

(iii) Regularly report to the Washington transportation commission regarding the progress of the study for the purpose of guiding the commission's toll setting on the facility; and

(iv) Provide a report to the governor and the legislature by January 2010.

(14) \$9,199,985 of the motor vehicle account--state appropriation is provided solely for project 100224I, as identified in the LEAP transportation document in subsection (1) of this section: US 2 high priority safety project. Expenditure of these funds is for safety projects on state route number 2 between Monroe and Gold Bar, which may include median rumble strips, traffic cameras, and electronic message signs.

(15) Expenditures for the state route number 99 Alaskan Way viaduct replacement project must be made in conformance with Engrossed Substitute Senate Bill No. 5768.

(16) The department shall conduct a public outreach process to identify and respond to community concerns regarding the Belfair bypass. The process must include representatives from Mason county, the legislature, area businesses, and community members. The department shall use this process to consider and develop design alternatives that alter the project's scope so that the community's needs are met within the project budget. The department shall provide a report on the process and outcomes to the legislature by June 30, 2010.

(17) The legislature is committed to the timely completion of R8A which supports the construction of sound transit's east link. Following the completion of the independent analysis of the methodologies to value the reversible lanes on Interstate 90 which may be used for high capacity transit as directed in section 204 of this act, the department shall complete the

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process of negotiations with sound transit. Such agreement shall be completed no later than December 1, 2009.

(18) \$250,000 of the motor vehicle account--state appropriation is provided solely for the design and construction of a right turn lane to improve visibility and traffic flow on state route number 195 and Cheney-Spokane Road.

(19) \$846,700 of the motor vehicle account--federal appropriation and \$17,280 of the motor vehicle account--state appropriation are provided solely for the Westview school noise wall.

(20) \$1,360 of the motor vehicle account--state appropriation and \$35,786 of the motor vehicle account--federal appropriation are provided solely for interchange design and planning work on US 12 at A Street and Tank Farm Road.

(21) \$20,011,125 of the transportation partnership account--state appropriation, \$2,550 of the motor vehicle account--state appropriation, \$30,003,473 of the motor vehicle account--private/local appropriation, and \$1,482,066 of the motor vehicle account--federal appropriation are provided solely for the I-5/Columbia river crossing/Vancouver project. The funding described in this subsection includes a \$30,003,473 contribution from the state of Oregon.

(22) It is important that the public and policymakers have accurate and timely access to information related to the Alaskan Way viaduct replacement project as it proceeds to, and during, the construction of all aspects of the project including, but not limited to, information regarding costs, schedules, contracts, project status, and neighborhood impacts. Therefore, it is the intent of the legislature that the state, city, and county departments of transportation establish a single source of accountability for integration, coordination, tracking, and information of all requisite components of the replacement project, which must include, at a minimum:

(a) A master schedule of all subprojects included in the full replacement project or program; and

(b) A single point of contact for the public, media, stakeholders, and other interested parties.

(23) The state route number 520 corridor account--state appropriation includes up to \$106,000,000 in proceeds from the sale of bonds authorized in Engrossed Substitute House Bill No. 2326 or in legislation authorizing bonds for the state route number 520 corridor projects. If Engrossed Substitute House Bill No. 2326, or legislation authorizing bonds for the state route number 520 corridor projects, is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(24) The department shall evaluate a potential deep bore culvert for the state route number 305/Bjorgen creek fish barrier project identified as project 330514A in LEAP Transportation Document ALL PROJECTS 2009-2, as developed April 24, 2009. The department shall evaluate whether a deep bore culvert will be a less costly alternative than a traditional culvert since a traditional culvert would require extensive road detours during construction.

(25) Project number 330215A in the LEAP transportation document described in subsection (1) of this section is expanded to include safety and congestion improvements from the Key Peninsula Highway to the vicinity of Purdy. The department shall consult with the Washington traffic safety commission to ensure that this project includes improvements at intersections and along the roadway to reduce the frequency and severity of collisions related to roadway conditions and traffic congestion.

(26) \$10,600,000 of the transportation partnership account--state appropriation is provided solely for project 109040Q, the Interstate 90 Two Way Transit and HOV Improvements--Stage 2 and 3 project, as indicated in the LEAP transportation

document referenced in subsection (1) of this section. Funds shall be used solely for preliminary engineering on stages 2 and 3 of this project.

(27) The department shall continue to work with the local partners in developing transportation solutions necessary for the economic growth in the Red Mountain American Viticulture Area of Benton county.

(28) For highway construction projects where the department considers agricultural lands of long-term commercial significance, as defined in RCW 36.70A.030, in reviewing and selecting sites to meet environmental mitigation requirements under the national environmental policy act (42 U.S.C. Sec. 4321 et seq.) and the state environmental policy act (chapter 43.21C RCW), the department shall, to the greatest extent possible, consider using public land first. If public lands are not available that meet the required environmental mitigation needs, the department may use other sites while making every effort to avoid any net loss of agricultural lands that have a designation of long-term commercial significance.

(29) Within the motor vehicle account--state appropriation and motor vehicle account--federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act.

(30) Within the amounts provided in this section, \$200,000 of the transportation partnership account--state appropriation is provided solely for the department to prepare a comprehensive tolling study of the state route number 167 corridor to determine the feasibility of administering tolls within the corridor, identified as project number 316718A in the LEAP transportation document described in subsection (1) of this section. The department shall report to the joint transportation committee by September 30, 2010. The department shall regularly report to the Washington transportation commission regarding the progress of the study for the purpose of guiding the commission's potential toll setting on the facility. The elements of the study must include, at a minimum:

(a) The potential for value pricing to generate revenues for needed transportation facilities within the corridor;

(b) Maximizing the efficient operation of the corridor; and

(c) Economic considerations for future system investments.

(31) Within the amounts provided in this section, \$200,000 of the transportation partnership account--state appropriation is provided solely for the department to prepare a comprehensive tolling study of the state route number 509 corridor to determine the feasibility of administering tolls within the corridor, identified as project number 850901F in the LEAP transportation document described in subsection (1) of this section. The department shall report to the joint transportation committee by September 30, 2010. The department shall regularly report to the Washington transportation commission regarding the progress of the study for the purpose of guiding the commission's potential toll setting on the facility. The elements of the study must include, at a minimum:

(a) The potential for value pricing to generate revenues for needed transportation facilities within the corridor;

(b) Maximizing the efficient operation of the corridor; and

(c) Economic considerations for future system investments.

(32) Within the amounts provided in this section, \$28,000,000 of the transportation partnership account--state appropriation is for project 600010A, as identified in the LEAP transportation document in subsection (1) of this section: NSC-North Spokane corridor design and right-of-way - new alignment. Expenditure of these funds is for preliminary engineering and right-of-way purchasing to prepare for four lanes to be built from where existing construction ends at

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Francis Avenue for three miles to the Spokane river. Additionally, any savings realized on project 600001A, as identified in the LEAP transportation document in subsection (1) of this section: US 395/NSC-Francis Avenue to Farwell Road - New Alignment, must be applied to project 600010A.

(33) \$400,000 of the motor vehicle account--state appropriation is provided solely for the department to conduct a state route number 2 route development plan that will identify essential improvements needed between the port of Everett/Naval station and approaching the state route number 9 interchange near the city of Snohomish.

(34) If the SR 26 - Intersection and Illumination Improvements are not completed by June 30, 2009, the department shall ensure that the improvements are completed as soon as practicable after June 30, 2009, and shall submit monthly progress reports on the improvements beginning July 1, 2009.

(35) \$200,000 of the transportation partnership account--state appropriation, identified on project number 400506A in the LEAP transportation document described in subsection (1) of this section, is provided solely for the department to work with the department of archaeology and historic preservation to ensure that the cultural resources investigation is properly conducted on the Columbia river crossing project. This project must be conducted with active archaeological management and result in one report that spans the single cultural area in Oregon and Washington. Additionally, the department shall establish a scientific peer review of independent archaeologists that are knowledgeable about the region and its cultural resources.

(36) The department shall work with the department of archaeology and historic preservation to ensure that the cultural resources investigation is properly conducted on all mega-highway projects and large ferry terminal projects. These projects must be conducted with active archaeological management. Additionally, the department shall establish a scientific peer review of independent archaeologists that are knowledgeable about the region and its cultural resources.

(37) Within the amounts provided in this section, \$1,500,000 of the motor vehicle account--state appropriation is provided solely for necessary work along the south side of SR 532, identified as project number 053255C in the LEAP transportation document described in subsection (1) of this section.

(38) \$10,000,000 of the transportation partnership account--state appropriation is provided solely for the Spokane street viaduct portion of project 809936Z, SR 99/Alaskan Way Viaduct - Replacement project as indicated in the LEAP transportation document referenced in subsection (1) of this section.

(39) The department shall conduct a public outreach process to identify and respond to community concerns regarding the portion of John's Creek Road that connects state route number 3 and state route number 101. The process must include representatives from Mason county, the legislature, area businesses, and community members. The department shall use this process to consider, develop, and design a project scope so that the community's needs are met for the lowest cost. The department shall provide a report on the process and outcomes to the legislature by June 30, 2010.

(40) The department shall apply for the competitive portion of federal transit administration funds for eligible transit-related costs of the state route number 520 bridge replacement and HOV project and the Columbia river crossing project. The federal funds described in this subsection must not include those federal transit administration funds distributed by formula. The

department shall provide a report regarding this effort to the legislature by January 1, 2010.

NEW SECTION. Sec. 307. FOR THE DEPARTMENT OF TRANSPORTATION--PRESERVATION--PROGRAM P

Transportation Partnership Account--State	
Appropriation.....	\$103,077,000
Motor Vehicle Account--State Appropriation.	\$88,142,000
Motor Vehicle Account--Federal Appropriation.	\$524,954,000
Motor Vehicle Account--Private/Local Appropriation	
.....	\$6,417,000
Transportation 2003 Account (Nickel Account)--State	
Appropriation.....	\$7,237,000
Puyallup Tribal Settlement Account--State	
Appropriation.....	\$6,500,000
TOTAL APPROPRIATION.	\$736,327,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire transportation 2003 account (nickel account) appropriation and the entire transportation partnership account appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document 2009-1 as developed April 24, 2009, Program - Highway Preservation Program (P). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 603 of this act.

(2) \$544,639 of the motor vehicle account--federal appropriation and \$455,361 of the motor vehicle account--state appropriation are provided solely for project 602110F, as identified in the LEAP transportation document in subsection (1) of this section: SR 21/Keller ferry boat - Preservation. Funds are provided solely for preservation work on the existing vessel, the Martha S.

(3) The department shall apply for surface transportation program (STP) enhancement funds to be expended in lieu of or in addition to state funds for eligible costs of projects in Programs I and P.

(4) \$6,500,000 of the Puyallup tribal settlement account--state appropriation is provided solely for mitigation costs associated with the Murray Morgan/11th Street bridge demolition. The department may negotiate with the city of Tacoma for the purpose of transferring ownership of the Murray Morgan/11th Street bridge to the city. If the city agrees to accept ownership of the bridge, the department may use the Puyallup tribal settlement account appropriation and other appropriated funds for bridge rehabilitation, bridge replacement, bridge demolition, and related mitigation. The department's participation, including prior expenditures, may not exceed \$39,953,000. Funds may not be expended unless the city of Tacoma agrees to take ownership of the bridge in its entirety and provides that the payment of these funds extinguishes any real or implied agreements regarding future bridge expenditures.

(5) The department and the city of Tacoma must present to the legislature an agreement on the timing of the transfer of ownership of the Murray Morgan/11th Street bridge and any additional necessary state funding required to achieve the transfer and rehabilitation of the bridge by January 1, 2010.

(6) The department shall, on a quarterly basis beginning July 1, 2009, provide to the office of financial management and the legislature reports providing the status on each active project funded in part or whole by the transportation 2003 account (nickel account) or the transportation partnership account. Funding provided at a programmatic level for transportation

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partnership account projects relating to seismic bridges should be reported on a programmatic basis. Projects within this programmatic level funding should be completed on a priority basis and scoped to be completed within the current programmatic budget. The department shall work with the office of financial management and the transportation committees of the legislature to agree on report formatting and elements. Elements must include, but not be limited to, project scope, schedule, and costs. For new construction contracts valued at fifteen million dollars or more, the department must also use an earned value method of project monitoring. The department shall also provide the information required under this subsection on a quarterly basis via the transportation executive information systems (TEIS).

(7) The department of transportation shall continue to implement the lowest life cycle cost planning approach to pavement management throughout the state to encourage the most effective and efficient use of pavement preservation funds. Emphasis should be placed on increasing the number of roads addressed on time and reducing the number of roads past due.

(8)(a) The department shall conduct an analysis of state highway pavement replacement needs for the next ten years. The report must include:

(i) The current backlog of asphalt and concrete pavement preservation projects;

(ii) The level of investment needed to reduce or eliminate the backlog and resume the lowest life-cycle cost;

(iii) Strategies for addressing the recent rapid escalation of asphalt prices, including alternatives to using hot mix asphalt;

(iv) Criteria for determining which type of pavement will be used for specific projects, including annualized cost per mile, traffic volume per lane mile, and heavy truck traffic volume per lane mile; and

(v) The use of recycled asphalt and concrete in state highway construction and the effect on highway pavement replacement needs.

(b) Additionally, the department shall work with the department of ecology, the county road administration board, and the transportation improvement board to explore and explain the potential use of permeable asphalt and concrete pavement in state highway construction as an alternative method of storm water mitigation and the potential effects on highway pavement replacement needs.

(c) The department shall submit the report to the office of financial management and the transportation committees of the legislature by December 1, 2010, in order to inform the development of the 2011-13 omnibus transportation appropriations act.

(9) \$1,722 of the motor vehicle account--state appropriation, \$9,608,115 of the motor vehicle account--federal appropriation, and \$272,141 of the transportation partnership account--state appropriation are provided solely for the SR 104/Hood Canal bridge - replace east half project, identified as project 310407B in the LEAP transportation document described in subsection (1) of this section.

(10) Within the motor vehicle account--state appropriation and motor vehicle account--federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act.

(11) Within the amounts provided in this section, \$1,510,000 of the motor vehicle account--state appropriation is provided solely to complete the rehabilitation of the SR 532/84th Avenue NW bridge deck.

(12) \$1,500,000 of the motor vehicle account--federal appropriation is provided solely for the environmental impact

statement and preliminary planning for the replacement of the state route number 9 Snohomish river bridge.

NEW SECTION. Sec. 308. FOR THE DEPARTMENT OF TRANSPORTATION--TRAFFIC OPERATIONS--PROGRAM Q--CAPITAL

Motor Vehicle Account--State Appropriation. \$6,394,000
 Motor Vehicle Account--Federal Appropriation. \$9,262,000
 TOTAL APPROPRIATION. \$15,656,000

NEW SECTION. Sec. 309. FOR THE DEPARTMENT OF TRANSPORTATION--WASHINGTON STATE FERRIES CONSTRUCTION--PROGRAM W

Puget Sound Capital Construction Account--State
 Appropriation. \$118,752,000
 Puget Sound Capital Construction Account--Federal
 Appropriation. \$38,306,000
 Puget Sound Capital Construction Account--Local
 Appropriation. \$8,492,000
 Transportation 2003 Account (Nickel Account)--State
 Appropriation. \$51,734,000
 Transportation Partnership Account--State
 Appropriation. \$67,234,000
 Multimodal Transportation Account--State Appropriation
 \$170,000
 TOTAL APPROPRIATION. \$284,688,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$118,752,000 of the Puget Sound capital construction account--state appropriation, \$38,306,000 of the Puget Sound capital construction account--federal appropriation, \$8,492,000 of the Puget Sound capital construction account--local appropriation, \$67,234,000 of the transportation partnership account--state appropriation, \$51,734,000 of the transportation 2003 account (nickel account)--state appropriation, and \$170,000 of the multimodal transportation account--state appropriation are provided solely for ferry capital projects, project support, and administration as listed in LEAP Transportation Document ALL PROJECTS 2009-2 as developed April 24, 2009, Program -Ferries Construction Program (W). Of the total appropriation, a maximum of \$10,627,000 may be used for administrative support, a maximum of \$8,184,000 may be used for terminal project support, and a maximum of \$4,497,000 may be used for vessel project support.

(2) \$51,734,000 of the transportation 2003 account (nickel account)--state appropriation and \$63,100,000 of the transportation partnership account--state appropriation are provided solely for the acquisition of three new Island Home class ferry vessels subject to the conditions of RCW 47.56.780. The department shall pursue a contract for the second and third Island Home class ferry vessels with an option to purchase a fourth Island Home class ferry vessel. However, if sufficient resources are available to build one 144-auto vessel prior to exercising the option to build the fourth Island Home class ferry vessel, procurement of the fourth Island Home class ferry vessel will be postponed and the department shall pursue procurement of a 144-auto vessel.

(a) The first two Island Home class ferry vessels must be placed on the Port Townsend-Keystone route.

(b) The department may add additional passenger capacity to one of the Island Home class ferry vessels to make it more flexible within the system in the future, if doing so does not require additional staffing on the vessel.

(c) Cost savings from the following initiatives will be included in the funding of these vessels: The department's review and update of the vessel life-cycle cost model as required

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under this section; and the implementation of technology efficiencies as required under section 602 of this act.

(3) \$2,450,000 of the Puget Sound capital construction account--state appropriation is provided solely for contingencies associated with closing out the existing contract for the technical design of the 144-auto vessel and the storage and maintenance of vessel owner-furnished equipment already procured. The department shall use as much of the already procured equipment as is practicable on the Island Home class ferry vessel if it is likely to be obsolete before it is used in procured 144-auto vessels.

(4) \$6,300,000 of the Puget Sound capital construction account--state appropriation is provided solely for emergency capital costs.

(5) The Anacortes terminal may be replaced if additional federal funds are sought and received by the department. If federal funds received are not sufficient to replace the terminal, only usable, discrete phases of the project, up to the amount of federal funds received, may be constructed with the funds.

(6) \$3,965,000 of the Puget Sound capital construction account--state appropriation is provided solely for the following vessel projects: Waste heat recovery pilot project; steering gear ventilation pilot project; and a new propulsion system for the MV Yakima. Before beginning these projects, the Washington state ferries must ensure the vessels' out-of-service time does not negatively impact service to the system.

(7) The department shall pursue purchasing a foreign-flagged vessel for service on the Anacortes, Washington to Sidney, British Columbia ferry route.

(8) The department shall provide to the office of financial management and the legislature quarterly reports providing the status on each project listed in this section and in the project lists submitted pursuant to this act and on any additional projects for which the department has expended funds during the 2009-11 fiscal biennium. Elements must include, but not be limited to, project scope, schedule, and costs. The department shall also provide the information required under this subsection via the transportation executive information systems (TEIS). The quarterly report regarding the status of projects identified on the list referenced in subsection (1) of this section must be developed according to an earned value method of project monitoring.

(9) The department shall review and adjust its capital program staffing levels to ensure staffing is at the most efficient level necessary to implement the capital program in the omnibus transportation appropriations act. The Washington state ferries shall report this review and adjustment to the office of financial management and the house and senate transportation committees of the legislature by July 2009.

(10) \$3,763,000 of the total appropriation is provided solely for the Washington state ferries to develop a reservation system. The department shall complete a predesign study and present the study to the joint transportation committee by November 1, 2009. This analysis must include an evaluation of the compatibility of the Washington state ferries' electronic fare system, proposed reservation system, and the implementation of smart card. The department may not implement a statewide reservation system until the department is authorized to do so in the 2010 supplemental omnibus transportation appropriations act.

(11) \$1,200,000 of the total appropriation is provided solely for improving the toll booth configuration at the Port Townsend and Keystone ferry terminals.

(12) \$3,249,915 of the total appropriation is provided solely for continued permitting and archaeological work in order to

determine the feasibility of relocating the Mukilteo ferry terminal. In order to ensure that the cultural resources investigation is properly conducted in a coordinated fashion, the department shall work with the department of archaeology and historic preservation and shall conduct work with active archaeological management. The department shall seek additional federal funding for this project.

(13) The department shall develop a proposed ferry vessel maintenance, preservation, and improvement program and present it to the transportation committees of the legislature by July 1, 2010. The proposal must:

(a) Improve the basis for budgeting vessel maintenance, preservation, and improvement costs and for projecting those costs into a sixteen-year financial plan;

(b) Limit the amount of planned out-of-service time to the greatest extent possible, including options associated with department staff as well as commercial shipyards. At a minimum, the department shall consider the following:

(i) The costs compared to benefits of Eagle Harbor repair and maintenance facility operations options to include staffing costs and benefits in terms of reduced out-of-service time;

(ii) The maintenance requirements for on-vessel staff, including the benefits of a systemwide standard;

(iii) The costs compared to benefits of staff performing preservation or maintenance work, or both, while the vessel is underway, tied up between sailings, or not deployed;

(iv) A review of the department's vessel maintenance, preservation, and improvement program contracting process and contractual requirements;

(v) The costs compared to benefits of allowing for increased costs associated with expedited delivery;

(vi) A method for comparing the anticipated out-of-service time of proposed projects and other projects planned during the same construction period;

(vii) Coordination with required United States coast guard dry dockings;

(viii) A method for comparing how proposed projects relate to the service requirements of the route on which the vessel normally operates; and

(ix) A method for evaluating the ongoing maintenance and preservation costs associated with proposed improvement projects; and

(c) Be based on the service plan in the capital plan, recognizing that vessel preservation and improvement needs may vary by route.

(14) \$247,000 of the Puget Sound capital construction account--state appropriation is provided solely for the Washington state ferries to review and update its vessel life-cycle cost model and report the results to the house of representatives and senate transportation committees of the legislature by December 1, 2009. This review will evaluate the impact of the planned out-of-service periods scheduled for each vessel on the ability of the overall system to deliver uninterrupted service and will assess the risk of service disruption from unscheduled maintenance or longer than planned maintenance periods.

(15) The department shall work with the department of archaeology and historic preservation to ensure that the cultural resources investigation is properly conducted on all large ferry terminal projects. These projects must be conducted with active archaeological management. Additionally, the department shall establish a scientific peer review of independent archaeologists that are knowledgeable about the region and its cultural resources.

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(16) The Puget Sound capital construction account--state appropriation includes up to \$118,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.843.

NEW SECTION. Sec. 310. FOR THE DEPARTMENT OF TRANSPORTATION--RAIL--PROGRAM Y--CAPITAL

Essential Rail Assistance Account--State Appropriation	
.....	\$675,000
Transportation Infrastructure Account--State	
Appropriation.....	\$13,100,000
Multimodal Transportation Account--State	
Appropriation.....	\$68,530,000
Multimodal Transportation Account--Federal	
Appropriation.....	\$16,054,000
Multimodal Transportation Account--Private/Local	
Appropriation.....	\$81,000
TOTAL APPROPRIATION.....	\$98,440,000

The appropriations in this section are subject to the following conditions and limitations:

(1)(a) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document ALL PROJECTS 2009-2 as developed April 24, 2009, Program - Rail Capital Program (Y). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 603 of this act.

(b)(i) Within the amounts provided in this section, \$116,000 of the transportation infrastructure account--state appropriation is for a low-interest loan through the freight rail investment bank program to the Port of Ephrata for rehabilitation of a rail spur.

(ii) Within the amounts provided in this section, \$1,200,000 of the transportation infrastructure account--state appropriation is for a low-interest loan through the freight rail investment bank program to the Port of Everett for a new rail track to connect a cement loading facility to the mainline.

(iii) Within the amounts provided in this section, \$3,684,000 of the transportation infrastructure account--state appropriation is for a low-interest loan through the freight rail investment bank program to the Port of Quincy for construction of a rail loop.

(iv) The department shall issue the loans referenced in this subsection (1)(b) with a repayment period of no more than ten years, and only so much interest as is necessary to recoup the department's costs to administer the loans.

(c)(i) Within the amounts provided in this section, \$1,712,022 of the multimodal transportation account--state appropriation and \$175,000 of the essential rail assistance account--state appropriation are for statewide - emergent freight rail assistance projects as follows: Port of Ephrata/Ephrata - additional spur rehabilitation (BIN 722710A) \$362,746; Tacoma Rail/Tacoma - new refinery spur tracks (BIN 711010A) \$420,000; CW Line/Lincoln County - grade crossing rehabilitation (BIN 700610A) \$370,650; Clark County owned railroad/Vancouver - track rehabilitation (BIN 710110A) \$366,813; Tacoma Rail/Tacoma - improved locomotive facility (BIN 711010B) \$366,813.

(ii) Within the amounts provided in this section, \$500,000 of the essential rail assistance account--state appropriation and \$25,000 of the multimodal transportation account--state appropriation are for a statewide - emergent freight rail assistance project grant for the Tacoma Rail/Roy - new connection to BNSF and Yelm (BIN 711310A) project, provided that the grantee first executes a written instrument that imposes on the grantee the obligation to repay the grant within

thirty days in the event that the grantee discontinues or significantly diminishes service along the line within a period of five years from the date that the grant is awarded.

(iii) Within the amounts provided in this section, \$337,978 of the multimodal transportation account--state appropriation is for a statewide - emergent freight rail assistance project grant for the Lincoln County PDA/Creston - new rail spur (BIN 710510A) project, provided that the grantee first documents to the satisfaction of the department sufficient commitments from the new shipper or shippers to locate in the publicly owned industrial park west of Creston to ensure that the net present value of the public benefits of the project is greater than the grant amount.

(d) Within the amounts provided in this section, \$8,100,000 of the transportation infrastructure account--state appropriation is for grants to any intergovernmental entity or local rail district to which the department of transportation assigns the management and oversight responsibility for the business and economic development elements of existing operating leases on the Palouse River and Coulee City (PCC) rail lines. The PCC rail line system is made up of the CW, P&L, and PV Hooper rail lines. Business and economic development elements include such items as levels of service and business operating plans, but must not include the state's oversight of railroad regulatory compliance, rail infrastructure condition, or real property management issues. The PCC rail system must be managed in a self-sustaining manner and best efforts must be used to ensure that it does not require state capital or operating subsidy beyond the level of state funding expended on it to date. The assignment of the stated responsibilities to an intergovernmental entity or rail district must be on terms and conditions as the department of transportation and the intergovernmental entity or rail district mutually agree. The grant funds may be used only to refurbish the rail lines. It is the intent of the legislature to make the funds appropriated in this section available as grants to an intergovernmental entity or local rail district for the purposes stated in this section at least until June 30, 2012, and to reappropriate as necessary any portion of the appropriation in this section that is not used by June 30, 2011.

(2)(a) The department shall issue a call for projects for the freight rail investment bank program and the emergent freight rail assistance program, and shall evaluate the applications according to the cost benefit methodology developed during the 2008 interim using the legislative priorities specified in (c) of this subsection. By November 1, 2010, the department shall submit a prioritized list of recommended projects to the office of financial management and the transportation committees of the legislature.

(b) When the department identifies a prospective rail project that may have strategic significance for the state, or at the request of a proponent of a prospective rail project or a member of the legislature, the department shall evaluate the prospective project according to the cost benefit methodology developed during the 2008 interim using the legislative priorities specified in (c) of this subsection. The department shall report its cost benefit evaluation of the prospective rail project, as well as the department's best estimate of an appropriate construction schedule and total project costs, to the office of financial management and the transportation committees of the legislature.

(c) The legislative priorities to be used in the cost benefit methodology are, in order of relative importance:

(i) Economic, safety, or environmental advantages of freight movement by rail compared to alternative modes;

- (ii) Self-sustaining economic development that creates family-wage jobs;
- (iii) Preservation of transportation corridors that would otherwise be lost;
- (iv) Increased access to efficient and cost-effective transport to market for Washington's agricultural and industrial products;
- (v) Better integration and cooperation within the regional, national, and international systems of freight distribution; and
- (vi) Mitigation of impacts of increased rail traffic on communities.

(3) The department is directed to seek the use of unprogrammed federal rail crossing funds to be expended in lieu of or in addition to state funds for eligible costs of projects in program Y.

(4) At the earliest possible date, the department shall apply, and assist ports and local jurisdictions in applying, for any federal funding that may be available for any projects that may qualify for such federal funding. State projects must be (a) currently identified on the project list referenced in subsection (1)(a) of this section or (b) projects for which no state match is required to complete the project. Local or port projects must not require additional state funding in order to complete the project, with the exception of (c) state funds currently appropriated for such project if currently identified on the project list referenced in subsection (1)(a) of this section or (d) potential grants awarded in the competitive grant process for the essential rail assistance program. If the department receives any federal funding, the department is authorized to obligate and spend the federal funds in accordance with federal law. To the extent permissible by federal law, federal funds may be used (e) in addition to state funds appropriated for projects currently identified on the project list referenced in subsection (1)(a) of this section in order to advance funding from future biennia for such project(s) or (f) in lieu of state funds; however, the state funds must be redirected within the rail capital program to advance funding for other projects currently identified on the project list referenced in subsection (1)(a) of this section. State funds may be redirected only upon consultation with the transportation committees of the legislature and the office of financial management, and approval by the director of the office of financial management. The department shall spend the federal funds before the state funds, and shall consult the office of financial management and the transportation committees of the legislature regarding project scope changes.

(5) The department shall provide quarterly reports to the office of financial management and the transportation committees of the legislature regarding applications that the department submits for federal funds, the status of such applications, and the status of projects identified on the list referenced in subsection (1)(a) of this section. The quarterly report regarding the status of projects identified on the list referenced in subsection (1)(a) of this section must be developed according to an earned value method of project monitoring.

(6) The multimodal transportation account--state appropriation includes up to \$20,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.867.

(7) When the balance of that portion of the miscellaneous program account apportioned to the department for the grain train program reaches \$1,180,000, the department shall acquire twenty-nine additional grain train railcars.

NEW SECTION. Sec. 311. FOR THE DEPARTMENT OF TRANSPORTATION--LOCAL PROGRAMS--PROGRAM Z--CAPITAL

Highway Infrastructure Account--State Appropriation. \$207,000
 Highway Infrastructure Account--Federal

Appropriation.....	\$1,602,000
Freight Mobility Investment Account--State	
Appropriation.....	\$13,548,000
Transportation Partnership Account--State	
Appropriation.....	\$8,863,000
Motor Vehicle Account--State Appropriation. . . .	\$12,954,000
Motor Vehicle Account--Federal Appropriation. . .	\$39,572,000
Freight Mobility Multimodal Account--State	
Appropriation.....	\$14,920,000
Freight Mobility Multimodal Account--Local	
Appropriation.....	\$3,135,000
Multimodal Transportation Account--Federal	
Appropriation.....	\$2,098,000
Multimodal Transportation Account--State	
Appropriation.....	\$28,262,000
Transportation 2003 Account (Nickel Account)--State	
Appropriation.....	\$709,000
Passenger Ferry Account--State Appropriation. . . .	\$2,879,000
TOTAL APPROPRIATION. . . .	\$128,749,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall, on a quarterly basis, provide status reports to the legislature on the delivery of projects as outlined in the project lists incorporated in this section. For projects funded by new revenue in the 2003 and 2005 transportation packages, reporting elements shall include, but not be limited to, project scope, schedule, and costs. Other projects may be reported on a programmatic basis. The department shall also provide the information required under this subsection on a quarterly basis via the transportation executive information system (TEIS).

(2) \$2,729,000 of the passenger ferry account--state appropriation is provided solely for near and long-term costs of capital improvements in a business plan approved by the governor for passenger ferry service.

(3) \$150,000 of the passenger ferry account--state appropriation is provided solely for the Port of Kingston for a one-time operating subsidy needed to retain a federal grant.

(4) \$3,000,000 of the motor vehicle account--federal appropriation is provided solely for the Coal Creek parkway project (L1000025).

(5) The department shall seek the use of unprogrammed federal rail crossing funds to be expended in lieu of or in addition to state funds for eligible costs of projects in local programs, program Z capital.

(6) The department shall apply for surface transportation program (STP) enhancement funds to be expended in lieu of or in addition to state funds for eligible costs of projects in local programs, program Z capital.

(7) Federal funds may be transferred from program Z to programs I and P and state funds shall be transferred from programs I and P to program Z to replace those federal funds in a dollar-for-dollar match. Fund transfers authorized under this subsection shall not affect project prioritization status. Appropriations shall initially be allotted as appropriated in this act. The department may not transfer funds as authorized under this subsection without approval of the office of financial management. The department shall submit a report on those projects receiving fund transfers to the office of financial management and the transportation committees of the legislature by December 1, 2009, and December 1, 2010.

(8) The city of Winthrop may utilize a design-build process for the Winthrop bike path project. Of the amount appropriated in this section for this project, \$500,000 of the multimodal transportation account--state appropriation is contingent upon

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the state receiving from the city of Winthrop \$500,000 in federal funds awarded to the city of Winthrop by its local planning organization.

(9) \$18,182,113 of the multimodal transportation account--state appropriation, \$8,753,895 of the motor vehicle account--federal appropriation, and \$4,000,000 of the transportation partnership account--state appropriation are provided solely for the pedestrian and bicycle safety program projects and safe routes to schools program projects identified in LEAP Transportation Document 2009-A, pedestrian and bicycle safety program projects and safe routes to schools program projects, as developed March 30, 2009, LEAP Transportation Document 2007-A, pedestrian and bicycle safety program projects and safe routes to schools program projects, as developed April 20, 2007, and LEAP Transportation Document 2006-B, pedestrian and bicycle safety program projects and safe routes to schools program projects, as developed March 8, 2006. Projects must be allocated funding based on order of priority. The department shall review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. Any project that has been awarded funds, but does not report activity on the project within one year of the grant award must be reviewed by the department to determine whether the grant should be terminated. The department shall promptly close out grants when projects have been completed, and identify where unused grant funds remain because actual project costs were lower than estimated in the grant award.

(10) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document ALL PROJECTS 2009-2 as developed April 24, 2009, Programs - Local Program (Z).

(11) For the 2009-11 project appropriations, unless otherwise provided in this act, the director of financial management may authorize a transfer of appropriation authority between projects managed by the freight mobility strategic investment board in order for the board to manage project spending and efficiently deliver all projects in the respective program.

(12) \$913,386 of the motor vehicle account--state appropriation and \$2,858,216 of the motor vehicle account--federal appropriation are provided solely for completion of the US 101 northeast peninsula safety rest area and associated roadway improvements east of Port Angeles at the Deer Park scenic view point. The department must surplus any right-of-way previously purchased for this project near Sequim. Approval to proceed with construction is contingent on surplus of previously purchased right-of-way. \$865,000 of the motor vehicle account--state appropriation is to be placed into unallotted status until such time as the right-of-way sale is completed.

TRANSFERS AND DISTRIBUTIONS

NEW SECTION. Sec. 401. FOR THE STATE TREASURER--BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALES DISCOUNTS AND DEBT TO BE PAID BY MOTOR VEHICLE ACCOUNT AND TRANSPORTATION FUND REVENUE

Highway Bond Retirement Account Appropriation. \$742,400,000
Ferry Bond Retirement Account Appropriation. . . . \$33,771,000
Transportation Improvement Board Bond Retirement

Account--State Appropriation.	\$22,541,000
Nondebt-Limit Reimbursable Account Appropriation	
Transportation Partnership Account--State Appropriation.	\$18,400,000
Motor Vehicle Account--State Appropriation.	\$8,318,000
Transportation 2003 Account (Nickel Account)--State Appropriation.	\$901,000
Special Category C Account--State Appropriation.	\$4,116,000
Urban Arterial Trust Account--State Appropriation.	\$148,000
Transportation Improvement Account--State Appropriation	\$85,000
Multimodal Transportation Account--State Appropriation	\$41,000
	\$283,000
TOTAL APPROPRIATION.	\$831,004,000

NEW SECTION. Sec. 402. FOR THE STATE TREASURER--BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALE EXPENSES AND FISCAL AGENT CHARGES

Transportation Partnership Account--State Appropriation	\$523,000
Motor Vehicle Account--State Appropriation.	\$7,000
Transportation 2003 Account (Nickel Account)--State Appropriation.	\$259,000
Special Category C Account--State Appropriation.	\$10,000
Urban Arterial Trust Account--State Appropriation.	\$5,000
Transportation Improvement Account--State Appropriation	\$3,000
Multimodal Transportation Account--State Appropriation	\$18,000
	\$18,000
TOTAL APPROPRIATION.	\$875,000

NEW SECTION. Sec. 403. FOR THE STATE TREASURER--BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR MVFT BONDS AND TRANSFERS

Motor Vehicle Account--State Appropriation:
For transfer to the Puget Sound Capital Construction Account. \$118,000,000
The department of transportation is authorized to sell up to \$118,000,000 in bonds authorized by RCW 47.10.843 for vessel and terminal acquisition, major and minor improvements, and long lead-time materials acquisition for the Washington state ferries.

NEW SECTION. Sec. 404. FOR THE STATE TREASURER--STATE REVENUES FOR DISTRIBUTION

Motor Vehicle Account Appropriation for motor vehicle fuel tax distributions to cities and counties. \$488,843,000

NEW SECTION. Sec. 405. FOR THE STATE TREASURER--TRANSFERS

Motor Vehicle Account--State Appropriation: For motor vehicle fuel tax refunds and statutory transfers. \$1,310,279,000

NEW SECTION. Sec. 406. FOR THE DEPARTMENT OF LICENSING--TRANSFERS

Motor Vehicle Account--State Appropriation: For motor vehicle fuel tax refunds and transfers. \$129,178,000

NEW SECTION. Sec. 407. FOR THE STATE TREASURER--ADMINISTRATIVE TRANSFERS

(1) Tacoma Narrows Toll Bridge Account--State Appropriation: For transfer to the Motor Vehicle Account--State. \$5,288,000

- (2) Motor Vehicle Account--State Appropriation:
For transfer to the Puget Sound Ferry Operations
Account--State. \$17,000,000
- (3) Recreational Vehicle Account--State
Appropriation: For transfer to the Motor Vehicle
Account--State. \$2,000,000
- (4) License Plate Technology Account--State
Appropriation: For transfer to the Motor Vehicle
Account--State. \$2,750,000
- (5) Multimodal Transportation Account--State
Appropriation: For transfer to the Puget Sound
Ferry Operations Account--State. \$9,000,000
- (6) Highway Safety Account--State Appropriation:
For transfer to the Multimodal Transportation
Account--State. \$18,750,000
- (7) Department of Licensing Services Account--State
Appropriation: For transfer to the Motor Vehicle
Account--State. \$2,000,000
- (8) Advanced Right-of-Way Account: For transfer
to the Motor Vehicle Account--State. \$14,000,000
- (9) Motor Vehicle Account--State Appropriation:
For transfer to the Transportation Partnership
Account--State. \$8,000,000

The transfers identified in this section are subject to the following conditions and limitations: The amount transferred in subsection (1) of this section represents repayment of operating loans and reserve payments provided to the Tacoma Narrows toll bridge account from the motor vehicle account in the 2005-07 fiscal biennium.

NEW SECTION. Sec. 408. STATUTORY APPROPRIATIONS. In addition to the amounts appropriated in this act for revenue for distribution, state contributions to the law enforcement officers' and firefighters' retirement system, and bond retirement and interest including ongoing bond registration and transfer charges, transfers, interest on registered warrants, and certificates of indebtedness, there is also appropriated such further amounts as may be required or available for these purposes under any statutory formula or under any proper bond covenant made under law.

NEW SECTION. Sec. 409. The department of transportation is authorized to undertake federal advance construction projects under the provisions of 23 U.S.C. Sec. 115 in order to maintain progress in meeting approved highway construction and preservation objectives. The legislature recognizes that the use of state funds may be required to temporarily fund expenditures of the federal appropriations for the highway construction and preservation programs for federal advance construction projects prior to conversion to federal funding.

COMPENSATION

NEW SECTION. Sec. 501. FOR THE OFFICE OF FINANCIAL MANAGEMENT--REVISED PENSION CONTRIBUTION RATES

- Aeronautics Account--State. (\$40,000)
- Grade Crossing Protective Account--State. (\$2,000)
- State Patrol Highway Account--State. (\$5,593,000)
- Motorcycle Safety Education Account--State. (\$18,000)
- High Occupancy Toll Lanes Operations Account--State
. (\$20,000)
- Rural Arterial Trust Account--State. (\$20,000)
- Wildlife Account--State. (\$16,000)
- Highway Safety Account--State. (\$1,869,000)
- Highway Safety Account--Federal. (\$56,000)

- Motor Vehicle Account--State. (\$11,348,000)
- Puget Sound Ferry Operations Account--State. (\$5,019,000)
- Urban Arterial Trust Account--State. (\$26,000)
- Transportation Improvement Account--State. (\$26,000)
- County Arterial Preservation Account--State. (\$22,000)
- Department of Licensing Services Account--State. (\$36,000)
- Multimodal Transportation Account--State. (\$220,000)
- Tacoma Narrows Toll Bridge Account--State. (\$28,000)
- Puget Sound Capital Construction Account--State. (\$459,000)
- Motor Vehicle Account--Federal. (\$8,791,000)

Appropriations are adjusted to reflect changes to appropriations to reflect savings resulting from pension funding. The office of financial management shall update agency appropriations schedules to reflect the changes to funding levels in this section as identified by agency and fund in LEAP transportation document Z9R-2009. From the applicable accounts, the office of financial management shall adjust allotments to the respective agencies by an amount that conforms with funding adjustments enacted in the 2009-11 omnibus operating appropriations act. Any allotment reductions under this section shall be placed in reserve status and remain unexpended.

NEW SECTION. Sec. 502. FOR THE OFFICE OF FINANCIAL MANAGEMENT--REVISED EMPLOYER HEALTH BENEFIT RATES

- Aeronautics Account--State. \$9,000
- State Patrol Highway Account--State. \$1,537,000
- Motorcycle Safety Education Account--State. \$6,000
- Puget Sound Capital Construction--State. \$85,000
- High Occupancy Toll Lanes Operations Account--State. \$5,000
- Rural Arterial Trust Account--State. \$3,000
- Wildlife Account--State. \$4,000
- Highway Safety Account--State. \$644,000
- Highway Safety Account--Federal. \$14,000
- Motor Vehicle Account--State. \$2,886,000
- Puget Sound Ferry Operations Account--State. \$1,311,000
- Urban Arterial Trust Account--State. \$5,000
- Transportation Improvement Account--State. \$5,000
- County Arterial Preservation Account--State. \$4,000
- Department of Licensing Services Account--State. \$6,000
- Multimodal Transportation Account--State. \$43,000
- Tacoma Narrows Toll Bridge Account--State. \$7,000
- Motor Vehicle Account--Federal. \$2,108,000

Appropriations are adjusted to reflect changes to appropriations to reflect changes in the employer cost of providing health benefit coverage. The office of financial management shall update agency appropriations schedules to reflect the changes to funding levels in this section as identified by agency and fund in LEAP transportation document 6M-2009. From the applicable accounts, the office of financial management shall adjust allotments to the respective agencies by an amount that conforms with funding adjustments enacted in the 2009-11 omnibus operating appropriations act. Any allotment reductions under this section shall be placed in reserve status and remain unexpended.

NEW SECTION. Sec. 503. COMPENSATION--INSURANCE BENEFITS. Appropriations for state agencies in this act are sufficient for nonrepresented and represented state employee health benefits for state agencies, and are subject to the following conditions and limitations:

(1)(a) The monthly employer funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan, shall not exceed \$745 per eligible employee for fiscal year 2010. For fiscal year

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2011, the monthly employer funding rate shall not exceed \$768 per eligible employee.

(b) In order to achieve the level of funding provided for health benefits, the public employees' benefits board shall require any or all of the following: Employee premium copayments; increases in point-of-service cost sharing; the implementation of managed competition; or make other changes to benefits consistent with RCW 41.05.065. During the 2009-11 fiscal biennium, the board may only authorize benefit plans and premium contributions for an employee and the employee's dependents that are the same, regardless of an employee's status as represented or nonrepresented under the personnel system reform act of 2002.

(c) The health care authority shall deposit any moneys received on behalf of the uniform medical plan as a result of rebates on prescription drugs, audits of hospitals, subrogation payments, or any other moneys recovered as a result of prior uniform medical plan claims payments into the public employees' and retirees' insurance account to be used for insurance benefits. Such receipts shall not be used for administrative expenditures.

(d) The conditions in this section apply to benefits for nonrepresented employees, employees represented by the super coalition, and represented employees outside of the super coalition, including employees represented under chapter 47.64 RCW.

(2) The health care authority, subject to the approval of the public employees' benefits board, shall provide subsidies for health benefit premiums to eligible retired or disabled public employees and school district employees who are eligible for medicare, pursuant to RCW 41.05.085. From January 1, 2010, through December 31, 2010, the subsidy shall be \$182.89. Beginning January 1, 2011, the subsidy shall be \$182.89 per month.

IMPLEMENTING PROVISIONS

NEW SECTION. Sec. 601. INFORMATION SYSTEMS PROJECTS. Agencies shall comply with the following requirements regarding information systems projects when specifically directed to do so by this act.

(1) Agency planning and decisions concerning information technology shall be made in the context of its information technology portfolio. "Information technology portfolio" means a strategic management approach in which the relationships between agency missions and information technology investments can be seen and understood, such that: Technology efforts are linked to agency objectives and business plans; the impact of new investments on existing infrastructure and business functions are assessed and understood before implementation; and agency activities are consistent with the development of an integrated, nonduplicative statewide infrastructure.

(2) Agencies shall use their information technology portfolios in making decisions on matters related to the following:

(a) System refurbishment, acquisitions, and development efforts;

(b) Setting goals and objectives for using information technology in meeting legislatively-mandated missions and business needs;

(c) Assessment of overall information processing performance, resources, and capabilities;

(d) Ensuring appropriate transfer of technological expertise for the operation of any new systems developed using external resources; and

(e) Progress toward enabling electronic access to public information.

(3) Each project will be planned and designed to take optimal advantage of Internet technologies and protocols. Agencies shall ensure that the project is in compliance with the architecture, infrastructure, principles, policies, and standards of digital government as maintained by the information services board.

(4) The agency shall produce a feasibility study for information technology projects at the direction of the information services board and in accordance with published department of information services policies and guidelines. At a minimum, such studies shall include a statement of: (a) The purpose or impetus for change; (b) the business value to the agency, including an examination and evaluation of benefits, advantages, and cost; (c) a comprehensive risk assessment based on the proposed project's impact on both citizens and state operations, its visibility, and the consequences of doing nothing; (d) the impact on agency and statewide information infrastructure; and (e) the impact of the proposed enhancements to an agency's information technology capabilities on meeting service delivery demands.

(5) The agency shall produce a comprehensive management plan for each project. The plan or plans shall address all factors critical to successful completion of each project. The plan(s) shall include, but is not limited to, the following elements: A description of the problem or opportunity that the information technology project is intended to address; a statement of project objectives and assumptions; a definition and schedule of phases, tasks, and activities to be accomplished; and the estimated cost of each phase. The planning for the phased approach shall be such that the business case justification for a project needs to demonstrate how the project recovers cost or adds measurable value or positive cost benefit to the agency's business functions within each development cycle.

(6) The agency shall produce quality assurance plans for information technology projects. Consistent with the direction of the information services board and the published policies and guidelines of the department of information services, the quality assurance plan shall address all factors critical to successful completion of the project and successful integration with the agency and state information technology infrastructure. At a minimum, quality assurance plans shall provide time and budget benchmarks against which project progress can be measured, a specification of quality assurance responsibilities, and a statement of reporting requirements. The quality assurance plans shall set out the functionality requirements for each phase of a project.

(7) A copy of each feasibility study, project management plan, and quality assurance plan shall be provided to the department of information services, the office of financial management, and legislative fiscal committees. The plans and studies shall demonstrate a sound business case that justifies the investment of taxpayer funds on any new project, an assessment of the impact of the proposed system on the existing information technology infrastructure, the disciplined use of preventative measures to mitigate risk, and the leveraging of private-sector expertise as needed. Authority to expend any funds for individual information systems projects is conditioned on the approval of the relevant feasibility study, project management plan, and quality assurance plan by the department of information services and the office of financial management.

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(8) Quality assurance status reports shall be submitted to the department of information services, the office of financial management, and legislative fiscal committees at intervals specified in the project's quality assurance plan.

NEW SECTION. Sec. 602. Transportation agencies shall consider some or all of the following strategies to achieve savings on information technology expenditures: (a) Holistic virtualization strategies; (b) wide-area network optimization strategies; (c) replacement of traditional telephone communications systems with alternatives; and (d) migration of external voice mail systems to internal voice mail systems. Agencies shall select an experienced firm from the prequalified contractors on the department of information services ITPS master agreement to develop a consolidated strategy and plan to achieve these strategies. By December 1, 2009, agencies shall report findings, including anticipated savings for the 2010 supplemental omnibus transportation appropriations act, to the office of financial management and the transportation committees of the legislature.

NEW SECTION. Sec. 603. FUND TRANSFERS. (1) The transportation 2003 projects or improvements and the 2005 transportation partnership projects or improvements are listed in LEAP Transportation Document 2009-1 as developed April 24, 2009, which consists of a list of specific projects by fund source and amount over a sixteen year period. Current fiscal biennium funding for each project is a line item appropriation, while the outer year funding allocations represent a sixteen year plan. The department is expected to use the flexibility provided in this section to assist in the delivery and completion of all transportation partnership account and transportation 2003 (nickel) account projects on the LEAP lists referenced in this act. For the 2009-11 project appropriations, unless otherwise provided in this act, the director of financial management may authorize a transfer of appropriation authority between projects funded with transportation 2003 account (nickel account) appropriations, transportation partnership account appropriations, or multimodal transportation account appropriations, in order to manage project spending and efficiently deliver all projects in the respective program under the following conditions and limitations:

(a) Transfers may only be made within each specific fund source referenced on the respective project list;

(b) Transfers from a project may not be made as a result of the reduction of the scope of a project, nor shall a transfer be made to support increases in the scope of a project;

(c) Each transfer between projects may only occur if the director of financial management finds that any resulting change will not hinder the completion of the projects as approved by the legislature. Until the legislature reconvenes to consider the 2010 supplemental budget, any unexpended 2007-09 appropriation balance as approved by the office of financial management, in consultation with the legislative staff of the house of representatives and senate transportation committees, may be considered when transferring funds between projects;

(d) Transfers from a project may be made if the funds appropriated to the project are in excess of the amount needed to complete the project;

(e) Transfers may not occur to projects not identified on the applicable project list, except for those projects that were expected to be completed in the 2007-09 fiscal biennium; and

(f) Transfers may not be made while the legislature is in session.

(2) At the time the department submits a request to transfer funds under this section a copy of the request shall be submitted to the transportation committees of the legislature.

(3) The office of financial management shall work with legislative staff of the house of representatives and senate transportation committees to review the requested transfers.

(4) The office of financial management shall document approved transfers and/or schedule changes in the transportation executive information system (TEIS), compare changes to the legislative baseline funding and schedules identified by project identification number identified in the LEAP lists adopted in this act, and transmit revised project lists to chairs of the transportation committees of the legislature on a quarterly basis.

NEW SECTION. Sec. 604. Executive Order number 05-05, archaeological and cultural resources, was issued effective November 10, 2005. Agencies and higher education institutions that issue grants or loans for capital projects shall comply with the requirements set forth in this executive order.

MISCELLANEOUS 2009-11 FISCAL BIENNIUM

Sec. 701. RCW 46.68.170 and 2007 c 518 s 701 are each amended to read as follows:

There is hereby created in the motor vehicle fund the RV account. All moneys hereafter deposited in said account shall be used by the department of transportation for the construction, maintenance, and operation of recreational vehicle sanitary disposal systems at safety rest areas in accordance with the department's highway system plan as prescribed in chapter 47.06 RCW. During the ~~((2005-2007 and))~~ 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the RV account to the motor vehicle fund such amounts as reflect the excess fund balance of the RV account to accomplish the purposes identified in this section.

Sec. 702. RCW 47.29.170 and 2007 c 518 s 702 are each amended to read as follows:

Before accepting any unsolicited project proposals, the commission must adopt rules to facilitate the acceptance, review, evaluation, and selection of unsolicited project proposals. These rules must include the following:

(1) Provisions that specify unsolicited proposals must meet predetermined criteria;

(2) Provisions governing procedures for the cessation of negotiations and consideration;

(3) Provisions outlining that unsolicited proposals are subject to a two-step process that begins with concept proposals and would only advance to the second step, which are fully detailed proposals, if the commission so directed;

(4) Provisions that require concept proposals to include at least the following information: Proposers' qualifications and experience; description of the proposed project and impact; proposed project financing; and known public benefits and opposition; and

(5) Provisions that specify the process to be followed if the commission is interested in the concept proposal, which must include provisions:

(a) Requiring that information regarding the potential project would be published for a period of not less than thirty days, during which time entities could express interest in submitting a proposal;

(b) Specifying that if letters of interest were received during the thirty days, then an additional sixty days for submission of the fully detailed proposal would be allowed; and

(c) Procedures for what will happen if there are insufficient proposals submitted or if there are no letters of interest submitted in the appropriate time frame.

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The commission may adopt other rules as necessary to avoid conflicts with existing laws, statutes, or contractual obligations of the state.

The commission may not accept or consider any unsolicited proposals before July 1, ~~((2009))~~ 2011.

NEW SECTION. Sec. 703. To the extent that any appropriation authorizes expenditures of state funds from the motor vehicle account, special category C account, Tacoma Narrows toll bridge account, transportation 2003 account (nickel account), transportation partnership account, transportation improvement account, Puget Sound capital construction account, multimodal transportation account, or other transportation capital project account in the state treasury for a state transportation program that is specified to be funded with proceeds from the sale of bonds authorized in chapter 47.10 RCW, the legislature declares that any such expenditures made prior to the issue date of the applicable transportation bonds for that state transportation program are intended to be reimbursed from proceeds of those transportation bonds in a maximum amount equal to the amount of such appropriation.

Sec. 704. RCW 46.16.685 and 2007 c 518 s 704 are each amended to read as follows:

The license plate technology account is created in the state treasury. All receipts collected under RCW 46.01.140(4)(e)(ii) must be deposited into this account. Expenditures from this account must support current and future license plate technology and systems integration upgrades for both the department and correctional industries. Moneys in the account may be spent only after appropriation. Additionally, the moneys in this account may be used to reimburse the motor vehicle account for any appropriation made to implement the digital license plate system. During the 2007-2009 and 2009-2011 fiscal ~~((biennium))~~ biennia, the legislature may transfer from the license plate technology account to the ~~((multimodal transportation))~~ highway safety account such amounts as reflect the excess fund balance of the license plate technology account.

Sec. 705. RCW 47.01.380 and 2006 c 311 s 26 are each amended to read as follows:

The department shall not commence construction on any part of the state route number 520 bridge replacement and HOV project until a record of decision has been reached providing reasonable assurance that project impacts will be avoided, minimized, or mitigated as much as practicable to protect against further adverse impacts on neighborhood environmental quality as a result of repairs and improvements made to the state route number 520 bridge and its connecting roadways, and that any such impacts will be addressed through engineering design choices, mitigation measures, or a combination of both. The requirements of this section shall not apply to off-site pontoon construction supporting the state route number 520 bridge replacement and HOV project. The requirements of this section shall not apply during the 2009-2011 fiscal biennium.

Sec. 706. RCW 47.01.390 and 2007 c 518 s 705 are each amended to read as follows:

(1) Prior to commencing construction on either project, the department of transportation must complete all of the following requirements for both the Alaskan Way viaduct and Seattle Seawall replacement project, and the state route number 520 bridge replacement and HOV project: (a) In accordance with the national environmental policy act, the department must designate the preferred alternative, prepare a substantial project mitigation plan, and complete a comprehensive cost estimate review using the department's cost estimate validation process, for each project; (b) in accordance with all applicable federal highway administration planning and project management

requirements, the department must prepare a project finance plan for each project that clearly identifies secured and anticipated fund sources, cash flow timing requirements, and project staging and phasing plans if applicable; and (c) the department must report these results for each project to the joint transportation committee.

(2) The requirements of this section shall not apply to (a) utility relocation work, and related activities, on the Alaskan Way viaduct and Seattle Seawall replacement project and (b) off-site pontoon construction supporting the state route number 520 bridge replacement and HOV project.

(3) The requirements of subsection (1) of this section shall not apply during the 2007-2009 fiscal biennium.

(4) The requirements of subsection (1) of this section shall not apply during the 2009-2011 fiscal biennium.

Sec. 707. RCW 47.60.395 and 2007 c 512 s 15 are each amended to read as follows:

(1) The joint legislative audit and review committee shall assess and report as follows:

(a) Audit the implementation of the cost allocation methodology evaluated under [section 205,] chapter 518, Laws of 2007, as it exists on July 22, 2007, assessing whether actual costs are allocated consistently with the methodology, whether there are sufficient internal controls to ensure proper allocation, and the adequacy of staff training; and

(b) Review the assignment of preservation costs and improvement costs for fiscal year 2009 to determine whether:

(i) The costs are capital costs;

(ii) The costs meet the statutory requirements for preservation activities and for improvement activities; and

(iii) Improvement costs are within the scope of legislative appropriations.

(2) The report on the evaluations in this section is due by January 31, 2010.

(3) This section expires December 31, 2010.

(4) The requirements of this section shall not apply during the 2009-2011 fiscal biennium.

Sec. 708. RCW 88.16.090 and 2008 c 128 s 4 are each amended to read as follows:

(1) A person may pilot any vessel subject to this chapter on waters covered by this chapter only if licensed to pilot such vessels on such waters under this chapter.

(2)(a) A person is eligible to be licensed as a pilot or a pilot trainee if the person:

(i) Is a citizen of the United States;

(ii) Is over the age of twenty-five years and under the age of seventy years;

(iii)(A) Holds at the time of application, as a minimum, a United States government license as master of steam or motor vessels of not more than one thousand six hundred gross register tons (three thousand international tonnage convention tons) upon oceans, near coastal waters, or inland waters; or the then most equivalent federal license as determined by the board; any such license to have been held by the applicant for a period of at least two years before application;

(B) Holds at the time of licensure as a pilot, after successful completion of the board-required training program, a first class United States endorsement without restrictions on the United States government license for the pilotage district in which the pilot applicant desires to be licensed; however, all applicants for a pilot examination scheduled to be given before July 1, 2008, must have the United States pilotage endorsement at the time of application; and

(C) The board may require that applicants and pilots have federal licenses and endorsements as it deems appropriate; and

(iv) Successfully completes a board-specified training program.

(b) In addition to the requirements of (a) of this subsection, a pilot applicant must meet such other qualifications as may be required by the board.

(c) 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) The board may establish such other training license and pilot license requirements as it deems appropriate.

(4) Pilot applicants shall be evaluated and may be ranked for entry into a board-specified training program in a manner specified by the board based on their performance on a written examination or examinations established by the board, performance on other evaluation exercises as may be required by the board, and other criteria or qualifications as may be set by the board.

When the board determines that the demand for pilots requires entry of an applicant into the training program it shall issue a training license to that applicant, but under no circumstances may an applicant be issued a training license more than four years after taking the written entry examination. The training license authorizes the trainee to do such actions as are specified in the training program.

After the completion of the training program the board shall evaluate the trainee's performance and knowledge. The board, as it deems appropriate, may then issue a pilot license, delay the issuance of the pilot license, deny the issuance of the pilot license, or require further training and evaluation.

(5) The board may (a) appoint a special independent committee or (b) contract with private or governmental entities knowledgeable and experienced in the development, administration, and grading of licensing examinations or simulator evaluations for marine pilots, or (c) do both. Active, licensed pilots designated by the board may participate in the development, administration, and grading of examinations and other evaluation exercises. If the board does appoint a special examination or evaluation development committee, it is authorized to pay the members of the committee the same compensation and travel expenses as received by members of the board. Any person who willfully gives advance knowledge of information contained on a pilot examination or other evaluation exercise is guilty of a gross misdemeanor.

(6) This subsection applies to the review of a pilot applicant's written examinations and evaluation exercises to qualify to be placed on a waiting list to become a pilot trainee. Failure to comply with the process set forth in this subsection renders the results of the pilot applicant's written examinations and evaluation exercises final. A pilot applicant may seek board review, administrative review, and judicial review of the results of the written examinations and evaluation exercises in the following manner:

(a) A pilot applicant who seeks a review of the results of his or her written examinations or evaluation exercises must request from the board-appointed or board-designated examination committee an administrative review of the results of his or her written examinations or evaluation exercises as set forth by board rule.

(b) The determination of the examination committee's review of a pilot applicant's examination results becomes final after thirty days from the date of service of written notification of the committee's determination unless a full adjudicative hearing before an administrative law judge has been requested

by the pilot applicant before the thirty-day period has expired, as set forth by board rule.

(c) When a full adjudicative hearing has been requested by the pilot applicant, the board shall request the appointment of an administrative law judge under chapter 34.12 RCW who has sufficient experience and familiarity with pilotage matters to be able to conduct a fair and impartial hearing. The hearing shall be governed by chapter 34.05 RCW. The administrative law judge shall issue an initial order.

(d) The initial order of the administrative law judge is final unless within thirty days of the date of service of the initial order the board or pilot applicant requests review of the initial order under chapter 34.05 RCW.

(e) The board may appoint a person to review the initial order and to prepare and enter a final order as governed by chapter 34.05 RCW and as set forth by board rule. The person appointed by the board under this subsection (6)(e) is called the board reviewing officer.

(7) Pilots are licensed under this section for a term of five years from and after the date of the issuance of their respective state licenses. Licenses must thereafter be renewed as a matter of course, unless the board withholds the license for good cause. Each pilot shall pay to the state treasurer an annual license fee in an amount set by the board by rule. Pursuant to RCW 43.135.055, the fees established under this subsection may be increased ((in excess of the fiscal growth factor as provided in RCW 43.135.055)) through the fiscal year ending June 30, ((2009)) 2011. The fees must be deposited in the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(8) All pilots and pilot trainees are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the pilot's or pilot trainee'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 and pilot trainees 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 pilot trainee is fully able to carry out the duties of a pilot or pilot trainee under this chapter. The board may in its discretion check with the appropriate authority for any convictions of or information regarding offenses by a licensed pilot or pilot trainee involving drugs or the personal consumption of alcohol in the prior twelve months.

(9) The board may require vessel simulator training for a pilot trainee and shall require vessel simulator training for a licensed pilot subject to RCW 88.16.105. 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.

(10) 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. Willful misrepresentation of such required information by a pilot applicant shall result in disqualification of the pilot applicant.

Sec. 709. RCW 47.12.244 and 2007 c 518 s 707 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:

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(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.

~~((+))~~ During the ~~((2007-09))~~ 2007-2009 and 2009-2011 fiscal ~~((biennium))~~ biennia, the legislature may transfer from the advance right-of-way revolving fund to the motor vehicle account amounts as reflect the excess fund balance of the advance right-of-way revolving fund.

Sec. 710. RCW 46.16.725 and 2008 c 72 s 2 are each amended to read as follows:

(1) The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.

(2) The board must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(3) Duties of the board include but are not limited to the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the senate and house transportation committees;

(b) Report annually to the senate and house transportation committees on the special license plate applications that were considered by the board;

(c) Issue approval and rejection notification letters to sponsoring organizations, the department, the chairs of the senate and house of representatives transportation committees, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application;

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The board may submit a recommendation to discontinue a special license plate series to the chairs of the senate and house of representatives transportation committees;

(e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates that an organization or a governmental entity may apply for.

(4) Except as provided in chapter 72, Laws of 2008, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, ~~((2009))~~ 2011. During this period of time, the special license plate review board created in RCW 46.16.705 and the department of licensing are prohibited from accepting, reviewing, processing, or approving any applications. Additionally, no special license plate may be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the board before February 15, 2005.

Sec. 711. RCW 46.68.060 and 2007 c 518 s 714 are each amended to read as follows:

There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which shall be deposited all moneys directed by law to be deposited therein. This fund shall be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial

responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set forth in RCW 43.59.010. During the ~~((2005-2007 and))~~ 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the highway safety fund to the motor vehicle fund and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund.

Sec. 712. RCW 46.68.220 and 2009 c 8 s 503 are each amended to read as follows:

The department of licensing services account is created in the motor vehicle fund. All receipts from service fees received under RCW 46.01.140(4)(b) shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for information and service delivery systems for the department, and for reimbursement of county licensing activities. During the 2007-2009 and 2009-2011 fiscal ~~((biennium))~~ biennia, the legislature may transfer from the department of licensing services account such amounts as reflect the excess fund balance of the account.

Sec. 713. RCW 46.61.527 and 1994 c 141 s 1 are each amended to read as follows:

(1) The secretary of transportation shall adopt standards and specifications for the use of traffic control devices in roadway construction zones on state highways. A roadway construction zone is an area where construction, repair, or maintenance work is being conducted by public employees or private contractors, on or adjacent to any public roadway. For the purpose of the pilot program referenced in section 218(2) of this act, during the 2009-2011 fiscal biennium, a roadway construction zone includes areas where public employees or private contractors are not present but where a driving condition exists that would make it unsafe to drive at higher speeds, such as, when the department is redirecting or realigning lanes on or adjacent to any public roadway pursuant to ongoing construction.

(2) No person may drive a vehicle in a roadway construction zone at a speed greater than that allowed by traffic control devices.

(3) A person found to have committed any infraction relating to speed restrictions in a roadway construction zone shall be assessed a monetary penalty equal to twice the penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended.

(4) A person who drives a vehicle in a roadway construction zone in such a manner as to endanger or be likely to endanger any persons or property, or who removes, evades, or intentionally strikes a traffic safety or control device is guilty of reckless endangerment of roadway workers. A violation of this subsection is a gross misdemeanor punishable under chapter 9A.20 RCW.

(5) The department shall suspend for sixty days the license or permit to drive or a nonresident driving privilege of a person convicted of reckless endangerment of roadway workers.

Sec. 714. RCW 46.63.170 and 2007 c 372 s 3 are each amended to read as follows:

(1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must first enact an ordinance allowing for their use to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance.

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(b) Use of automated traffic safety cameras is restricted to two-arterial intersections, railroad crossings, and school speed zones only.

(c) During the 2009-2011 fiscal biennium, automated traffic safety cameras may be used to detect speed violations for the purposes of section 201(2) of this act if the local legislative authority first enacts an ordinance authorizing the use of cameras to detect speed violations.

(d) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

~~((d))~~ (e) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (3)(a) of this section. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

~~((e))~~ (f) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

~~((f))~~ (g) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

~~((g))~~ (h) All locations where an automated traffic safety camera is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.

~~((h))~~ (i) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of

RCW ~~((3-46-120))~~ 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3). However, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device. During the 2009-2011 fiscal biennium, an automated traffic safety camera includes a camera used to detect speed violations for the purposes of section 201(2) of this act.

(6) During the 2009-2011 fiscal biennium, this section does not apply to automated traffic safety cameras for the purposes of section 218(2) of this act.

Sec. 715. RCW 47.12.080 and 1984 c 7 s 121 are each amended to read as follows:

(1) Except as provided otherwise in this section, the secretary of transportation may transfer and convey to the United States, its agencies or instrumentalities, to any other state agency, to any county or city or port district of this state, or to any public utility company, any unused state-owned real property under the jurisdiction of the department of transportation when, in the judgment of the secretary of transportation and the attorney general, the transfer and conveyance is consistent with public interest. Whenever the secretary makes an agreement for any such transfer or conveyance, and the attorney general concurs therein, the secretary shall execute and deliver unto the grantee a deed of conveyance, easement, or other instrument, duly acknowledged, as shall be necessary to fulfill the terms of the aforesaid agreement. All moneys paid to the state of Washington under

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any of the provisions hereof shall be deposited in the motor vehicle fund.

(2) Through the end of the 2009-2011 fiscal biennium, the legislature may designate property under the jurisdiction of the department as unused state-owned real property and may further designate the transfer and conveyance of the property as consistent with the public interest. Once designated under this subsection, the legislature may direct the transfer and conveyance of the property to any entity described in subsection (1) of this section for adequate consideration as deemed such by the legislature, and need not require fair market value in exchange for the property.

Sec. 716. RCW 43.19.642 and 2007 c 348 s 201 are each amended to read as follows:

(1) Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the United States environmental protection agency for on-highway diesel fuel, agencies shall use biodiesel as an additive to ultra-low sulfur diesel for lubricity, provided that the use of a lubricity additive is warranted and that the use of biodiesel is comparable in performance and cost with other available lubricity additives. The amount of biodiesel added to the ultra-low sulfur diesel fuel shall be not less than two percent.

(2) Effective June 1, 2009, state agencies are required to use a minimum of twenty percent biodiesel as compared to total volume of all diesel purchases made by the agencies for the operation of the agencies' diesel-powered vessels, vehicles, and construction equipment.

(3) All state agencies using biodiesel fuel shall, beginning on July 1, 2006, file biannual reports with the department of general administration documenting the use of the fuel and a description of how any problems encountered were resolved.

(4) For the 2009-2011 fiscal biennium, the Washington state ferries is required to use a minimum of five percent biodiesel as compared to total volume of all diesel purchases made by the Washington state ferries for the operation of the Washington state ferries diesel-powered vessels so long as the per gallon price of diesel containing a five percent biodiesel blend level does not exceed the per gallon price of diesel by more than five percent. If the per gallon price of diesel containing a five percent biodiesel blend level exceeds the per gallon price of diesel by more than five percent, the requirements of this section do not apply to vessel fuel purchases by the Washington state ferries.

(5) By December 1, 2009, the department of general administration shall:

(a) Report to the legislature on the average true price differential for biodiesel by blend and location; and

(b) Examine alternative fuel procurement methods that work to address potential market barriers for in-state biodiesel producers and report these findings to the legislature.

Sec. 717. RCW 43.19.534 and 1993 sp.s. c 20 s 1 are each amended to read as follows:

(1) State agencies, the legislature, and departments shall purchase for their use all goods and services required by the legislature, agencies, or departments that are produced or provided in whole or in part from class II inmate work programs operated by the department of corrections through state contract. These goods and services shall not be purchased from any other source unless, upon application by the department or agency: ~~((+))~~ (a) The department of general administration finds that the articles or products do not meet the reasonable requirements of the agency or department, ~~((2))~~ (b) are not of equal or better quality, or ~~((3))~~ (c) the price of the product or service is higher than that produced by the private sector. However, the criteria

contained in ~~((+))~~ (a), ~~((2))~~ (b), and ~~((3))~~ (c) of this section for purchasing goods and services from sources other than correctional industries do not apply to goods and services produced by correctional industries that primarily replace goods manufactured or services obtained from outside the state. The department of corrections and department of general administration shall adopt administrative rules that implement this section.

(2) During the 2009-2011 fiscal biennium, and in conformance with section 223(11) of this act, this section does not apply to the purchase of uniforms by the Washington state ferries.

Sec. 718. RCW 47.68.090 and 1980 c 67 s 1 are each amended to read as follows:

The department of transportation may make available its engineering and other technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports or air navigation facilities.

The department may render financial assistance by grant or loan or both to any municipality or municipalities acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities, or to any Indian tribe recognized as such by the federal government or such tribes acting jointly in the planning, acquisition, construction, improvement, maintenance or operation of an airport, owned or controlled, or to be owned or controlled by such tribe or tribes and to be held available for the general use of the public, out of appropriations made by the legislature for such purposes. Such financial assistance may be furnished in connection with federal or other financial aid for the same purposes: PROVIDED, That no grant or loan or both shall be in excess of two hundred fifty thousand dollars, or five hundred thousand dollars during the 2009-2011 fiscal biennium, for any one project: PROVIDED FURTHER, That no grant or loan or both shall be granted unless the municipality or municipalities acting jointly, or the tribe or tribes acting jointly shall from their own funds match any funds made available by the department upon such ratio as the department may prescribe.

The department is authorized to act as agent of any municipality or municipalities acting jointly or any tribe or tribes acting jointly, upon the request of such municipality or municipalities, or such tribe or tribes in accepting, receiving, receipting for and disbursing federal moneys, and other moneys public or private, made available to finance, in whole or in part, the planning, acquisition, construction, improvement, maintenance or operation of an airport or air navigation facility; and if requested by such municipality or municipalities, or tribe or tribes, may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance, or operation; and all municipalities and tribes are authorized to designate the department as their agent for the foregoing purposes. The department, as principal on behalf of the state, and any municipality on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the department upon such terms and conditions as are prescribed by the United States. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds

designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available: PROVIDED, That any landing fee or charge imposed by any Indian tribe or tribes for the privilege of use of an airport facility planned, acquired, constructed, improved, maintained, or operated with financial assistance from the department pursuant to this section must apply equally to tribal and nontribal members: PROVIDED FURTHER, That in the event any municipality or municipalities or Indian tribe or tribes, or any distributor of aircraft fuel as defined by RCW 82.42.020 which operates in any airport facility which has received financial assistance pursuant to this section, fails to collect the aircraft fuel excise tax as specified in chapter 82.42 RCW, all funds or value of technical assistance given or paid to such municipality or municipalities or Indian tribe or tribes under the provisions of this section shall revert to the department, and shall be due and payable to the department immediately.

MISCELLANEOUS

NEW SECTION. Sec. 801. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 802. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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Correct the title.
 And the bill do pass as recommended by the conference committee.
 Signed by Senators Haugen, Marr and Swecker; Representatives Clibborn and Liias.

MOTION

Senator Haugen moved that the Report of the Conference Committee on Engrossed Substitute Senate Bill No. 5352 be adopted.

The President declared the question before the Senate to be the motion by Senator Haugen that the Report of the Conference Committee on Engrossed Substitute Senate Bill No. 5352 be adopted.

The motion by Senator Haugen carried and the Report of the Conference Committee was adopted by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5352, as recommended by the Conference Committee.

Senators Haugen, Hewitt, Swecker, Jarrett and King spoke in favor of final passage of the bill.

POINT OF INQUIRY

Senator King: "Would the Senator from the Forty-First District yield to a question? The question is, if the implementation of the B-20 renewable fuel standard is delayed for Washington State Ferries as outlined in this budget, is it the intent of the Legislature to recognize that the state wide

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renewable fuel standard for bio diesel will also be delayed until the state fleet meets the B-20 renewable fuel standard?"

Senator Jarrett: "The intent of the Legislature concerning the delay or suspension of the two percent renewable fuel standard for bio diesel was codified after the passage Senate Bill No. 6508 in 2006. This bill added a new section to chapter 19.112 that provided with the governor the authority to issue an executive order suspending the two percent state wide fuel standard if it were determined technically or economically infeasible or pose a significant risk to public safety. Section 716 of ESSB 5352 alone does not prevent Washington from meeting the two percent renewable fuel standard for bio diesel. However, meeting the two percent goal of renewable fuel standard for bio diesel will still face significant challenges. This budget seeks to provide a practical bio diesel utilization requirement for the Washington State Ferry system in the near term so the challenges with bio diesel procurement supply and pricing can be addressed over the 09-11 biennium. Section 716 of ESSB 5352 maintains the original legislative intent concerning the delay or suspension of the two percent renewable fuel standard for bio diesel. Should the requirement be determined technically or economically infeasible or pose significant risk to the public the state wide two percent renewable fuel standard may be suspended by executive order and I would point out that the B-5 is only for two years and that we revert to the B-20 standard. Thank you Mr. President."

MOTION

On motion of Senator Eide, Senate Rule 15 was suspended to allow the Senate to adjourn later than 10:00 pm.

Senators Kilmer and Marr spoke in favor of final passage of the bill.

Senator Holmquist spoke against final passage of the bill.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5352, as recommended by the Conference Committee, and the bill passed the Senate by the following vote: Yeas, 41; Nays, 8; Absent, 0; Excused, 0.

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

Voting nay: Senators Holmquist, Honeyford, McCaslin, Morton, Pflug, Roach, Schoesler and Stevens

ENGROSSED SUBSTITUTE SENATE BILL NO. 5352, as recommended by the Conference Committee, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

PERSONAL PRIVILEGE

Senator Haugen: "Thank you Mr. President. Forty-nine years ago today I had my first baby and I can tell you it's taken, today has been worse than that day. It's been a very long day. I can't believe it's been forty-nine years but 'Happy Birthday Mary Beth.' I just want to say how much I appreciate the very fine work of my committee staff. I can tell you, we had two new

coordinators this year, Kelly and David. They were so extraordinary, these young men took on this challenge in a tough time and it really has been wonderful working with them and the other members of the staff. We had actually two other new members in our staff who actually were so valuable but it wasn't only our own committee staff. One of the things we started out working with really early on is working with the House. Representative Clibborn and I worked very closely together along with her staff working with our staff, and believe me, it really does make a difference. We had our non partisan staff working with us. It really did help us I think put together a budget that's really extraordinary for not only transportation but for the working people of this state. But more than anything else, more than anything else, you know we don't realize that we all like to take a lot of credit for things but it truly is the staff. They've been here night after night early in the morning spending many hours after we all go home and I just want to say to you guys, thank you so much. Here's one for you, Kelly. You've got to delegate more next year but your really great and I don't know if any more left here just let me ask them to join me and say thank you to them."

PERSONAL PRIVILEGE

Senator Swecker: "I too would like to thank the staff. I think it's important to know that we had good leadership. We have good leadership on that team and that's what makes us all effective on it. I think the good Senator from the Tenth isn't it, yes, Senator from the Tenth, for her openness and her leadership. I know that we started this process oh back over the way, it's been a number of sessions now we worked in a bipartisan fashion and I really think it has paid off big time in the state of Washington. So, thank you Madam Chair and thank you staff."

PERSONAL PRIVILEGE

Senator Marr: "Mr. President, I don't know if any other fiscal chairs treated their committee to pull pork sandwiches and apple crisps and brownies but maybe we're just fortunate. I do want to say the Chair has certainly made us part of the family and that means once in awhile we got spanked but I think, out of it, out of this whole process came a budget that we're really proud of. I do want to say and she's the first to extend the credit to staff and reflecting on something that Senator Tom said earlier, one of my first thoughts coming to the legislature after thirty years in the private sector probably like Senator Tom was, boy if I had this group of people around me in the private sector I'd have a pretty successful business. I think we all share those thoughts. These are great people who are committed to public service in state government and without them we would not be able to deliver on the promise to represent the people as well as we do. I join with Senator Haugen and Senator Swecker in terms of lauding the staff with their hard work. The thing is that even as we passed this budget we all know there work will continue on for a good amount of time in terms in figuring out what the heck we actually voted for so we want to thank the good senator and staff for great work this year."

MESSAGE FROM THE HOUSE

April 25, 2009

MR. PRESIDENT:

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The House has adopted the report of Conference Committee on SUBSTITUTE SENATE BILL NO. 5574, and has passed the bill as recommended by the Conference Committee.

And the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

REPORT OF THE CONFERENCE COMMITTEE
Substitute Senate Bill No. 5574
April 25, 2009

MR. PRESIDENT:

MR. SPEAKER:

We of your conference committee, to whom was referred Substitute Senate Bill No. 5574, have had the same under consideration and recommend that all previous amendments not be adopted and that the following striking amendment be adopted:

Strike everything after the enacting clause and insert the following:

NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Recording device" means an electronic system, and the physical device or mechanism containing the electronic system, that primarily, or incidental to its primary function, preserves or records, in electronic form, data collected by sensors or provided by other systems within a motor vehicle. "Recording device" includes event data recorders, sensing and diagnostic modules, electronic control modules, automatic crash notification systems, geographic information systems, and any other device that records and preserves data that can be accessed related to that motor vehicle. "Recording device" does not include onboard diagnostic systems whose exclusive function is to capture fault codes used to diagnose or service the motor vehicle.

(2) "Owner" means:

(a) A person having all the incidents of ownership, including legal title, of a motor vehicle, whether or not the person lends, rents, or creates a security interest in the motor vehicle;

(b) A person entitled to the possession of a motor vehicle as the purchaser under a security agreement;

(c) A person entitled to possession of a motor vehicle as a lessee pursuant to a written lease agreement for a period of more than three months; or

(d) If a third party requests access to a recording device to investigate a collision, the owner of the motor vehicle at the time the collision occurred.

NEW SECTION. Sec. 2. (1) A manufacturer of a motor vehicle sold or leased in this state, that is equipped with one or more recording devices, shall disclose in the owner's manual that the motor vehicle is equipped with one or more recording devices and, if so, the type of data recorded and whether the recording device or devices have the ability to transmit information to a central communications system or other external device.

(2) If a recording device is used as part of a subscription service, the subscription service agreement must disclose the type of information that the device may record or transmit.

(3) A disclosure made in writing is deemed a disclosure in the owner's manual.

(4) If a recording device is to be installed in a vehicle aftermarket, the manufacturer or distributor of the device shall disclose in the product manual the type of information that the device may record and whether the recording device has the

ability to transmit information to a central communications system or other external device.

(5) A disclosure made in writing is deemed a disclosure in the product manual.

NEW SECTION. Sec. 3. (1) Information recorded or transmitted by a recording device may not be retrieved, downloaded, scanned, read, or otherwise accessed by a person other than the owner of the motor vehicle in which the recording device is installed except:

(a) Upon a court order or pursuant to discovery. Any information recorded or transmitted by a recording device and obtained by a court order or pursuant to discovery is private and confidential and is not subject to public disclosure;

(b) With the consent of the owner, given for a specific instance of access, for any purpose;

(c) For improving motor vehicle safety, including medical research on the human body's reaction to motor vehicle collisions, if the identity of the motor vehicle or the owner or driver of the motor vehicle is not disclosed in connection with the retrieved information;

(d) For determining the need for or facilitating emergency medical response if a motor vehicle collision occurs, provided that the information retrieved is used solely for medical purposes; or

(e) For subscription services pursuant to an agreement in which disclosure required under section 2 of this act has been made, provided that the information retrieved is used solely for the purposes of fulfilling the subscription service.

(2) For the purposes of subsection (1)(c) of this section:

(a) The disclosure of a motor vehicle's vehicle identification number with the last six digits deleted or redacted is not a disclosure of the identity of the owner or driver; and

(b) Retrieved information may only be disclosed to a data processor.

(3) Information that can be associated with an individual and that is recorded or transmitted by a recording device may not be sold to a third party unless the owner of the information explicitly grants permission for the sale.

(4) Any person who violates this section is guilty of a misdemeanor.

NEW SECTION. Sec. 4. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying chapter 19.86 RCW.

NEW SECTION. Sec. 5. A manufacturer of a motor vehicle sold or leased in this state that is equipped with a recording device shall ensure by licensing agreement or other means that a tool or tools are available that are capable of accessing and retrieving the information stored in a recording device. The tool or tools must be commercially available no later than ninety days after the effective date of this section.

Sec. 6. RCW 46.63.020 and 2008 c 282 s 11 are each amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

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- (1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;
- (2) RCW 46.09.130 relating to operation of nonhighway vehicles;
- (3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;
- (4) RCW 46.10.130 relating to the operation of snowmobiles;
- (5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;
- (6) RCW 46.16.010 relating to the nonpayment of taxes and fees by failure to register a vehicle and falsifying residency when registering a motor vehicle;
- (7) RCW 46.16.011 relating to permitting unauthorized persons to drive;
- (8) RCW 46.16.160 relating to vehicle trip permits;
- (9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;
- (10) RCW 46.20.005 relating to driving without a valid driver's license;
- (11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;
- (12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;
- (13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;
- (14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;
- (15) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license, temporary restricted driver's license, or ignition interlock driver's license;
- (16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;
- (17) RCW 46.20.750 relating to circumventing an ignition interlock device;
- (18) RCW 46.25.170 relating to commercial driver's licenses;
- (19) Chapter 46.29 RCW relating to financial responsibility;
- (20) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (21) RCW 46.37.435 relating to wrongful installation of sunscreening material;
- (22) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;
- (23) RCW 46.37.671 through 46.37.675 relating to signal preemption devices;
- (24) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (25) RCW 46.48.175 relating to the transportation of dangerous articles;
- (26) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (27) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (28) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- (29) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

- (30) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
 - (31) RCW 46.55.035 relating to prohibited practices by tow truck operators;
 - (32) RCW 46.55.300 relating to vehicle immobilization;
 - (33) RCW 46.61.015 relating to obedience to police officers, flaggers, or firefighters;
 - (34) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
 - (35) RCW 46.61.022 relating to failure to stop and give identification to an officer;
 - (36) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
 - (37) RCW 46.61.500 relating to reckless driving;
 - (38) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
 - (39) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;
 - (40) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
 - (41) RCW 46.61.522 relating to vehicular assault;
 - (42) RCW 46.61.5249 relating to first degree negligent driving;
 - (43) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
 - (44) RCW 46.61.530 relating to racing of vehicles on highways;
 - (45) RCW 46.61.655(7) (a) and (b) relating to failure to secure a load;
 - (46) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
 - (47) RCW 46.61.740 relating to theft of motor vehicle fuel;
 - (48) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
 - (49) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
 - (50) Chapter 46.65 RCW relating to habitual traffic offenders;
 - (51) RCW 46.68.010 relating to false statements made to obtain a refund;
 - (52) Section 3 of this act relating to recording device information;
 - (53) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;
 - ~~((53))~~ (54) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
 - ~~((54))~~ (55) RCW 46.72A.060 relating to limousine carrier insurance;
 - ~~((55))~~ (56) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;
 - ~~((56))~~ (57) RCW 46.72A.080 relating to false advertising by a limousine carrier;
 - ~~((57))~~ (58) Chapter 46.80 RCW relating to motor vehicle wreckers;
 - ~~((58))~~ (59) Chapter 46.82 RCW relating to driver's training schools;
 - ~~((59))~~ (60) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;
 - ~~((60))~~ (61) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.
- NEW SECTION. Sec. 7.** Sections 1 through 5 of this act constitute a new chapter in Title 46 RCW.

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NEW SECTION. Sec. 8. Sections 1 through 4 and 6 of this act take effect July 1, 2010."

Correct the title.

And the bill do pass as recommended by the conference committee.

Signed by Senators Holmquist, Kauffman and Kohl-Welles; Representatives Clibborn, Eddy and Shea.

MOTION

Senator Kauffman moved that the Report of the Conference Committee on Substitute Senate Bill No. 5574 be adopted.

The President declared the question before the Senate to be the motion by Senator Kauffman that the Report of the Conference Committee on Substitute Senate Bill No. 5574 be adopted.

The motion by Senator Kauffman carried and the Report of the Conference Committee was adopted by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5574, as recommended by the Conference Committee.

MOTION

On motion of Senator McDermott, Senator Murray was excused.

MOTION

On motion of Senator Holmquist, Senator Delvin was excused.

MOTION

On motion of Senator Marr, Senators Brown and Fraser were excused.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5574, as recommended by the Conference Committee, and the bill passed the Senate by the following vote: Yeas, 45; Nays, 2; Absent, 0; Excused, 2.

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

Voting nay: Senators McCaslin and Morton

Excused: Senators Brown and Delvin

SUBSTITUTE SENATE BILL NO. 5574, as recommended by the Conference Committee, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 13, 2009

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5795 with the following amendment: 5795-S AMH SEAQ PARC 033

On page 2, after line 29, insert the following:

"Sec. 2. RCW 47.46.060 and 2002 c 114 s 18 are each amended to read as follows:

(1) Any person, including the department of transportation and any private entity or entities, may apply for deferral of taxes on the site preparation for, the construction of, the acquisition of any related machinery and equipment which will become a part of, and the rental of equipment for use in the state route number 16 corridor improvements project under this chapter. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the project.

(3) The department of transportation or a private entity granted a tax deferral under this section shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax. The project is operationally complete under this section when the collection of tolls is commenced for the state route number 16 improvements covered by the deferral.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the department of transportation or a private entity granted a deferral under this section.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the private entity. Transfer of ownership does not terminate the deferral.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section.

(7) Taxes due under chapters 82.08 and 82.12 RCW on the site preparation for, the construction of, the acquisition of any related machinery and equipment that will become a part of, and the rental of equipment for use in the state route number 16 corridor improvements project for which a deferral has been granted need not be repaid."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

POINT OF ORDER

Senator Haugen: "Thank you Mr. President. I would argue that the House amendments to Substitute Senate Bill No. 5795 changes the scope and object of the underlying bill as it left this body. I respectfully request you rule as such. The underlying bill as it left the Senate addressed the direct use of tolls and other revenues related to the Tacoma Narrows Bridge. The bill directs the Transportation Commission to determine the appropriateness

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toll revenues expenditure to avoid the types of frivolous expenditures made in recent years. However, the House amendment has nothing to do with the direct use of Tacoma Narrows Bridge toll revenue. Rather it provides the sale and use tax exemption for the working involved in building the bridge. Additionally the sales and tax used tax exemption would negatively impact the state general fund. However the title of the underlying senate bill is 'An Act relating to the Tacoma Narrows Bridge account'. There's no reference in the scope or object of this bill to the state general fund. Mr. President, because of the amendment the house amendment in no way relates to the original substance of underlying bill, I respectfully request that you find the house amendment out of order as it changes the scope and object of the bill. Thank you Mr. President."

POINT OF ORDER

Senator Kilmer: "Thank you Mr. President. I would argue that the house amendments to Substitute Senate Bill No. 5795, the house amendment is within the scope and object of the underline senate bill and if I may continue?"

REPLY BY THE PRESIDENT

President Owen: "Brief."

POINT OF ORDER

Senator Kilmer: "Thank you. It is correct that the underline bill addresses the use of funds from the Tacoma Narrows Bridge. This bill sets up a structure for determining permitted and non permitted uses of Tacoma Narrows Bridge toll revenue. The amendment that was added in the other body by exempting sales and use taxes applicable to the bridge simply describes another non permitted use of Narrows Bridge toll revenue. That is if the sales and use taxes are exempt toll revenue is no longer needed for that expenditure item and is therefore non permitted use of toll revenue. For that and other reasons which I'm sure you will find compelling I ask that you find the house amendment properly before the senate. Thank you Mr. President."

MOTION

On motion of Senator Eide, further consideration of Substitute Senate Bill No. 5795 was deferred and the bill held its place on the concurrence calendar.

MESSAGE FROM THE HOUSE

April 23, 2009

MR. PRESIDENT:

The House receded in its amendment to ENGROSSED SUBSTITUTE SENATE BILL NO. 5321. Under suspension of rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5321-S.E AMH HUNT H3409.3 and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 82.14.415 and 2006 c 361 s 1 are each amended to read as follows:

(1) The legislative authority of any city (~~with a population less than four hundred thousand and which~~) that is located in a county with a population greater than six hundred thousand that

annexes an area consistent with its comprehensive plan required by chapter 36.70A RCW, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to 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 city. The tax may only be imposed by a city if:

(a) The city has commenced annexation of an area (~~under chapter 35.13 or 35A.14 RCW~~) having a population of at least ten thousand people, or four thousand in the case of a city described under subsection (3)(a)(i) of this section, prior to January 1, (~~2010~~) 2015; and

(b) The city legislative authority determines by resolution or ordinance that the projected cost to provide municipal services to the annexation area exceeds the projected general revenue that the city would otherwise receive from the annexation area on an annual basis.

(2) The tax authorized under this section is a credit against the state tax under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the city at no cost to the city and shall remit the tax to the city as provided in RCW 82.14.060.

(3)(a) ~~Except as provided in (b) of this subsection, the maximum rate of tax any city may impose under this section ((shall be 0.2 percent for the total number of annexed areas the city may annex. The rate of the tax imposed under this section))~~ is:

(i) 0.1 percent for each annexed area in which the population (~~that~~) is greater than ten thousand and less than twenty thousand. (~~The rate of the tax imposed under this section shall be~~) The ten thousand population threshold in this subsection (3)(a)(i) is four thousand for a city with a population between one hundred fifteen thousand and one hundred forty thousand and located within a county with a population over one million five hundred thousand; and

(ii) 0.2 percent for an annexed area in which the population is greater than twenty thousand.

(b) Beginning July 1, 2011, the maximum rate of tax imposed under this section is 0.85 percent for an annexed area in which the population is greater than eighteen thousand if the annexed area was, prior to November 1, 2008, officially designated as a potential annexation area by more than one city, one of which has a population greater than four hundred thousand.

(4)(a) Except as provided in (b) of this subsection, the maximum cumulative rate of tax a city may impose under subsection (3)(a) of this section is 0.2 percent for the total number of annexed areas the city may annex.

(b) The maximum cumulative rate of tax a city may impose under subsection (3)(a) of this section is 0.3 percent, beginning July 1, 2011, if the city commenced annexation of an area, prior to January 1, 2010, that would have otherwise allowed the city to increase the rate of tax imposed under this section absent the rate limit imposed in (a) of this subsection.

(c) The maximum cumulative rate of tax a city may impose under subsection (3)(b) of this section is 0.85 percent for the single annexed area the city may annex and the amount of tax distributed to a city under subsection (3)(b) of this section shall not exceed five million dollars per fiscal year.

(5) The tax imposed by this section shall only be imposed at the beginning of a fiscal year and shall continue for no more than ten years from the date that each increment of the tax is first imposed. Tax rate increases due to additional annexed areas shall be effective on July 1st of the fiscal year following the fiscal year in which the annexation occurred, provided that notice is given to the department as set forth in subsection ((8)) (9) of this section.

((5)) (6) All revenue collected under this section shall be used solely to provide, maintain, and operate municipal services for the annexation area.

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~~((6))~~ (7) The revenues from the tax authorized in this section may not exceed that which the city deems necessary to generate revenue equal to the difference between the city's cost to provide, maintain, and operate municipal services for the annexation area and the general revenues that the cities would otherwise expect to receive from the annexation during a year. If the revenues from the tax authorized in this section and the revenues from the annexation area exceed the costs to the city to provide, maintain, and operate municipal services for the annexation area during a given year, the city shall notify the department and the tax distributions authorized in this section shall be suspended for the remainder of the year.

~~((7))~~ (8) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the legislative authority of a city shall adopt an ordinance that includes the following:

(a) A certification that the amount needed to provide municipal services to the annexed area reflects the city's true and actual costs;

(b) The rate of tax under this section that shall be imposed within the city; and

~~((8))~~ (c) The threshold amount for the first fiscal year following the annexation and passage of the ordinance.

~~((8))~~ (9) The tax shall cease to be distributed to the city for the remainder of the fiscal year once the threshold amount has been reached. No later than March 1st of each year, the city shall provide the department with a certification of the city's true and actual costs to provide municipal services to the annexed area, a new threshold amount for the next fiscal year, and notice of any applicable tax rate changes. Distributions of tax under this section shall begin again on July 1st of the next fiscal year and continue until the new threshold amount has been reached or June 30th, whichever is sooner. Any revenue generated by the tax in excess of the threshold amount shall belong to the state of Washington. Any amount resulting from the threshold amount less the total fiscal year distributions, as of June 30th, shall not be carried forward to the next fiscal year.

(10) The tax shall cease to be distributed to a city imposing the tax under subsection (3)(b) of this section for the remainder of the fiscal year, if the total distributions to the city imposing the tax exceed five million dollars for the fiscal year.

~~((9))~~ (11) The following definitions apply throughout this section unless the context clearly requires otherwise:

(a) "Annexation area" means an area that has been annexed to a city under chapter 35.13 or 35A.14 RCW. "Annexation area" includes all territory described in the city resolution.

(b) "Commenced annexation" means the initiation of annexation proceedings has taken place under the direct petition method or the election method under chapter 35.13 or 35A.14 RCW.

(c) "Department" means the department of revenue.

~~((10))~~ (d) "Municipal services" means those services customarily provided to the public by city government.

~~((11))~~ (e) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(f) "Potential annexation area" means one or more geographic areas that a city has officially designated for potential future annexation, as part of its comprehensive plan adoption process under the state growth management act, chapter 36.70A RCW.

~~((12))~~ (g) "Threshold amount" means the maximum amount of tax distributions as determined by the city in accordance with subsection ~~((6))~~ (7) of this section that the department shall distribute to the city generated from the tax imposed under this section in a fiscal year.

Sec. 2. RCW 9.46.295 and 1974 ex.s. c 155 s 6 are each amended to read as follows:

(1) Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued

throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

(2) A city or town with a prohibition on house-banked social card game licenses that annexes an area that is within a city, town, or county that permits house-banked social card games may allow a house-banked social card game business that was licensed by the commission as of the effective date of this act to continue operating if the city or town is authorized to impose a tax under RCW 82.14.415 and can demonstrate that the continuation of the house-banked social card game business will reduce the credit against the state sales and use tax as provided in RCW 82.14.415(7). A city or town that allows a house-banked social card game business in an annexed area to continue operating is not required to allow additional house-banked social card game businesses."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Prentice moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5321.

POINT OF INQUIRY

Senator Berkey: "Would the Senator from the Eleventh District yield to a question? Is it the intent of this legislation that the annexation tax credit applies to qualifying annexation that uses an inter local agreement as its method of commencing an annexation?"

Senator Prentice: "Yes, it is the intent of this bill and the intent of the program from the beginning that the annexation tax credit applies to a qualifying annexation no matter what method of annexation is used."

The President declared the question before the Senate to be the motion by Senator Prentice that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5321.

The motion by Senator Prentice carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5321 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5321, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5321, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 37; Nays, 11; Absent, 0; Excused, 1.

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

Voting nay: Senators Becker, Benton, Carrell, Holmquist, Honeyford, King, McCaslin, Morton, Pflug, Roach and Stevens

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Excused: Senator Delvin
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5321, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 24, 2009

MR. PRESIDENT:

The House receded in its amendment to SUBSTITUTE SENATE BILL NO. 5436. Under suspension of rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5436-S AMH CODY H3443.2 and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 48.150.010 and 2007 c 267 s 3 are each amended to read as follows:

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

(1) "Direct patient-provider primary care practice" and "direct practice" means a provider, group, or entity that meets the following criteria in (a), (b), (c), and (d) of this subsection:

(a)(i) A health care provider who furnishes primary care services through a direct agreement;

(ii) A group of health care providers who furnish primary care services through a direct agreement; or

(iii) An entity that sponsors, employs, or is otherwise affiliated with a group of health care providers who furnish only primary care services through a direct agreement, which entity is wholly owned by the group of health care providers or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the internal revenue code, and is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer under Title 48 RCW. Such entity is not prohibited from sponsoring, employing, or being otherwise affiliated with other types of health care providers not engaged in a direct practice;

(b) Enters into direct agreements with direct patients or parents or legal guardians of direct patients;

(c) Does not accept payment for health care services provided to direct patients from any entity subject to regulation under Title 48 RCW((;)) or plans administered under chapter 41.05, 70.47, or 70.47A RCW((, or self-insured plans)); and

(d) Does not provide, in consideration for the direct fee, services, procedures, or supplies such as prescription drugs, hospitalization costs, major surgery, dialysis, high level radiology (CT, MRI, PET scans or invasive radiology), rehabilitation services, procedures requiring general anesthesia, or similar advanced procedures, services, or supplies.

(2) "Direct patient" means a person who is party to a direct agreement and is entitled to receive primary care services under the direct agreement from the direct practice.

(3) "Direct fee" means a fee charged by a direct practice as consideration for being available to provide and providing primary care services as specified in a direct agreement.

(4) "Direct agreement" means a written agreement entered into between a direct practice and an individual direct patient, or the parent or legal guardian of the direct patient or a family of direct patients, whereby the direct practice charges a direct fee as consideration for being available to provide and providing primary care services to the individual direct patient. A direct agreement must (a) describe the specific health care services the direct practice will provide; and (b) be terminable at will upon written notice by the direct patient.

(5) "Health care provider" or "provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to

practice health or health-related services or otherwise practicing health care services in this state consistent with state law.

(6) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(7) "Primary care" means routine health care services, including screening, assessment, diagnosis, and treatment for the purpose of promotion of health, and detection and management of disease or injury.

(8) "Network" means the group of participating providers and facilities providing health care services to a particular health carrier's health plan or to plans administered under chapter 41.05, 70.47, or 70.47A RCW.

Sec. 2. RCW 48.150.040 and 2007 c 267 s 6 are each amended to read as follows:

(1) Direct practices may not:

(a) Enter into a participating provider contract as defined in RCW 48.44.010 or 48.46.020 with any carrier or with any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, to provide health care services through a direct agreement except as set forth in subsection (2) of this section;

(b) Submit a claim for payment to any carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, for health care services provided to direct patients as covered by their agreement;

(c) With respect to services provided through a direct agreement, be identified by a carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, as a participant in the carrier's or any carrier's contractor or subcontractor network for purposes of determining network adequacy or being available for selection by an enrollee under a carrier's benefit plan; or

(d) Pay for health care services covered by a direct agreement rendered to direct patients by providers other than the providers in the direct practice or their employees, except as described in subsection (2)(b) of this section.

(2) Direct practices and providers may:

(a) Enter into a participating provider contract as defined by RCW 48.44.010 and 48.46.020 or plans administered under chapter 41.05, 70.47, or 70.47A RCW for purposes other than payment of claims for services provided to direct patients through a direct agreement. Such providers shall be subject to all other provisions of the participating provider contract applicable to participating providers including but not limited to the right to:

(i) Make referrals to other participating providers;

(ii) Admit the carrier's members to participating hospitals and other health care facilities;

(iii) Prescribe prescription drugs; and

(iv) Implement other customary provisions of the contract not dealing with reimbursement of services;

(b) Pay for charges associated with the provision of routine lab and imaging services ((provided in connection with wellness physical examinations)). In aggregate such payments per year per direct patient are not to exceed fifteen percent of the total annual direct fee charged that direct patient. Exceptions to this limitation may occur in the event of short-term equipment failure if such failure prevents the provision of care that should not be delayed; and

(c) Charge an additional fee to direct patients for supplies, medications, and specific vaccines provided to direct patients that are specifically excluded under the agreement, provided the direct practice notifies the direct patient of the additional charge, prior to their administration or delivery.

Sec. 3. RCW 48.150.050 and 2007 c 267 s 7 are each amended to read as follows:

(1) Direct practices may not decline to accept new direct patients or discontinue care to existing patients solely because of the patient's health status. A direct practice may decline to accept a patient if the practice has reached its maximum capacity, or if the patient's medical condition is such that the

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provider is unable to provide the appropriate level and type of health care services in the direct practice. So long as the direct practice provides the patient notice and opportunity to obtain care from another physician, the direct practice may discontinue care for direct patients if: (a) The patient fails to pay the direct fee under the terms required by the direct agreement; (b) the patient has performed an act that constitutes fraud; (c) the patient repeatedly fails to comply with the recommended treatment plan; (d) the patient is abusive and presents an emotional or physical danger to the staff or other patients of the direct practice; or (e) the direct practice discontinues operation as a direct practice.

(2) Subject to the restrictions established in this chapter, direct practices may accept payment of direct fees directly or indirectly from ((nonemployer)) third parties. A direct practice may accept a direct fee paid by an employer on behalf of an employee who is a direct patient. However, a direct practice shall not enter into a contract with an employer relating to direct practice agreements between the direct practice and employees of that employer, other than to establish the timing and method of the payment of the direct fee by the employer.

Sec. 4. RCW 48.41.030 and 2004 c 260 s 25 are each amended to read as follows:

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

(1) "Accounting year" means a twelve-month period determined by the board for purposes of record-keeping and accounting. The first accounting year may be more or less than twelve months and, from time to time in subsequent years, the board may order an accounting year of other than twelve months as may be required for orderly management and accounting of the pool.

(2) "Administrator" means the entity chosen by the board to administer the pool under RCW 48.41.080.

(3) "Board" means the board of directors of the pool.

(4) "Commissioner" means the insurance commissioner.

(5) "Covered person" means any individual resident of this state who is eligible to receive benefits from any member, or other health plan.

(6) "Health care facility" has the same meaning as in RCW 70.38.025.

(7) "Health care provider" means any physician, facility, or health care professional, who is licensed in Washington state and entitled to reimbursement for health care services.

(8) "Health care services" means services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(9) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(10) "Health coverage" means any group or individual disability insurance policy, health care service contract, and health maintenance agreement, except those contracts entered into for the provision of health care services pursuant to Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term care, long-term care, dental, vision, accident, fixed indemnity, disability income contracts, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of the worker's compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(11) "Health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under this pool, have access to hospital and medical benefits or reimbursement including any group or individual disability insurance policy; health care service contract; health maintenance agreement; uninsured arrangements of group or group-type contracts including employer self-insured, cost-plus, or other benefit methodologies

not involving insurance or not governed by Title 48 RCW; coverage under group-type contracts which are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits. This term includes coverage through "health coverage" as defined under this section, and specifically excludes those types of programs excluded under the definition of "health coverage" in subsection (10) of this section.

(12) "Medical assistance" means coverage under Title XIX of the federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter 74.09 RCW.

(13) "Medicare" means coverage under Title XVIII of the Social Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

(14) "Member" means any commercial insurer which provides disability insurance or stop loss insurance, any health care service contractor, any health maintenance organization licensed under Title 48 RCW, and any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010. "Member" also means the Washington state health care authority as issuer of the state uniform medical plan. "Member" shall also mean, as soon as authorized by federal law, employers and other entities, including a self-funding entity and employee welfare benefit plans that provide health plan benefits in this state on or after May 18, 1987. "Member" also means a direct practice as defined in RCW 48.150.010. "Member" does not include any insurer, health care service contractor, or health maintenance organization whose products are exclusively dental products or those products excluded from the definition of "health coverage" set forth in subsection (10) of this section.

(15) "Network provider" means a health care provider who has contracted in writing with the pool administrator or a health carrier contracting with the pool administrator to offer pool coverage to accept payment from and to look solely to the pool or health carrier according to the terms of the pool health plans.

(16) "Plan of operation" means the pool, including articles, by-laws, and operating rules, adopted by the board pursuant to RCW 48.41.050.

(17) "Point of service plan" means a benefit plan offered by the pool under which a covered person may elect to receive covered services from network providers, or nonnetwork providers at a reduced rate of benefits.

(18) "Pool" means the Washington state health insurance pool as created in RCW 48.41.040.

Sec. 5. RCW 48.150.110 and 2007 c 267 s 13 are each amended to read as follows:

(1) A direct agreement must include the following disclaimer: "This agreement does not provide comprehensive health insurance coverage. It provides only the health care services specifically described." The direct agreement may not be sold to a group and may not be entered with a group of subscribers. It must be an agreement between a direct practice and an individual direct patient. Nothing prohibits the presentation of marketing materials to groups of potential subscribers or their representatives. All marketing materials must be filed for approval with the commissioner prior to use. All advertising and marketing materials must be filed with the commissioner at least thirty days prior to use.

(2) A comprehensive disclosure statement shall be distributed to all direct patients with their participation forms. Such disclosure must inform the direct patients of their financial rights and responsibilities to the direct practice as provided for in this chapter, encourage that direct patients obtain and maintain insurance for services not provided by the direct practice, and state that the direct practice will not bill a carrier for services covered under the direct agreement. The disclosure statement shall include contact information for the office of the insurance commissioner."

Correct the title.
and the same are herewith transmitted.

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MOTION

Senator Keiser moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5436.
 Senator Keiser spoke in favor of the motion.
 Senator Pflug spoke against the motion.

MOTION

On motion of Senator Marr, Senator Franklin was excused.

The President declared the question before the Senate to be the motion by Senator Keiser that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5436.

The motion by Senator Keiser carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5436 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5436, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5436, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 29; Nays, 18; Absent, 0; Excused, 2.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Excused: Senators Delvin and Franklin

SUBSTITUTE SENATE BILL NO. 5436, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 10:55 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 11:23 p.m. by President Owen.

MESSAGE FROM THE HOUSE

April 25, 2009

MR. PRESIDENT:

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

- ENGROSSED SUBSTITUTE HOUSE BILL NO. 1379,
- ENGROSSED SUBSTITUTE HOUSE BILL NO. 1619,
- ENGROSSED SUBSTITUTE HOUSE BILL NO. 1782,
- HOUSE BILL NO. 2331,
- SUBSTITUTE HOUSE BILL NO. 2346,

and the same are herewith transmitted.

The Senate resumed consideration of Substitute House Bill No. 1776.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1776, by House Committee on Education Appropriations (originally sponsored by Representatives Ericks, Haigh, Priest, Hunter, Liias, Sullivan, Pedersen, Maxwell, White and Kenney)

Changing school levy provisions.

The measure was read the second time.

WITHDRAWAL OF AMENDMENT

On motion of Senator Tom, the striking amendment by Senator Tom to Substitute House Bill No. 1776 was withdrawn.

MOTION

Senator Tom moved that the following striking amendment by Senators Tom and McAuliffe be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 28A.500.030 and 2006 c 372 s 904 and 2006 c 119 s 1 are each reenacted and amended to read as follows:

Allocation of state matching funds to eligible districts for local effort assistance shall be determined as follows:

(1) Funds raised by the district through maintenance and operation levies shall be matched with state funds using the following ratio of state funds to levy funds:

(a) The difference between the district's twelve percent levy rate and the statewide average twelve percent levy rate; to

(b) The statewide average twelve percent levy rate.

(2) The maximum amount of state matching funds for districts eligible for local effort assistance shall be the district's twelve percent levy amount, multiplied by the following percentage:

(a) The difference between the district's twelve percent levy rate and the statewide average twelve percent levy rate; divided by

(b) The district's twelve percent levy rate.

(3) Calendar year 2003 allocations and maximum eligibility under this chapter shall be multiplied by 0.99.

(4) From January 1, 2004, to December 31, 2005, allocations and maximum eligibility under this chapter shall be multiplied by 0.937.

(5) From January 1, 2006, to December 31, 2006, allocations and maximum eligibility under this chapter shall be multiplied by 0.9563. Beginning with calendar year 2007, allocations and maximum eligibility under this chapter shall be fully funded at one hundred percent and shall not be reduced.

(6) From January 1, 2010, through December 31, 2011, allocations and maximum eligibility under this chapter may be reduced as determined in the 2009-2011 omnibus appropriations act.

Sec. 2. RCW 84.52.0531 and 2009 c 4 s 908 are each amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of

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(a) plus or minus (b) and (c) of this subsection minus (d) of this subsection:

(a) The district's levy base as defined in subsections (3) and (4) of this section multiplied by the district's maximum levy percentage as defined in subsection (5) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) For districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (5) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 2005 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year and the amounts determined under subsection (4) of this section, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) For levy collections in calendar years 2005 through ~~(2011)~~ 2014, in addition to the allocations included under subsection (3)(a) through (c) of this section, a district's levy base shall also include the following:

(a) The difference between the allocation the district would have received in the current school year ~~((had RCW 84.52.068 not been amended by chapter 19, Laws of 2003 1st sp. sess.))~~ using the Initiative 728 base and the allocation the district received in the current school year pursuant to RCW 84.52.068 ~~((The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(a) by any additional per student allocations included in a district's levy base pursuant to the~~

~~enactment of an initiative to the people subsequent to June 10, 2004)); and~~

(b) The difference between the allocations the district would have received the prior school year ~~((had RCW 28A.400.205 not been amended by chapter 20, Laws of 2003 1st sp. sess.))~~ using the Initiative 732 base and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205. ~~((The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(b) by any additional salary increase allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004.))~~

(5) A district's maximum levy percentage shall be twenty-two percent in 1998 and twenty-four percent in 1999 and every year thereafter, except as provided in subsection (6) of this section; plus, for qualifying districts, the grandfathered percentage determined as follows:

(a) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(b) For 1998 and thereafter, the percentage calculated as follows:

(i) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(ii) Reduce the result of (b)(i) of this subsection by any levy reduction funds as defined in subsection ~~((6))~~ (7) of this section that are to be allocated to the district for the current school year;

(iii) Divide the result of (b)(ii) of this subsection by the district's levy base; and

(iv) Take the greater of zero or the percentage calculated in (b)(iii) of this subsection.

(6) The maximum levy percentages provided in subsection (5) of this section shall be increased by four percentage points not to exceed a maximum levy percentage of thirty-five percent for levies approved by voters in 2009 after the effective date of this section through December 31, 2011.

(7) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsections (3) and (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

~~((7) For the purposes of this section,))~~ (8) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

~~((8) For the purposes of this section,))~~ (b) "Current school year" means the year immediately following the prior school year.

(c) "Initiative 728 base" means the allocation to the student achievement fund for the prior year that would have been made under chapter 3, Laws of 2001, as approved by the voters, if all annual adjustments to the initial 2001 allocation had been made in previous years and in each subsequent year as provided for under chapter 3, Laws of 2001.

(d) "Initiative 732 base" means the prior year's annual salary cost-of-living increases as they would have been calculated under chapter 4, Laws of 2001, as approved by the voters, if each annual cost-of-living increase had been made in previous years and in each subsequent year as provided for under chapter 4, Laws of 2001.

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(9) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(10) The superintendent of public instruction shall develop rules (~~and regulations~~) and inform school districts of the pertinent data necessary to carry out the provisions of this section.

(11) For calendar year 2009, the office of the superintendent of public instruction shall recalculate school district levy authority to reflect levy rates certified by school districts for calendar year 2009.

NEW SECTION. Sec. 3. A new section is added to chapter 84.52 RCW to read as follows:

The legislature recognizes that school districts request voter approval for two-year through four-year levies based on their projected levy capacities at the time that the levies are submitted to the voters. It is the intent of the legislature to permit school districts with voter-approved maintenance and operation levies to seek an additional approval from the voters, if subsequently enacted legislation would permit a higher levy.

Sec. 4. RCW 84.52.053 and 2007 c 129 s 3 are each amended to read as follows:

(1) The limitations imposed by RCW 84.52.050 through 84.52.056, and 84.52.043 shall not prevent the levy of taxes by school districts, when authorized so to do by the voters of such school district in the manner and for the purposes and number of years allowable under Article VII, section 2(a) of the Constitution of this state. Elections for such taxes shall be held in the year in which the levy is made or, in the case of propositions authorizing two-year through four-year levies for maintenance and operation support of a school district, authorizing two-year levies for transportation vehicle funds established in RCW 28A.160.130, or authorizing two-year through six-year levies to support the construction, modernization, or remodeling of school facilities, which includes the purposes of RCW 28A.320.330(2)(f), in the year in which the first annual levy is made.

(2) Once additional tax levies have been authorized for maintenance and operation support of a school district for a two-year through four-year period as provided under subsection (1) of this section, no further additional tax levies for maintenance and operation support of the district for that period may be authorized, except for additional levies to provide for subsequently enacted increases affecting the district's levy base or maximum levy percentage. For the purpose of applying the limitation of this subsection, a two-year through six-year levy to support the construction, modernization, or remodeling of school facilities shall not be deemed to be a tax levy for maintenance and operation support of a school district.

(3) A special election may be called and the time therefor fixed by the board of school directors, 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".

Sec. 5. 2006 c 119 s 3 (uncodified) is amended to read as follows:

This act expires January 1, (~~2012~~) 2015.

Sec. 6. 2009 c 4 s 909 (uncodified) is amended to read as follows:

Section 908 of this act expires January 1, (~~2012~~) 2015.

NEW SECTION. Sec. 7. Sections 2 through 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 take effect immediately.

NEW SECTION. Sec. 8. Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009."

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

MOTION

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

On page 4, line 34 of the amendment, after "percentage of" strike "thirty-five" and insert "twenty-eight"

On page 4, line 36 of the amendment, after "2011" insert "2, except that for districts grandfathered above twenty-eight percent as of the effective date of this section, the authority to collect the grandfathered level is retained"

Senator Pflug spoke in favor of adoption of the amendment to the striking amendment.

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

Senator Pflug demanded a roll call but was not sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator Pflug on page 4, line 34 to the striking amendment to Substitute House Bill No. 1776.

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

MOTION

Senator McDermott moved that the following amendment by Senator McDermott and others to the striking amendment be adopted.

On page 7 of the amendment, after line 8, insert new section:

NEW SECTION. Sec. 7. State grant funding for the 21st Century after-school program is suspended during the 2009-11 fiscal period."

Renumber the remaining sections consecutively.

The President declared the question before the Senate to be the adoption of the amendment by Senator McDermott and others on page 7, after line 8 to the striking amendment to Substitute House Bill No. 1776.

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

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Tom and McAuliffe as amended to Substitute House Bill No. 1776.

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

MOTION

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

On page 1, line 1 of the title, after "levies;" strike the remainder of the title and insert "amending RCW 84.52.0531 and 84.52.053; amending 2006 c 119 s 3 (uncodified); amending 2009 c 4 s 909 (uncodified); reenacting and amending RCW 28A.500.030; adding a new section to chapter 84.52 RCW; providing an effective date; providing expiration dates; and declaring an emergency."

MOTION

On motion of Senator Tom, the rules were suspended, Substitute House Bill No. 1776 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Tom spoke in favor of passage of the bill.

Senator King spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1776 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1776 as amended by the Senate as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 29; Nays, 14; Absent, 0; Excused, 6.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Brandland, Carrell, Haugen, Hewitt, Holmquist, Honeyford, King, Parlette, Pflug, Schoesler, Sheldon, Swecker and Zarelli

Excused: Senators Benton, Delvin, McCaslin, Morton, Roach and Stevens

SUBSTITUTE HOUSE BILL NO. 1776 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

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

The Senate resumed consideration of Senate Bill No. 6158 which had been deferred earlier in the day.

SECOND READING

SENATE BILL NO. 6158, by Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Brown, Prentice and Tom)

Delaying the implementation of the family leave insurance program.

The measure was read the second time.

Senators Holmquist, Schoesler, King and Becker spoke in favor of adoption of the amendment.

Senators Brown, Prentice, Keiser and Kohl-Welles spoke against adoption of the amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

POINT OF ORDER

Senator Schoesler: "I believe the speaker is impugning the motives of a previous speaker that was on that panel."

REPLY BY THE PRESIDENT

President Owen: "Senator Prentice, you're coming pretty close."

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Holmquist and others to Senate Bill No. 6158.

ROLL CALL

The Secretary called the roll on the adoption of the striking amendment by Senator Holmquist and others and the striking amendment was not adopted by the following vote: Yeas, 16; Nays, 27; Absent, 0; Excused, 6.

Voting yea: Senators Becker, Brandland, Carrell, Hatfield, Hewitt, Holmquist, Honeyford, King, Marr, Parlette, Pflug, Rockefeller, Schoesler, Sheldon, Swecker and Zarelli

Voting nay: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Shin and Tom

Excused: Senators Benton, Delvin, McCaslin, Morton, Roach and Stevens

MOTION

On motion of Senator Keiser, the rules were suspended, Senate Bill No. 6158 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Keiser spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 6158.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 6158 and the bill passed the Senate by the following vote: Yeas, 29; Nays, 14; Absent, 0; Excused, 6.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Brandland, Carrell, Haugen, Hewitt, Holmquist, Honeyford, King, Parlette, Pflug, Schoesler, Sheldon, Swecker and Zarelli

Excused: Senators Benton, Delvin, McCaslin, Morton, Roach and Stevens

ENGROSSED SENATE BILL NO. 6158, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED HOUSE BILL NO. 2194, by Representative Appleton

Modifying provisions relating to extraordinary medical placement for offenders.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

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"Sec. 1. RCW 9.94A.728 and 2008 c 231 s 34 are each amended to read as follows:

No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); (C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(D) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW

72.09.270 to the extent that such programming or activities are made available by the department; and

(E) Has not committed a new felony after July 22, 2007, while under community custody.

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a program developed by the department, for transfer to community custody in lieu of earned release time pursuant to subsection (1) of this section;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department denies transfer to community custody in lieu of earned early release pursuant to (c) of this subsection, the department may transfer an offender to partial confinement in lieu of earned early release up to three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in this section;

(e) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

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(i) The offender has a medical condition that is serious ~~(enough)~~ and is expected to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so at the time of release; and

(iii) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the offender's term of confinement may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to subsection (2)(d) of this section;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870; and

(10) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement.

NEW SECTION, Sec. 2. This act takes effect August 1, 2009."

MOTION

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

On page 5, line 1 of the amendment, after "offender" insert "convicted of a sex offense or an offender"

Renumber the sections consecutively and correct any internal references accordingly.

Senators Schoesler, Carrell and Swecker spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of the amendment by Senator Schoesler on page 5, line 1 to the striking amendment to Engrossed House Bill No. 2194.

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

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Hargrove and Regala to Engrossed House Bill No. 2194.

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

MOTION

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

On page 1, line 1 of the title, after "offenders;" strike the remainder of the title and insert "amending RCW 9.94A.728; and providing an effective date."

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed House Bill No. 2194 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Schoesler and Carrell spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2194 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 2194 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 27; Nays, 16; Absent, 0; Excused, 6.

Voting yea: Senators Berkey, Brandland, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Shin and Tom

Voting nay: Senators Becker, Carrell, Hewitt, Hobbs, Holmquist, Honeyford, Kilmer, King, Marr, Parlette, Pflug, Rockefeller, Schoesler, Sheldon, Swecker and Zarelli

Excused: Senators Benton, Delvin, McCaslin, Morton, Roach and Stevens

ENGROSSED HOUSE BILL NO. 2194 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 6160, by Senator Prentice

Relating to criminal justice. Revised for 1st Substitute: Concerning criminal justice sentencing.

MOTIONS

On motion of Senator Hargrove, Substitute Senate Bill No. 6160 was substituted for Senate Bill No. 6160 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Hargrove, the rules were suspended, Substitute Senate Bill No. 6160 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

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The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6160.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6160 and the bill passed the Senate by the following vote: Yeas, 43; Nays, 0; Absent, 0; Excused, 6.

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

Excused: Senators Benton, Delvin, McCaslin, Morton, Roach and Stevens

SUBSTITUTE SENATE BILL NO. 6160, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 6162, by Senator Prentice

Relating to criminal justice. Revised for 1st Substitute: Providing for the supervision of offenders sentenced to community custody regardless of risk classification if the offender has a current conviction for a serious violent offense.

MOTION

On motion of Senator Hargrove, Substitute Senate Bill No. 6162 was substituted for Senate Bill No. 6162 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Carrell moved that the following amendment by Senator Carrell be adopted.

On page 4, after line 8, insert the following:

"Sec. 3. RCW 9.94A.030 and 2009 c . . . (ESSB 5288) 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) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in

the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.701, as established by the commission or the legislature under RCW 9.94A.850.

~~(7)~~ "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

~~((77))~~ (8) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

~~((88))~~ (9) "Confinement" means total or partial confinement.

~~((99))~~ (10) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

~~((100))~~ (11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

~~((111))~~ (12) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

~~((122))~~ (13) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

~~((133))~~ (14) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

~~((144))~~ (15) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

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(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

~~((15))~~ (16) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

~~((16))~~ (17) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

~~((17))~~ (18) "Department" means the department of corrections.

~~((18))~~ (19) "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 custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

~~((19))~~ (20) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

~~((20))~~ (21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

~~((21))~~ (22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

~~((22))~~ (23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

~~((23))~~ (24) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

~~((24))~~ (25) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

~~((25))~~ (26) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

~~((26))~~ (27) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

~~((27))~~ (28) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

~~((28))~~ (29) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

~~((29))~~ (30) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

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- (k) Manslaughter in the first degree;
- (l) Manslaughter in the second degree;
- (m) Promoting prostitution in the first degree;
- (n) Rape in the third degree;
- (o) Robbery in the second degree;
- (p) Sexual exploitation;
- (q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

Ⓜ Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

~~((30))~~ (31) "Nonviolent offense" means an offense which is not a violent offense.

~~((31))~~ (32) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer convicted of an offense included in RCW 9.94A.501(1) and ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((32))~~ (33) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial

portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

~~((33))~~ (34) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

~~((34))~~ (35) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection ((34)) (35)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

((35)) (36) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

((36)) (37) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

((37)) (38) "Public school" has the same meaning as in RCW 28A.150.010.

((38)) (39) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

((39)) (40) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

((40)) (41) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would

be classified as a serious traffic offense under (a) of this subsection.

((41)) (42) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

((42)) (43) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

((43)) (44) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

((44)) (45) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

((45)) (46) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

((46)) (47) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

((47)) (48) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

((48)) (49) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

((49)) (50) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

((50)) (51) "Violent offense" means:

(a) Any of the following felonies:

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(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

~~((51))~~ (52) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

~~((52))~~ (53) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

~~((53))~~ (54) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 4. RCW 9.94A.701 and 2009 c . . . (ESSB 5288) s 5 are each amended to read as follows:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall ~~(; in addition to the other terms of the sentence, sentence the offender to community custody for three years)~~ impose a term of community custody for the community custody range established under RCW 9.94A.850:

(a) A sex offense not sentenced under RCW 9.94A.507;

(b) A ~~(serious)~~ violent offense; or

(c) A violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006, when a court sentences the person to a term of confinement of one year or less.

(2) ~~(A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.~~

~~(3))~~ A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

(a) Any crime against persons under RCW 9.94A.411(2);

(b) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate; or

(c) A felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000.

~~((4))~~ (3) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.

~~((5))~~ (4) If an offender is sentenced under the special sexual offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

~~((6))~~ (5) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

~~((7))~~ (6) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.507, the court shall impose community custody as provided in that section.

~~((8))~~ (7) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

Sec. 5. RCW 9.94A.704 and 2009 c . . . (ESSB 5288) s 6 are each amended to read as follows:

(1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions and the duration of community custody when the offender is sentenced to a community custody range on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

(a) Report as directed to a community corrections officer;

(b) Remain within prescribed geographical boundaries;

(c) Notify the community corrections officer of any change in the offender's address or employment;

(d) Pay the supervision fee assessment; and

(e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

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(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(9)(a) When a sex offender has been sentenced pursuant to RCW 9.94A.507, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

- (i) The crime of conviction;
- (ii) The offender's risk of reoffending;
- (iii) The safety of the community.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(10) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

Sec. 6. RCW 9.94A.707 and 2009 c . . . (ESSB 5288) s 7 are each amended to read as follows:

(1) Community custody shall begin: (a) Upon completion of the term of confinement; or (b) at the time of sentencing if no term of confinement is ordered.

(2) When an offender is sentenced to community custody, the offender is subject to the conditions of community custody as of the date of sentencing, unless otherwise ordered by the court.

(3) When an offender is sentenced to a community custody range pursuant to RCW 9.94A.701(1), the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

Sec. 7. RCW 9.94A.850 and 2009 c . . . (ESSB 5288) s 8 are each amended to read as follows:

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The administrative office of the courts shall provide the commission with available data on diversion, including the use of youth court programs, and dispositions of juvenile offenders under chapter 13.40 RCW; and

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(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community restitution, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) Not later than December 31 of each year, the commission may propose modifications to the community custody ranges to be included in sentences under RCW 9.94A.701(1). The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW.

Sec. 8. 2009 c . . . (ESSB 5288) s 9 (uncodified) is amended to read as follows:

Consistent with the provisions of RCW 9.94A.701(2), the department of corrections shall recalculate the term of community custody and reset the date that community custody will end for each offender currently in confinement or serving a term of community custody for a crime specified in RCW 9.94A.701(2). The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject."

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

On page 4, line 14, after "(2)" strike "Section 2" and insert "Sections 2 through 8"

On page 1, beginning on line 2 of the title, after "custody" strike the remainder of the title and insert "when the offender has a current conviction for a violent offense or a serious violent offense as defined in RCW 9.94A.030; amending RCW 9.94A.501, 9.94A.501, 9.94A.030, 9.94A.701, 9.94A.704, 9.94A.707, and 9.94A.850; amending 2009 c . . . (ESSB 5288) s 9 (uncodified), creating a new section; providing an effective date; providing an expiration date; and declaring an emergency."

Senator Carrell spoke in favor of adoption of the amendment.

Senator Hargrove spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Carrell on page 4, after line 8 to Substitute Senate Bill No. 6162.

The motion by Senator Carrell failed and the amendment was not adopted by voice vote.

MOTION

On motion of Senator Hargrove, the rules were suspended, Substitute Senate Bill No. 6162 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6162.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6162 and the bill passed the Senate by the following vote: Yeas, 42; Nays, 1; Absent, 0; Excused, 6.

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

Voting nay: Senator Swecker

Excused: Senators Benton, Delvin, McCaslin, Morton, Roach and Stevens

SUBSTITUTE SENATE BILL NO. 6162, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2362, by House Committee on Ways & Means (originally sponsored by Representative Kessler)

Providing support for judicial branch agencies by imposing surcharges on court fees and requesting the supreme court to consider increases to attorney licensing fees.

The measure was read the second time.

MOTION

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Senator Tom moved that the following committee amendment by the Committee on Ways & Means be adopted.

On page 5, line 12, after "is", strike "established in the custody of the state treasurer." And insert "created within the state treasury, subject to appropriation."

On page 5, line 16, strike ", except as otherwise provided by this section."

Senator Tom spoke in favor of adoption of the committee amendment.

The President declared the question before the Senate to be the adoption of the committee amendment by the Committee on Ways & Means to Substitute House Bill No. 2362.

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

MOTION

Senator Hatfield moved that the following amendment by Senators Hatfield, Delvin and Honeyford be adopted.

On page 2, line 23, strike "twenty" and insert "ten".

Senators Hatfield, Honeyford and Carrell spoke in favor of adoption of the amendment.

Senator Kline spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Hatfield, Delvin and Honeyford on page 2, line 23 to Substitute House Bill No. 2362.

The motion by Senator Hatfield failed and the amendment was not adopted by a rising vote.

MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford be adopted:

On page 2, line 23, after "of" strike "twenty" and insert "five"

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

WITHDRAWAL OF AMENDMENT

On motion of Senator Honeyford, the amendment by Senator Honeyford on page 2, line 23 to Substitute House Bill No. 2362 was withdrawn.

MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford be adopted.

On page 3, line 2, after "of" strike "ten" and insert "five"

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

WITHDRAWAL OF AMENDMENT

On motion of Senator Honeyford, the amendment by Senator Honeyford on page 3, line 2 to Substitute House Bill No. 2362 was withdrawn.

MOTION

Senator Eide moved that all remaining amendments to Substitute House Bill No. 2362 be laid upon the table.

MOTION

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Senator King moved that the question of tabling all the remaining amendments to Substitute House Bill No. 2362 be divided.

The President declared the question before the Senate to be the motion by Senator Eide that Amendment No. 500 by Senator Honeyford to Substitute House Bill No. 2362 be laid upon the table.

The motion by Senator Eide carried and Amendment No. 500 by Senator Honeyford to Substitute House Bill No. 2362 was laid upon the table by voice vote.

The President declared the question before the Senate to be the motion by Senator Eide that Amendment No. 501 by Senator Honeyford to Substitute House Bill No. 2362 be laid upon the table.

The motion by Senator Eide carried and Amendment No. 501 by Senator Honeyford to Substitute House Bill No. 2362 was laid upon the table by voice vote.

The President declared the question before the Senate to be the motion by Senator Eide that Amendment No. 504 by Senator Honeyford to Substitute House Bill No. 2362 be laid upon the table.

The motion by Senator Eide carried and Amendment No. 504 by Senator Honeyford to Substitute House Bill No. 2362 was laid upon the table by voice vote.

The President declared the question before the Senate to be the motion by Senator Eide that Amendment No. 503 by Senator Honeyford to Substitute House Bill No. 2362 be laid upon the table.

The motion by Senator Eide carried and Amendment No. 503 by Senator Honeyford to Substitute House Bill No. 2362 was laid upon the table by voice vote.

The President declared the question before the Senate to be the motion by Senator Eide that Amendment No. 505 by Senator Honeyford to Substitute House Bill No. 2362 be laid upon the table.

The motion by Senator Eide carried and Amendment No. 505 by Senator Honeyford to Substitute House Bill No. 2362 was laid upon the table by voice vote.

The President declared the question before the Senate to be the motion by Senator Eide that Amendment No. 502 by Senator Honeyford to Substitute House Bill No. 2362 be laid upon the table.

The motion by Senator Eide carried and Amendment No. 502 by Senator Honeyford to Substitute House Bill No. 2362 was laid upon the table by voice vote.

The President declared the question before the Senate to be the motion by Senator Eide that Amendment No. 470 by Senator Honeyford to Substitute House Bill No. 2362 be laid upon the table.

The motion by Senator Eide carried and Amendment No. 470 by Senator Honeyford to Substitute House Bill No. 2362 was laid upon the table by voice vote.

The President declared the question before the Senate to be the motion by Senator Eide that Amendment No. 471 by Senator Honeyford to Substitute House Bill No. 2362 be laid upon the table.

The motion by Senator Eide carried and Amendment No. 471 by Senator Honeyford to Substitute House Bill No. 2362 was laid upon the table by voice vote.

The President declared the question before the Senate to be the motion by Senator Eide that Amendment No. 521 by Senator Marr to Substitute House Bill No. 2362 be laid upon the table.

The motion by Senator Eide carried and Amendment No. 521 by Senator Honeyford to Substitute House Bill No. 2362 was laid upon the table by voice vote.

The President declared the question before the Senate to be the motion by Senator Eide to lay upon the table amendment number 528 by Senator Marr to Substitute House Bill No. 2362. Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members

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 supported the demand and the demand was sustained.

PARLIAMENTARY INQUIRY

Senator Hargrove: "Is there any room left on the table?"

PARLIAMENTARY INQUIRY

Senator Eide: "Thank you. Just want to make sure what exactly we're voting on."

REPLY BY THE PRESIDENT

President Owen: "We are voting on the motion to lay upon the table amendment number 528. A yes vote would lay it upon the table. A no vote will allow you to vote on the amendment."

The President declared the question before the Senate to be the motion by Senator Eide that amendment number 528 by Senator Marr to Substitute House Bill No. 2362 be laid upon the table.

The Secretary called the roll on the motion by Senator Eide and the motion carried by the following vote: Yeas, 27; Nays, 16; Absent, 0; Excused, 6.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller and Tom

Voting nay: Senators Becker, Brandland, Carrell, Hewitt, Hobbs, Holmquist, Honeyford, King, Marr, Parlette, Pflug, Schoesler, Sheldon, Shin, Swecker and Zarelli

Excused: Senators Benton, Delvin, McCaslin, Morton, Roach and Stevens

The President declared the question before the Senate to be the motion by Senator Eide that Amendment No. 487 by Senator Shin to Substitute House Bill No. 2362 be laid upon the table.

The motion by Senator Eide carried and Amendment No. 487 by Senator Shin to Substitute House Bill No. 2362 was laid upon the table by voice vote.

MOTION

On motion of Senator Kline the rules were suspended, Substitute House Bill No. 2362 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

Senators Schoesler, Marr and Carrell spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2362 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2362 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 25; Nays, 18; Absent, 0; Excused, 6.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Jarrett, Kastama,

Kauffman, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller and Tom

Voting nay: Senators Becker, Brandland, Carrell, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kilmer, King, Marr, Parlette, Pflug, Schoesler, Sheldon, Shin, Swecker and Zarelli

Excused: Senators Benton, Delvin, McCaslin, Morton, Roach and Stevens

SUBSTITUTE HOUSE BILL NO. 2362, as amended by the Senate having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, Substitute House Bill No. 2362 was immediately transmitted to the House of Representatives.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2245, by House Committee on Ways & Means (originally sponsored by Representative Cody)

Clarifying public employees' benefits board eligibility.

The measure was read the second time.

MOTION

Senator Pflug moved that the following amendment by Senator Pflug be adopted.

On page 13, beginning on line 24, after "entities" strike all material through "1993." on line 38, and insert "((; and

(g) Minimum scope and content of public employee benefit plans to be offered to enrollees participating in the employee health benefit plans.

To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993. Nothing in this subsection (2)(g) shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits or the administration of a high deductible health plan in conjunction with a health savings account))."

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

Senator Pflug spoke in favor of adoption of the amendment.

Senator Keiser spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Pflug on page 13, line 24 to Engrossed Substitute House Bill No. 2245.

The motion by Senator Pflug failed and the amendment was not adopted by voice vote.

MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed Substitute House Bill No. 2245 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Keiser spoke in favor of passage of the bill.

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2009 REGULAR SESSION

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2245.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2245 and the bill passed the Senate by the following vote: Yeas, 43; Nays, 0; Absent, 0; Excused, 6.

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

Excused: Senators Benton, Delvin, McCaslin, Morton, Roach and Stevens

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2245, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2341, by House Committee on Ways & Means (originally sponsored by Representatives Cody and Kelley)

Modifying the basic health plan program.

The measure was read the second time.

MOTION

Senator Pflug moved that the following amendment by Senator Pflug be adopted.

On page 8, line 33, after "requirements.", insert:

"(g) To collect from all public employees a voluntary opt in donation of varying amounts through a monthly or one-time payroll deduction as provided for in RCW 41.04.230. The donation must be deposited in the health services account established in RCW 43.72.900 to be used for the sole purpose of maintaining enrollment capacity in the basic health plan.

The administrator shall send an annual notice to state employees extending the opportunity to participate in the opt-in donation program for the purpose of saving enrollment slots for the basic health plan. The first such notice shall be sent to public employees no later than June 1, 2009.

The notice shall include monthly sponsorship levels of fifteen dollars per month, thirty dollars per month, fifty dollars per month and any other amounts deemed reasonable by the administrator. The sponsorship levels shall be named "Safety Net Contributor," "Safety Net Hero," and "Safety Net Champion" respectively. The donation amounts provided shall be tied to the level of coverage the employee will be purchasing for a working poor individual without access to health care coverage.

The administrator shall ensure that employees are given an opportunity to establish a monthly standard deduction or a one-time deduction towards the basic health plan donation program. The basic health plan donation program shall be known as the "Save the Safety Net Program."

The donation permitted under this subsection may not be collected from any public employee who does not actively opt in

to the donation program. Written notification of intent to discontinue participation in the donation program must be provided by the public employee at least fourteen days prior to the next standard deduction.

On page 17, after line 34, insert:

NEW SECTION. Sec. 8. Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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

The President declared the question before the Senate to be the adoption of the amendment by Senator Pflug on page 8, line 33 to Substitute House Bill No. 2341.

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

MOTION

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

On page 1, line 2 of the title, after "budget;" strike "and"

On page 1, line 4 of the title, after "70.47.170" insert ";and declaring an emergency"

MOTION

Senator Pflug moved that the following amendment by Senator Pflug be adopted.

On page 17, after line 34, insert the following:

NEW SECTION. Sec. 7. If the monthly funding rate for public employee benefits in the omnibus appropriations act is not reduced to seven hundred and six dollars for fiscal years 2010 and 2011 and a commensurate restoration to the level of funding for the basic health plan in the omnibus appropriations act which reflects the full extent of those savings is not made, this act is null and void.

WITHDRAWAL OF AMENDMENT

On motion of Senator Pflug, the amendment by Senator Pflug on page 17, line 34 to Substitute House Bill No. 2341 was withdrawn.

MOTION

On motion of Senator Keiser the rules were suspended, Substitute House Bill No. 2341 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Keiser spoke in favor of passage of the bill.

POINT OF INQUIRY

Senator Prentice: "Would the Senator from the Forty-Ninth District yield to a question? The bill changes the eligibility for individuals enrolled in medical assistance programs with DSHS from being enrolled in basic health plan. Is that intended to be all programs offered by medical assistance?"

Senator Keiser: "The intent is to try to apply this to enrollees receiving partial medical coverage authorized under chapter 74.09 RCW and not limited programs like family planning only coverage."

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POINT OF INQUIRY

Senator Schoesler: "Would the gentleman from the Forty-Ninth District yield to a question? Well, I know he hasn't been excused. If the gentleman would answer the question I would love to ask him if he concurred with the previous speaker."

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2341 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2341 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 30; Nays, 13; Absent, 0; Excused, 6.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Regala, Rockefeller, Shin, Tom and Zarelli

Voting nay: Senators Becker, Brandland, Carrell, Hewitt, Holmquist, Honeyford, King, Parlette, Pflug, Ranker, Schoesler, Sheldon and Swecker

Excused: Senators Benton, Delvin, McCaslin, Morton, Roach and Stevens

SUBSTITUTE HOUSE BILL NO. 2341 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 6096, by Senator Tom

Concerning the taxation of the manufacturing and selling of fuel for consumption outside the waters of the United States by vessels in foreign commerce.

The measure was read the second time.

MOTION

Senator Brandland moved that the following amendment by Senator Brandland be adopted.

On page 2, beginning on line 22, after "applies" strike "both prospectively and retroactively" and insert "prospectively only"

Senator Brandland spoke in favor of adoption of the amendment.

Senator Tom spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Brandland on page 2, line 22 to Senate Bill No. 6096.

The motion by Senator Brandland failed and the amendment was not adopted by a rising vote.

MOTION

On motion of Senator Tom, the rules were suspended, Senate Bill No. 6096 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

POINT OF ORDER

Senator Brandland: "Thank you Mr. President. I believe that this measure may require a super majority vote under provisions of law enacted last year under by Imitative 960. I've got a one page document here and I'll be glad to read it but if you'd like to just have me bring it up I'd do that as well."

REPLY BY THE PRESIDENT

President Owen: "The President would be happy to read it himself."

PARLIAMENTARY INQUIRY

Senator Tom: "Thank you Mr. President. I also have a interesting piece of reading material for you that I would like to bring to the bar unless the members would enjoy a nice little night time reading."

MOTION

On motion of Senator Eide, further consideration of Senate Bill No. 6096 was deferred and the bill held its place on the third reading calendar.

MOTION

At 1:17 a.m., on motion of Senator Eide, the Senate adjourned until 10:30 a.m. Sunday, April 26, 2009.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate