

SIXTEENTH DAY

MORNING SESSION

Senate Chamber, Olympia, Wednesday, May 11, 2011

The Senate was called to order at 10:00 a.m. by Senator Fraser. The Secretary called the roll and that all Senators were present with the exception of Senators Benton, Holmquist Newbry, Keiser, Pflug, Sheldon and Shin.

The Sergeant at Arms Color Guard consisting Senate staff Jim Troyer and Judy Rogers-LaVigne, presented the Colors. Senator Hargrove offered the prayer.

MOTION

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

MOTION

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

MESSAGE FROM THE HOUSE

May 10, 2011

MR. PRESIDENT:

The House has passed:

ENGROSSED HOUSE BILL 1248,

ENGROSSED SUBSTITUTE HOUSE BILL 2065.

and the same are 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

SB 5956 by Senators Harper, Pflug and Kline

AN ACT Relating to the prohibited practices of collection agencies; reenacting and amending RCW 19.16.250; creating a new section; providing an effective date; and declaring an emergency.

Referred to Committee on Business & Financial Services.

SB 5957 by Senators Keiser, Delvin, Kohl-Welles, Kline and Tom

AN ACT Relating to moving marijuana to Schedule II under the uniform controlled substances act; and amending RCW 69.50.204 and 69.50.206.

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 with the exception of Senate Bill No. 5956 which was placed on the second reading calendar under suspension of the rules.

SUPPLEMENTAL INTRODUCTION AND FIRST READING OF HOUSE BILLS

EHB 1248 by Representatives Hunter and Darneille

AN ACT Relating to authorizing emergency rule making when necessary to implement fiscal reductions; and amending RCW 34.05.350; and declaring an emergency.

Referred to Committee on Ways & Means.

ESHB 2065 by House Committee on Ways & Means (originally sponsored by Representative Hunt)

AN ACT Relating to allocation of funding for students enrolled in alternative learning experiences; amending RCW 28A.150.262, 28A.250.005, 28A.250.010, 28A.250.020, 28A.250.030, 28A.250.060, 28A.150.260, 28A.150.100, and 28A.250.050; adding a new section to chapter 28A.150 RCW; creating a new section; providing an effective date; and providing an expiration date.

Referred to Committee on Ways & Means.

MOTION

On motion of Senator Eide, all measures listed on the Supplemental Introduction and First Reading report were referred to the committees as designated.

MOTION

At 10:10 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 1:31 p.m. by President Owen.

MOTION

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

SECOND READING

SENATE BILL NO. 5956, by Senators Harper and Pflug

Concerning the prohibited practices of collection agencies.

The measure was read the second time.

MOTION

On motion of Senator Harper, the rules were suspended, Senate Bill No. 5956 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Harper spoke in favor of passage of the bill.

MOTION

On motion of Senator Ericksen, Senators Becker, Benton, Holmquist Newbry and Pflug were excused.

MOTION

On motion of Senator White, Senators Keiser, Sheldon and Shin were excused.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5956.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5956 and the bill passed the Senate by the following vote: Yeas, 42; Nays, 0; Absent, 0; Excused, 7.

Voting yea: Senators Baumgartner, Baxter, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Becker, Benton, Holmquist Newbry, Keiser, Pflug, Sheldon and Shin

SENATE BILL NO. 5956, 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 SECOND SUBSTITUTE SENATE BILL 5596,

ENGROSSED SUBSTITUTE SENATE BILL 5927.

MOTION

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

RULING BY THE PRESIDENT

President Owen: "In ruling upon the point of order raised by Senator Holmquist Newbry as to the application of Initiative 1053 to Engrossed Substitute Senate Bill 5581, the President finds and rules as follows:

Procedural challenges to revenue bills have been relatively common since the enactment of Initiative 601, followed by Initiatives 960 and 1053. These challenges often have a significant impact on revenue legislation, as the result of each challenge determines the number of votes necessary for a matter to pass. The President has attempted to approach these challenges in a consistent manner, and strongly believes that consistency provides guidance to members and legislative staff in drafting legislation that increases revenue. Certainly, some of the challenges have been easier to decide than others. In this particular instance, excellent arguments have been made to support both sides of the ultimate question – whether this assessment is a tax or a fee – and the President believes that this is one of the more difficult decisions he has been called upon to make.

Substitute Senate Bill 5581 addresses the collection of revenue referred to as a 'safety net assessment.' The bill does two separate things: it reduces the Medicaid rates paid to nursing homes for the care of Medicaid eligible patients, and it collects an assessment to supplement those reduced rates. This challenge focuses on the collection and distribution of the assessment, arguing that it constitutes a tax under I-1053.

Generally, the bill imposes an obligation on licensed nursing homes to pay an assessment based on the number of beds in each facility, but only for those beds occupied by private pay and Medicaid patients. After federal funds are received and added to the assessments, those amounts are used to pay for the care of Medicaid patients in licensed nursing homes. The bill carefully excludes certain nursing homes from the obligation to pay the assessment, such as continuing care facilities, publicly-owned facilities, hospitals, and smaller nursing homes. However, to the extent that those facilities may have Medicaid patients, they will benefit from the increased rates provided by the assessments. For almost all individual nursing facilities, the amount paid and the benefit received will vary from one another, and these variances are likely to be significant.

Past rulings by the President have recognized that a measure may be appropriately described as a fee if there is a sufficient nexus between those paying the fee or tax, and the purpose for which the revenue is used. Several additional elements contribute to this analysis, such as the common elements linking members of the group obligated to pay, whether the amounts are paid into an account with limited purposes, and the specific purpose or purposes for which the revenue may be used.

The latter two elements – paying the funds into a limited account, and limiting the purpose for which the funds may be used – weigh in favor of this measure being considered a fee.

Admittedly, there is not a perfect symmetry between the individual institutions that may pay the assessment and those that receive the benefit of the increased Medicaid rates. The precise amounts paid will vary between nursing homes, and the Medicaid rate payments will also vary, because the mix of beds – private-pay and Medicaid – will be different for each institution and will also change over time for each individual institution.

But even though individual circumstances may vary, the President cannot ignore that the nursing home industry provides a broad range of vital services for Washington citizens, particularly elderly citizens. These services are paid for through private resources, Medicare, and Medicaid. Most nursing homes – although not all of them – have a mix of all three. Accordingly, the President views this bill as imposing an assessment on the licensed nursing home industry, and returning that assessment to the industry in the form of increased Medicaid rates. Neither I-1053 nor the President's prior rulings have required that a fee fall equally on individual payors, nor that its benefits be the same for each recipient. Simply put, 'there must be a reasonable connection between the fee, those paying it, and the purpose on which its proceeds may be spent.' April 4, 2007, Senate Journal, pages 1204-05).

For these reasons, the President believes this measure will take only a simple majority vote on final passage, and Senator Holmquist Newbry's point is not well-taken."

THIRD READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 5581, by Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Parlette, Hargrove, Shin, Conway and Kline).

Creating a nursing home safety net assessment.

SIXTEENTH DAY, MAY 11, 2011

2011 1ST SPECIAL SESSION

The bill was read on Third Reading.

Passed to Committee on Rules for second reading.

Senators Keiser, Murray, Parlette and Brown spoke in favor of passage of the bill.

Senators Ericksen, Roach and Haugen spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5581.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5581 and the bill passed the Senate by the following vote: Yeas, 27; Nays, 17; Absent, 0; Excused, 5.

Voting yea: Senators Brown, Chase, Conway, Delvin, Eide, Fraser, Hargrove, Harper, Hatfield, Hobbs, Honeyford, Keiser, Kilmer, King, Kline, Kohl-Welles, Morton, Murray, Nelson, Parlette, Prentice, Pridemore, Regala, Rockefeller, Schoesler, Tom and White

Voting nay: Senators Baumgartner, Baxter, Carrell, Ericksen, Fain, Haugen, Hewitt, Hill, Kastama, Litzow, McAuliffe, Pflug, Ranker, Roach, Stevens, Swecker and Zarelli

Excused: Senators Becker, Benton, Holmquist Newbry, Sheldon and Shin

ENGROSSED SUBSTITUTE SENATE BILL NO. 5581, 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. 5581 was immediately transmitted to the House of Representatives.

MOTION

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

REPORTS OF STANDING COMMITTEES

May 11, 2011

SB 5873 Prime Sponsor, Senator Prentice: Concerning the sales and use tax exemption for qualifying businesses of eligible server equipment. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli; Parlette; Baumgartner; Baxter; Conway; Hatfield; Hewitt; Honeyford; Keiser; Pflug; Schoesler and Tom.

MINORITY recommendation: Do not pass. Signed by Senators Kastama and Rockefeller.

MINORITY recommendation: That it be referred without recommendation. Signed by Senator Regala.

May 11, 2011
E2SHB 1965 Prime Sponsor, Committee on Ways & Means: Concerning adverse childhood experiences. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass as amended. Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Parlette; Brown; Conway; Fraser; Hatfield; Hewitt; Honeyford; Kastama; Keiser; Kohl-Welles; Pflug; Pridemore; Regala; Rockefeller and Schoesler.

MINORITY recommendation: That it be referred without recommendation. Signed by Senator Baxter.

Passed to Committee on Rules for second reading.

May 11, 2011
EHB 2069 Prime Sponsor, Representative Cody: Concerning hospital payments. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Brown; Conway; Fraser; Hatfield; Keiser; Kohl-Welles; Pflug; Pridemore; Regala; Rockefeller and Tom.

MINORITY recommendation: Do not pass. Signed by Senators Honeyford and Schoesler.

MINORITY recommendation: That it be referred without recommendation. Signed by Senator Baxter.

Passed to Committee on Rules for second reading.

MOTION

On motion of Senator Eide, all measures listed on the Standing Committee report were referred to the committees as designated.

MOTION

At 2:05 p.m., on motion of Senator Eide, the Senate adjourned until 10:00 a.m. Thursday, May 12, 2011.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

SIXTEENTH DAY, MAY 11, 2011

2011 1ST SPECIAL SESSION

1248		President Signed.....	2
	Introduction & 1 st Reading	5873	
	Messages	Committee Report.....	3
1965-S2		5927-S	
	Committee Report	President Signed.....	2
2065-S		5956	
	Introduction & 1 st Reading	Introduction & 1 st Reading.....	1
	Messages	Other Action	1
2069		Second Reading	1
	Committee Report	Third Reading Final Passage.....	2
5581-S		5957	
	Third Reading.....	Introduction & 1 st Reading.....	1
	Third Reading Final Passage	PRESIDENT OF THE SENATE	
5596-S2		Ruling by the President SSB 5581	2