

**FIFTY FIFTH DAY**

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MORNING SESSION

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Senate Chamber, Olympia  
Saturday, March 6, 2021

The Senate was called to order at 10:02 a.m. by the President of the Senate, Lt. Governor Heck presiding. The Secretary called the roll and announced to the President that all Senators were present.

The Washington State Patrol Honor Guard presented the Colors.

Mr. Narayan Das and Mr. Niam Das led the Senate in the Pledge of Allegiance. Narayan and Niam Das are nephews of Senator Das.

The prayer was offered by Pastor Chris Rule of Orting Baptist Church.

MOTIONS

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

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

MESSAGE FROM THE HOUSE

March 4, 2021

MR. PRESIDENT:

The House has passed:

HOUSE BILL NO. 1034,  
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1097,  
ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO.  
1139,  
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1197,  
ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO.  
1227,  
ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO.  
1335,  
SUBSTITUTE HOUSE BILL NO. 1379,  
SUBSTITUTE HOUSE BILL NO. 1438,  
HOUSE BILL NO. 1495,

and the same are herewith transmitted.

BERNARD DEAN, Chief Clerk

MOTION

On motion of Senator Liias, the Senate advanced to the fifth order of business.

INTRODUCTION AND FIRST READING

2SHB 1033 by House Committee on Finance (originally sponsored by Leavitt, Boehnke, Bronoske, Santos, Paul and Orwall)

AN ACT Relating to the Washington customized employment training program; amending RCW 82.04.449; creating new sections; providing an effective date; and declaring an emergency.

Referred to Committee on Higher Education & Workforce Development.

HB 1034 by Representatives Fitzgibbon, Cody, Ortiz-Self and Wylie

AN ACT Relating to park and recreation district levies; amending RCW 36.69.145, 84.52.010, and 84.52.043; and creating a new section.

Referred to Committee on Ways & Means.

E2SHB 1073 by House Committee on Appropriations (originally sponsored by Berry, Wicks, Fitzgibbon, Bateman, Tharinger, Simmons, Kloba, Ramel, Ortiz-Self, Goodman, Ryu, Bronoske, Hackney, Chopp, Riccelli, Stonier, Frame, Macri, Davis, Pollet, Bergquist and Harris-Talley)

AN ACT Relating to expanding coverage of the paid family and medical leave program; amending RCW 50A.15.010 and 50A.30.020; adding a new section to chapter 50A.15 RCW; creating new sections; and declaring an emergency.

Referred to Committee on Labor, Commerce & Tribal Affairs.

ESHB 1097 by House Committee on Labor & Workplace Standards (originally sponsored by Sells, Bateman, Ortiz-Self, Kloba, Chopp, Ormsby, Stonier and Macri)

AN ACT Relating to increasing worker protections; amending RCW 49.17.130, 49.17.140, 49.17.160, and 49.17.180; adding a new section to chapter 51.04 RCW; creating a new section; prescribing penalties; and providing an effective date.

Referred to Committee on Labor, Commerce & Tribal Affairs.

ESHB 1113 by House Committee on Education (originally sponsored by Ortiz-Self, Kloba and Pollet)

AN ACT Relating to school attendance; amending RCW 28A.225.015, 28A.225.030, 28A.225.151, 28A.225.020, 28A.225.025, 28A.225.026, 28A.225.0261, 28A.225.027, 28A.225.035, 28A.225.090, and 28A.225.090; adding a new section to chapter 28A.225 RCW; providing an effective date; providing an expiration date; and declaring an emergency.

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

E2SHB 1139 by House Committee on Appropriations (originally sponsored by Pollet, Callan, Berg, Dolan, Ryu, Leavitt, Bronoske, Ramel, Ramos, Lekanoff, Stonier, Ortiz-Self, Frame, Goodman, Rule, Bergquist, Berry, Wylie, J. Johnson, Taylor and Valdez)

AN ACT Relating to taking action to address lead in school drinking water; adding a new section to chapter 28A.210 RCW; adding new sections to chapter 43.70 RCW; adding a new section to chapter 43.20 RCW; and creating new sections.

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

HB 1167 by Representatives Bateman, Dolan and Hackney

AN ACT Relating to Thurston county superior court judges; amending RCW 2.08.065; and creating a new section.

Referred to Committee on Law & Justice.

E2SHB 1186 by House Committee on Appropriations (originally sponsored by Goodman, Senn, Sullivan, Leavitt, Gregerson, Fitzgibbon, Ortiz-Self, Duerr, Tharinger, Macri, Davis, Pollet, Callan, Harris-Talley and Hackney)

AN ACT Relating to juvenile rehabilitation; amending RCW 72.01.412, 13.40.020, 13.40.205, 13.40.215, 13.40.220, and 13.04.800; creating new sections; and providing a contingent effective date.

Referred to Committee on Human Services, Reentry & Rehabilitation.

ESHB 1189 by House Committee on Finance (originally sponsored by Duerr, Boehnke, Bateman, Sullivan, Fitzgibbon, Walen, Ramel, Springer, Wicks, Slatter, Pollet, Callan and Harris-Talley)

AN ACT Relating to tax increment financing; amending RCW 84.55.010 and 84.55.120; and adding a new chapter to Title 39 RCW.

Referred to Committee on Business, Financial Services & Trade.

ESHB 1197 by House Committee on Civil Rights & Judiciary (originally sponsored by Riccelli, Tharinger, Cody, Pollet and Harris-Talley)

AN ACT Relating to health care decisions made by a designated person; amending RCW 7.70.065; reenacting and amending RCW 7.70.065; providing an effective date; and providing an expiration date.

Referred to Committee on Law & Justice.

SHB 1207 by House Committee on Transportation (originally sponsored by Ramel, Boehnke, Lekanoff, Lovick, Ortiz-Self, Eslick, Bergquist and Leavitt)

AN ACT Relating to improving access to department of licensing issued documents by extending the issuance period of driver licenses and identicards to eight years, allowing online issuance and renewal of instruction permits, and expanding online renewal of driver licenses and identicards; amending RCW 46.20.049, 46.20.055, 46.20.091, 46.20.120, 46.20.161, 46.20.181, 46.20.202, and 46.20.505; reenacting and amending RCW 46.20.117; creating new sections; providing an effective date; and declaring an emergency.

Referred to Committee on Transportation.

SHB 1209 by House Committee on Civil Rights & Judiciary (originally sponsored by Bronoske, Cody, Sells, Walen, Lekanoff, Peterson, Fey, Fitzgibbon, Ryu, Taylor, Shewmake, Santos, Thai, Ortiz-Self, Dolan, Gregerson, Hackney, Callan, Valdez, Riccelli, Macri and Goodman)

AN ACT Relating to immunity protection for nonmedical assistance; and adding a new section to chapter 4.24 RCW.

Referred to Committee on Law & Justice.

E2SHB 1220 by House Committee on Appropriations (originally sponsored by Peterson, Macri, Bateman, Ryu, Lekanoff, Fitzgibbon, Kloba, Davis, Lovick, Santos, Ortiz-Self, Simmons, Berg, Hackney, Chopp, Tharinger and Frame)

AN ACT Relating to supporting emergency shelters and housing through local planning and development regulations; amending RCW 36.70A.020 and 36.70A.030; reenacting and amending RCW 36.70A.070; adding a new section to chapter 35A.21 RCW; adding a new section to chapter 35.21 RCW; and adding a new section to chapter 36.70A RCW.

Referred to Committee on Housing & Local Government.

E2SHB 1227 by House Committee on Appropriations (originally sponsored by Ortiz-Self, Callan, Senn, Dolan, Fitzgibbon, Ramos, Davis, Santos, Macri, Gregerson, Young and Ormsby)

AN ACT Relating to protecting the rights of families responding to allegations of abuse or neglect of a child; amending RCW 13.34.040, 26.44.056, 26.44.050, 13.34.050, 13.34.062, 13.34.060, 13.34.065, and 13.34.090; creating new sections; and providing an effective date.

Referred to Committee on Human Services, Reentry & Rehabilitation.

SHB 1259 by House Committee on Appropriations (originally sponsored by Santos, Dolan, Ryu, Valdez, Fey, Ramel, Ortiz-Self, Hackney, Ramos, Kloba, Callan, Lekanoff, Macri, Gregerson, Slatter, Stonier and Harris-Talley)

AN ACT Relating to expanding public contracting opportunities for women and minority business enterprises by increasing the regulatory oversight and accountability of the office of minority and women's business enterprises; amending RCW 39.19.020, 39.19.060, 39.19.080, 39.19.090, 39.19.200, and 39.19.250; adding a new section to chapter 39.19 RCW; and repealing RCW 39.19.100 and 39.19.110.

Referred to Committee on Business, Financial Services & Trade.

ESHB 1267 by House Committee on Public Safety (originally sponsored by Entenman, Hackney, Senn, Dolan, Leavitt, Berry, Fitzgibbon, Valdez, Simmons, Ramel, Ortiz-Self, Ramos, Chopp, Davis, Thai, Bergquist, Peterson, Kloba, Callan, Lekanoff, Macri, Goodman, Gregerson, J. Johnson, Lovick, Slatter, Ryu, Berg, Harris-Talley, Sells, Tharinger, Orwall, Pollet, Santos and Ormsby)

AN ACT Relating to investigation of potential criminal conduct arising from police use of force, including custodial injuries, and other officer-involved incidents; amending RCW 10.93.020, 39.26.125, and 10.114.011; adding a new section to chapter 41.06 RCW; adding a new chapter to Title 43 RCW; creating new sections; and providing an expiration date.

Referred to Committee on Law & Justice.

E2SHB 1287 by House Committee on Transportation (originally sponsored by Ramel, Hackney, Bateman,

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AN ACT Relating to preparedness for a zero emissions transportation future; amending RCW 19.280.030 and 19.27.540; adding a new section to chapter 47.01 RCW; and creating a new section.

Referred to Committee on Environment, Energy & Technology.

**SHB 1301** by House Committee on Transportation (originally sponsored by Fitzgibbon, Hackney, Valdez and Macri)

AN ACT Relating to providing expanded options for fare enforcement by regional transit authorities; and amending RCW 81.112.210 and 81.112.220.

Referred to Committee on Transportation.

**SHB 1333** by House Committee on Finance (originally sponsored by Tharinger, Steele, Hackney and Lekanoff)

AN ACT Relating to providing an extension to the local sales and use tax for public facilities in rural counties; and amending RCW 82.14.370.

Referred to Committee on Ways & Means.

**E2SHB 1335** by House Committee on Appropriations (originally sponsored by Valdez, Rude, Berry, Fitzgibbon, Morgan, Santos, Shewmake, Davis, Berg, Gilday, Bergquist, Fey, Bateman, Lekanoff, Lovick, Callan, Riccelli, Rule, Pollet, Senn and Harris-Talley)

AN ACT Relating to review and property owner notification of recorded documents with unlawful racial restrictions; amending RCW 64.06.020 and 49.60.227; adding a new section to chapter 43.330 RCW; creating new sections; and providing an expiration date.

Referred to Committee on Business, Financial Services & Trade.

**SHB 1357** by House Committee on State Government & Tribal Relations (originally sponsored by Mosbrucker, Gregerson, Chase and Berry)

AN ACT Relating to voters' pamphlets for overseas and service voters; amending RCW 29A.40.020, 29A.32.260, and 29A.72.025; and creating new sections.

Referred to Committee on State Government & Elections.

**SHB 1379** by House Committee on Transportation (originally sponsored by Lovick, Boehnke, Sutherland, Ryu and Dent)

AN ACT Relating to establishing an unpiloted aircraft system state coordinator and program funding source; amending RCW 47.68.250, 47.68.250, and 47.68.020; adding a new section to chapter 47.68 RCW; providing effective dates; providing an expiration date; and declaring an emergency.

Referred to Committee on Transportation.

**SHB 1438** by House Committee on Finance (originally sponsored by Orcutt, Sutherland, Graham, Young, Volz and Eslick)

AN ACT Relating to expanding eligibility for property tax exemptions for service-connected disabled veterans and senior citizens by modifying income thresholds for eligibility to allow deductions for common health care-related expenses; reenacting and amending RCW 84.36.383; and creating a new section.

Referred to Committee on Ways & Means.

**SHB 1446** by House Committee on Environment & Energy (originally sponsored by Fey)

AN ACT Relating to prohibiting a utility from being assessed a penalty for not meeting its biennial acquisition target for cost-effective conservation in special circumstances outside the utility's control; and amending RCW 19.285.040 and 19.285.060.

Referred to Committee on Environment, Energy & Technology.

**EHB 1453** by Representatives Bergquist, Volz, Valdez, Lekanoff, Shewmake, Sutherland and Riccelli

AN ACT Relating to voters' pamphlets; amending RCW 29A.32.010, 29A.32.020, 29A.32.031, 29A.32.060, 29A.32.070, 29A.32.090, 29A.32.110, 29A.32.121, 29A.32.210, 29A.32.220, 29A.32.230, 29A.32.241, 29A.32.250, 29A.32.260, 29A.32.280, and 29A.72.025; and providing an effective date.

Referred to Committee on State Government & Elections.

**HB 1495** by Representatives Chapman, Robertson and Dent

AN ACT Relating to providing that qualified dealer cash incentives paid to auto dealers are bona fide discounts for purposes of the business and occupation tax; adding a new section to chapter 82.04 RCW; creating a new section; and providing an effective date.

Referred to Committee on Ways & Means.

**E2SHB 1504** by House Committee on Appropriations (originally sponsored by Chopp, Simmons, Berry, Davis, Valdez, Wylie, J. Johnson, Ryu, Tharinger, Taylor, Goodman, Bergquist, Ramel, Peterson, Senn, Dolan, Ormsby, Duerr, Macri, Kloba, Callan, Morgan, Stonier, Pollet, Riccelli and Thai)

AN ACT Relating to modifying the workforce education investment act to invest in new and existing behavioral health workforce programs; amending RCW 28B.145.030 and 43.79.195; adding a new section to chapter 28B.115 RCW; adding a new section to chapter 71.24 RCW; and creating new sections.

Referred to Committee on Higher Education & Workforce Development.

**ESHB 1521** by House Committee on Finance (originally sponsored by Entenman, Sullivan, Callan, Jacobsen, Taylor, Stokesbary, Gregerson and Ormsby)

AN ACT Relating to supporting warehousing and manufacturing job centers; adding new sections to chapter

82.14 RCW; creating a new section; and providing an expiration date.

Referred to Committee on Business, Financial Services & Trade.

#### MOTIONS

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

At 10:07 a.m., on motion of Senator Liias, the Senate was declared to be at ease subject to the call of the President.

Senator Hasegawa announced a meeting of the Democratic Caucus.

Senator Rivers announced a meeting of the Republican Caucus.

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#### AFTERNOON SESSION

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The Senate was called to order at 12:22 a.m. by President Heck.

#### MOTION

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

#### SECOND READING

SENATE BILL NO. 5237, by Senators Wilson, C., Dhingra, Das, Billig, Conway, Darneille, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Nguyen, Nobles, Pedersen, Saldaña and Salomon

Expanding accessible, affordable child care and early childhood development programs.

#### MOTIONS

On motion of Senator Wilson, C., Second Substitute Senate Bill No. 5237 was substituted for Senate Bill No. 5237 and the substitute bill was placed on the second reading and read the second time.

#### MOTION

Senator Van De Wege moved that the following floor amendment no. 343 by Senator Van De Wege be adopted:

Beginning on page 4, line 25, after "purposes" strike all material through "RCW 41.56.028" on page 6, line 12

On page 6, after line 12, insert the following:

**"NEW SECTION. Sec. 102. FAIR START FOR KIDS SPENDING GOALS AND STRATEGIES.** The spending goals and strategies for the fair start for kids account created under section 101 of this act include, but are not limited to:

(1) Increasing child care subsidy rates, with the goal of moving toward the full cost of providing high quality child care;

(2) Expanding health care coverage through state sponsorship of child care workers on the Washington health benefit exchange and providing consumer assistance through navigators, as well as any other expansions of access to affordable health care for staff in child care centers, family home providers, outdoor nature-based care, and early childhood education and assistance program staff;

(3) Increasing child care and early learning providers' compensation;

(4) Implementing the provisions of collective bargaining agreements for family child care providers negotiated pursuant to RCW 41.56.028;

(5) Supporting and expanding access to the early childhood education and assistance program to reach state-funded entitlement required in RCW 43.216.556;

(6) Making child care affordable for families;

(7) Providing resources and supports for family, friend, and neighbor caregivers that better reflect the full cost of care;

(8) Providing professional development opportunities for child care and early learning providers;

(9) Delivering infant and early childhood mental health consultation services;

(10) Establishing prekindergarten through third grade systems coordinators at educational service districts;

(11) Supporting youth development programs serving children and youth ages birth through 12 including, but not limited to, expanded learning opportunities, mentoring, school-age child care, and wraparound supports or integrated student supports;

(12) Awarding grants and loans through the early learning facilities grant and loan program established under chapter 43.31 RCW;

(13) Paying enhanced rates for special rate designations in the working connections child care programs, early childhood education and assistance programs, and birth to three early childhood education and assistance programs including designations established in sections 302, 304, 305, and 404 of this act;

(14) Supporting costs for transparent data collection and information technology systems operated by the department and department contractors, in particular, to ensure equitable systemic service provision and outcomes;

(15) Providing access to learning technology;

(16) Providing child care resource and referral services;

(17) Conducting quality rating and improvement system activities through the early achievers program;

(18) Expanding prenatal to three services and supports, including the birth to three early childhood education and assistance program and the in-home parent skill-based programs established in RCW 43.216.130;

(19) Building and delivering a family resource and referral linkage system;

(20) Administering comprehensive shared services hubs to allow the ongoing pooling and shared use of services by licensed or certified child care centers and family home providers;

(21) Training department staff to ensure consistent and equitable application of child care licensing and quality standards across the state including antibias and antiracist training;

(22) Providing incentives for child care providers to become licensed; and

(23) Recognizing the benefits of the diverse workforce and facilitating communication in the three most commonly spoken languages by developing a language access plan that centers on equity and access for immigrants, multilingual providers, caregivers, and families."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 6, line 28, after "section" strike "101" and insert "102"

On page 12, line 1, after "(11)" insert "The council shall convene a temporary licensing subcommittee to provide feedback and recommendations on improvement to the statewide licensing process. The subcommittee shall examine strategies to increase the number of licensed child care providers in the state. The subcommittee shall develop model policies for licensed child care

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providers to implement licensing standards including, but not limited to, completing the child care and early learning licensing guidebook, to be made available to support providers with compliance. The subcommittee shall also develop recommendations regarding incentives and financial supports to help prospective providers navigate the licensing process. The subcommittee shall provide feedback and recommendations pursuant to this subsection (11) by December 1, 2022.

(12)"

Renumber the remaining subsection consecutively and correct any internal references accordingly.

On page 27, after line 7, insert the following:

**"NEW SECTION. Sec. 313.** NEGOTIATED RULE MAKING WITH CHILD CARE CENTERS. The secretary shall engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with the largest organization representing child care center owners and directors; the largest organization representing supervisors, teachers, and aides; and other affected interests before adopting requirements that affect child care center licensees."

On page 35, line 30, after "~~(twelve)~~" strike "13" and insert "12"

On page 51, line 31, after "101" strike ", 103" and insert "through 103"

On page 51, line 32, after "311" strike ", 312" and insert "through 313"

Senators Van De Wege and Wilson, C. spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of floor amendment no. 343 by Senator Van De Wege on page 4, line 25 to Second Substitute Senate Bill No. 5237.

The motion by Senator Van De Wege carried and floor amendment no. 343 was adopted by voice vote.

#### MOTION

Senator Braun moved that the following floor amendment no. 435 by Senator Braun be adopted:

On page 6, beginning on line 11, strike all of subsection (3)

On page 21, beginning on line 22, strike all of subsection (4)

On page 23, beginning on line 17, strike all of subsection (4)

On page 30, beginning on line 14, after "(3)" strike all material through "section." on line 17 and insert "The department must adopt rules to implement this section."

On page 51, after line 13, insert the following:

**"NEW SECTION. Sec. 601.** Nothing in this act changes the department's responsibility to collectively bargain over mandatory subjects consistent with RCW 41.56.028(3) or limits the legislature's authority to make programmatic modifications to licensed child care and early learning programs consistent with legislative reservation of rights under RCW 41.56.028(4)(d). For RCW 43.216.749, the parties should bargain over the implementation of the subsidy rates and apply those rates consistent with that section and the agreement reached between the parties."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 51, line 32, after "404," strike "and 405" and insert "405, and 601"

Senators Braun and Wilson, C. spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the

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adoption of floor amendment no. 435 by Senator Braun on page 6, line 11 to Second Substitute Senate Bill No. 5237.

The motion by Senator Braun carried and floor amendment no. 435 was adopted by voice vote.

#### MOTION

Senator Wilson, L. moved that the following floor amendment no. 428 by Senator Wilson, L. be adopted:

On page 6, after line 12, insert the following:

**"Sec. 102.** RCW 43.88.055 and 2020 c 218 s 2 are each amended to read as follows:

(1) The legislature must adopt a four-year balanced budget as follows:

(a) Beginning in the 2013-2015 fiscal biennium, the legislature shall enact a balanced omnibus operating appropriations bill that leaves, in total, a positive ending fund balance in the general fund and related funds.

(b) Beginning in the 2013-2015 fiscal biennium, the projected maintenance level of the omnibus appropriations bill enacted by the legislature shall not exceed the available fiscal resources for the next ensuing fiscal biennium.

(2) For purposes of this section:

(a) "Available fiscal resources" means the beginning general fund and related fund balances and any fiscal resources estimated for the general fund and related funds, adjusted for enacted legislation, and with forecasted revenues adjusted to the greater of (i) the official general fund and related funds revenue forecast for the ensuing biennium, or (ii) the official general fund and related funds forecast for the second fiscal year of the current fiscal biennium, increased by 4.5 percent for each fiscal year of the ensuing biennium;

(b) "Projected maintenance level" means estimated appropriations necessary to maintain the continuing costs of program and service levels either funded in that appropriations bill or mandated by other state or federal law, and the amount of any general fund moneys projected to be transferred to the budget stabilization account pursuant to Article VII, section 12 of the state Constitution;

(c) "Related funds," as used in this section, means the Washington opportunity pathways account, the workforce education investment account, the fair start for kids account, and the education legacy trust account.

(3) Subsection (1)(a) and (b) of this section does not apply to an appropriations bill that makes net reductions in general fund and related funds appropriations and is enacted between July 1st and February 15th of any fiscal year.

(4) Subsection (1)(b) of this section does not apply in a fiscal biennium in which money is appropriated from the budget stabilization account pursuant to Article VII, section 12(d)(ii) of the state Constitution."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 1, line 2 of the title, after "RCW" insert "43.88.055,"

Senators Wilson, L. and Rolfes spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of floor amendment no. 428 by Senator Wilson, L. on page 6, line 12 to Second Substitute Senate Bill No. 5237.

The motion by Senator Wilson, L. carried and floor amendment no. 428 was adopted by voice vote.

#### MOTION

Senator Rolfes moved that the following floor amendment no. 408 by Senator Rolfes be adopted:

On page 12, line 26, after "(2)" strike "By July 1, 2025" and insert "Beginning July 1, 2021"

On page 12, line 34, after "(3)" strike "By" and insert "Beginning"

On page 13, line 17, after "July 1," strike "2023" and insert "2021"

On page 14, line 23, after "July 1," strike "2023" and insert "2021"

On page 20, line 35, after "(2)" strike "(a) By" and insert "Beginning"

On page 20, line 36, after "the" strike "75th" and insert "85th"

On page 21, beginning on line 1, strike all of subsection (2)(b)

On page 21, beginning on line 27, after "(1)" strike all material through "(a)" on line 29

On page 21, line 29, after "2021-22" strike "through 2022-23 school years, rates" and insert "school year, rates for the early childhood education and assistance program"

On page 21, line 30, after "least" strike "five" and insert "10"

On page 21, beginning on line 32, strike all of subsection (1)(b)

On page 22, line 18, after "(1)" strike "By" and insert "Beginning"

On page 23, line 1, after "(1)" strike "By" and insert "Beginning"

On page 25, line 26, after "~~(The)~~" strike "By" and insert "Beginning"

On page 30, line 6, after "(2)" strike "By" and insert "Beginning"

Beginning on page 49, line 24, strike all of section 508

Correct any internal references accordingly.

On page 51, beginning on line 25, strike all of section 603

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 51, beginning on line 29, strike all of section 605

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 52, line 3, after "**608.**" strike "Section 504 of this act is" and insert "Sections 201, 202, 301, 310, and 504 of this act are"

On page 52, line 6, after "and" strike "takes" and insert "take"

On page 1, line 4 of the title, after "43.216.710," strike "43.216.514, and 43.216.136" and insert "and 43.216.514"

Senators Rolfes and Braun spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of floor amendment no. 408 by Senator Rolfes on page 12, line 26 to Second Substitute Senate Bill No. 5237.

The motion by Senator Rolfes carried and floor amendment no. 408 was adopted by voice vote.

#### MOTION

Senator Braun moved that the following floor amendment no. 430 by Senator Braun be adopted:

On page 12, line 26, after "July 1," strike "2025" and insert "2024"

On page 12, line 34, after "July 1," strike "2027" and insert "2024"

On page 13, line 19, after "July 1," strike "2027" and insert "2024"

On page 15, beginning on line 32, after "program" strike all

material through "income" on line 36

On page 17, beginning on line 28, after "incomes" strike all material through "incomes" on line 31

On page 18, beginning on line 6, after "~~#~~)" strike all material through "but" on line 7

On page 20, line 5, after "July 1," strike "2024" and insert "2023"

On page 51, line 28, after "July 1," strike "2026" and insert "2024"

#### WITHDRAWAL OF AMENDMENT

On motion of Senator Braun and without objection, floor amendment no. 430 by Senator Braun on page 12, line 26 to Second Substitute Senate Bill No. 5237 was withdrawn.

#### MOTION

Senator Short moved that the following floor amendment no. 423 by Senator Short be adopted:

On page 27, after line 7, insert the following:

NEW SECTION. Sec. 313. The legislature recognizes that certain areas of the state lack access to licensed child care and early learning programs. The legislature acknowledges that family home licensees must provide care in their private residences. The legislature intends to explore a new family home hub model that would allow family home licensees to operate child care and early learning programs in homes where the licensee does not reside. The legislature intends to establish a pilot project to determine if this new model can increase access to licensed child care and early learning programs.

NEW SECTION. Sec. 314. (1) The department shall establish a family home hub pilot project. The purpose of the pilot project is to allow family home licensees to operate child care and early learning programs in private residences where the licensee does not reside. The pilot project must commence beginning August 31, 2021, and conclude June 30, 2026.

(2) The department must select up to 10 family home licensees who live east of the crest of the Cascade mountains and up to 10 family home licensees who live west of the crest of the Cascade mountains to participate in the pilot project. The department must select family home licensees who live in:

(a) Areas where there are few or limited licensed child care and early learning programs; or

(b) Areas of need where child care and early learning programs are at or near full capacity, and where access may be restricted by one or more enrollment waitlists.

(3) The department must adopt rules to implement the pilot project and may waive or adapt licensing requirements when necessary to allow for the family home hub except for staff-to-child ratio requirements. The rules must:

(a) Require a supervisor at each private residence who meets training and supervision requirements established by the department; and

(b) Allow but not require the family home licensee or supervisor to live at the private residence or in a dwelling unit located on the same lot as the private residence that is the site of the licensed program.

(4)(a) By November 30, 2025, the department must report to the appropriate committees of the legislature on findings from the pilot project, including:

(i) Potential costs of implementing family home hubs;

(ii) Impact on new license applications and license capacity; and

(iii) Impact on access to child care and early learning programs;

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and

(b) The department must recommend whether the family home hub pilot project should be modified or expanded.

(5) This section expires August 1, 2026."

On page 31, line 22, after "quarters" insert "except as provided in section 314 of this act"

On page 51, line 32, after "312," insert "314,"

Senator Short spoke in favor of adoption of the amendment.

Senator Wilson, C. spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of floor amendment no. 423 by Senator Short on page 27, line 7 to Second Substitute Senate Bill No. 5237.

The motion by Senator Short did not carry and floor amendment no. 423 was not adopted by voice vote.

MOTION

Senator Padden moved that the following floor amendment no. 433 by Senator Padden be adopted:

On page 27, after line 7, insert the following:

**"NEW SECTION. Sec. 313.** (1) By July 1, 2022, the department shall provide additional supports to aid interested parties in becoming licensed or certified child care providers.

(2) The department shall adopt rules to create a regulatory relief incentive program to increase the number of child care providers. The incentives for potential providers may include:

(a) Suspending, delaying, or waiving certain regulations that act as barriers to entry in the child care market;

(b) Granting providers a longer period of at least one year to meet licensing requirements;

(c) Reevaluating required child-to-staff ratios and minimum indoor space requirements for licensing; and

(d) Removing or waiving requirements for licensing as they relate to the early achievers program."

On page 51, line 32, after "311" strike ", 312" and insert "through 313"

Senator Padden spoke in favor of adoption of the amendment.

Senators Wilson, C. and Billig spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of floor amendment no. 433 by Senator Padden on page 27, line 7 to Second Substitute Senate Bill No. 5237.

The motion by Senator Padden did not carry and floor amendment no. 433 was not adopted by voice vote.

MOTION

On motion of Senator Wilson, C., the rules were suspended, Engrossed Second Substitute Senate Bill No. 5237 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Wilson, C., Nobles, Billig, Lovelett and Salomon spoke in favor of passage of the bill.

Senators Hawkins, Fortunato, Rivers, Braun, Wilson, L., Short and Brown spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 5237.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 5237 and the bill passed the Senate by the following vote: Yeas, 28; Nays, 21; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Carlyle, Cleveland, Conway, Darneille, Das, Dhingra, Frockt, Hasegawa, Hobbs, Hunt, Keiser, Kuderer, Liias, Lovelett, Mullet, Nguyen, Nobles, Pedersen, Randall, Robinson, Rolfes, Saldaña, Salomon, Stanford, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Braun, Brown, Dozier, Ericksen, Fortunato, Gildon, Hawkins, Holy, Honeyford, King, McCune, Muzzall, Padden, Rivers, Schoesler, Sheldon, Short, Wagoner, Warnick, Wilson, J. and Wilson, L.

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5237, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 1:21 p.m., on motion of Senator Liias, the Senate was declared to be at ease subject to the call of the President.

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The Senate was called to order at 1:58 p.m. by President Heck.

SECOND READING

SENATE BILL NO. 5096, by Senators Robinson, Hunt, Nguyen, and Wilson, C.

Concerning an excise tax on gains from the sale or exchange of certain capital assets.

MOTIONS

On motion of Senator Robinson, Substitute Senate Bill No. 5096 was substituted for Senate Bill No. 5096 and the substitute bill was placed on the second reading and read the second time.

Revised for 1st Substitute: Enacting an excise tax on gains from the sale or exchange of certain capital assets.

Senator Robinson moved that the following striking floor amendment no. 363 by Senator Robinson be adopted:

Strike everything after the enacting clause and insert the following:

**"Part I  
Capital Gains Tax**

**NEW SECTION. Sec. 101.** (1) The legislature recognizes that a tax system that is fair, balanced, and works for everyone is essential to help all Washingtonians grow and thrive. But Washington's tax system today is the most regressive in the nation because it asks those making the least to pay the most as a percentage of their income. Middle-income families in Washington pay two to four times more in taxes, as a percentage of household income, as compared to top earners in the state. Low-income Washingtonians pay at least six times more than do our wealthiest residents. To begin to rebalance the tax code, the legislature intends to enact an excise tax on the sale of certain capital assets.

(2) The excise tax on capital gains is a tax on the one-time, voluntary sale or exchange of a capital asset, not a tax on ownership of the asset itself. This excise tax is paid only by those

individuals who engage in voluntary sales or exchanges of Washington capital assets, either directly or indirectly through their ownership interest in an entity that engages in voluntary sales or exchanges of Washington capital assets, and is measured by the realization of significant net gain on the aggregate of such transactions during the taxable year. In order to protect against further regressive impacts of the tax system, encourage the everyday investments that Washingtonians of all income levels strive for, and support our economy, this excise tax will not apply to capital gains realized by certain sales and transfers. The legislature specifically finds and declares that the excise tax on the voluntary sale or exchange of capital assets is necessary for the support of state government and its existing institutions.

(3) To help meet the state's obligations to its people, the legislature dedicates the first \$350,000,000 in revenue collected from this excise tax to the state's education legacy trust account. This funding is critically needed to provide support for education, especially early learning and child care, and to provide for the economic security of low-income households who are struggling to afford quality child care and preschool. Furthermore, the legislature finds that increasing taxes on the wealthiest residents is only one-half of the effort to rebalance the tax code. In an effort to both reduce the tax burden on those earning the least and to account for anticipated volatility in revenue collections from the capital gains excise tax, revenue received above base levels will be deposited into the taxpayer fairness account. Revenues deposited in this account will be used to offset existing tax burdens via policies such as funding of the working families' tax exemption.

**NEW SECTION. Sec. 102.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adjusted capital gain" means federal net long-term capital gain:

(a) Plus any amount of long-term capital loss from a sale or exchange that is exempt from the tax imposed in this chapter, to the extent such loss was included in calculating federal net long-term capital gain;

(b) Plus any amount of long-term capital loss from a sale or exchange that is not allocated to Washington under section 108 of this act, to the extent such loss was included in calculating federal net long-term capital gain;

(c) Plus any amount of loss carryforward from a sale or exchange that is not allocated to Washington under section 108 of this act, to the extent such loss was included in calculating federal net long-term capital gain;

(d) Less any amount of long-term capital gain from a sale or exchange that is not allocated to Washington under section 108 of this act, to the extent such gain was included in calculating federal net long-term capital gain; and

(e) Less any amount of long-term capital gain from a sale or exchange that is exempt from the tax imposed in this chapter, to the extent such gain was included in calculating federal net long-term capital gain.

(2) "Capital asset" has the same meaning as provided by Title 26 U.S.C. Sec. 1221 of the internal revenue code and also includes any other property if the sale or exchange of the property results in a gain that is treated as a long-term capital gain under Title 26 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

(3) "Federal net long-term capital gain" means the net long-term capital gain reportable for federal income tax purposes determined as if Title 26 U.S.C. Secs. 55 through 59, 1400Z-1, and 1400Z-2 of the internal revenue code did not exist.

(4) "Individual" means a natural person.

(5) "Internal revenue code" means the United States internal

revenue code of 1986, as amended, as of the effective date of this section, or such subsequent date as the department may provide by rule consistent with the purpose of this chapter.

(6) "Long-term capital asset" means a capital asset that is held for more than one year.

(7) "Long-term capital gain" means gain from the sale or exchange of a long-term capital asset.

(8) "Long-term capital loss" means a loss from the sale or exchange of a long-term capital asset.

(9) "Real estate" has the same meaning as in RCW 82.45.032, except that real estate does not include an individual's ownership interest or beneficial interest in an entity which itself owns an interest in real property located in this state for the purposes of this chapter.

(10)(a) "Resident" means an individual:

(i) Who is domiciled in this state during the taxable year, unless the individual (A) maintained no permanent place of abode in this state during the entire taxable year, (B) maintained a permanent place of abode outside of this state during the entire taxable year, and (C) spent in the aggregate not more than 30 days of the taxable year in this state; or

(ii) Who is not domiciled in this state during the taxable year, but maintained a place of abode and was physically present in this state for more than 183 days during the taxable year.

(b) For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(c) An individual who is a resident under (a) of this subsection is a resident for that portion of a taxable year in which the individual was domiciled in this state or maintained a place of abode in this state.

(11) "Taxable year" means the taxpayer's taxable year as determined under the internal revenue code.

(12) "Taxpayer" means an individual subject to tax under this chapter.

(13) "Washington capital gains" means an individual's adjusted capital gain less \$250,000, as adjusted annually under section 115 of this act, for each return filed under this chapter.

**NEW SECTION. Sec. 103.** (1) Beginning January 1, 2022, an excise tax is imposed on the sale or exchange of long-term capital assets. Only individuals are subject to payment of the tax, which equals seven percent multiplied by an individual's Washington capital gains.

(2) If an individual's Washington capital gains are less than zero for a taxable year, no tax is due under this section and no such amount is allowed as a carryover for use in the calculation of that individual's adjusted capital gain, as defined in section 102(1) of this act, for any taxable year. To the extent that a loss carryforward is included in the calculation of an individual's federal net long-term capital gain and that loss carryforward is directly attributable to losses from sales or exchanges allocated to this state under section 108 of this act, the loss carryforward is included in the calculation of that individual's adjusted capital gain for the purposes of this chapter. An individual may not include any losses carried back for federal income tax purposes in the calculation of that individual's adjusted capital gain for any taxable year.

(3)(a) The tax imposed in this section applies to the sale or exchange of long-term capital assets owned by the taxpayer, whether the taxpayer was the legal or beneficial owner of such assets at the time of the sale or exchange. The tax applies when the Washington capital gains are recognized by the taxpayer in accordance with this chapter.

(b) For purposes of this chapter:

(i) An individual is considered to be a beneficial owner of long-term capital assets held by an entity that is a pass-through or disregarded entity for federal tax purposes, such as a partnership,



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limited liability company, S corporation, or grantor trust, to the extent of the individual's ownership interest in the entity as reported for federal income tax purposes.

(ii) A nongrantor trust is deemed to be a grantor trust if the trust does not qualify as a grantor trust for federal tax purposes, and the grantor's transfer of assets to the trust is treated as an incomplete gift under Title 26 U.S.C. Sec. 2511 of the internal revenue code and its accompanying regulations. A grantor of such trust is considered the beneficial owner of the capital assets of the trust for purposes of the tax imposed in this section and must include any long-term capital gain or loss from the sale or exchange of a capital asset by the trust in the calculation of that individual's adjusted capital gain, if such gain or loss is allocated to this state under section 108 of this act.

**NEW SECTION. Sec. 104.** This chapter does not apply to the sale or exchange of:

- (1) All real estate;
- (2) Assets held under a retirement savings account under Title 26 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered annuity or custodial account described in Title 26 U.S.C. Sec. 403(b) of the internal revenue code, a deferred compensation plan under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an individual retirement account or individual retirement annuity described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a Roth individual retirement account described in Title 26 U.S.C. Sec. 408A of the internal revenue code, an employee defined contribution program, an employee defined benefit plan, or a similar retirement savings vehicle;
- (3) Assets pursuant to, or under imminent threat of, condemnation proceedings by the United States, the state or any of its political subdivisions, or a municipal corporation;
- (4) Cattle, horses, or breeding livestock if for the taxable year of the sale or exchange, more than 50 percent of the taxpayer's gross income for the taxable year, including from the sale or exchange of capital assets, is from farming or ranching;
- (5) Property depreciable under Title 26 U.S.C. Sec. 167(a)(1) of the internal revenue code, or that qualifies for expensing under Title 26 U.S.C. Sec. 179 of the internal revenue code;
- (6) Timber, timberland, or the receipt of Washington capital gains as dividends and distributions from real estate investment trusts derived from gains from the sale or exchange of timber and timberland. "Timber" means forest trees, standing or down, on privately or publicly owned land, and includes Christmas trees and short-rotation hardwoods. The sale or exchange of timber includes the cutting or disposal of timber qualifying for capital gains treatment under Title 26 U.S.C. Sec. 631(a) or (b) of the internal revenue code; and
- (7) Goodwill received from the sale of an auto dealership licensed under chapter 46.70 RCW whose activities are subject to chapter 46.96 RCW.

**NEW SECTION. Sec. 105.** The tax imposed under this chapter is in addition to any other taxes imposed by the state or any of its political subdivisions, or a municipal corporation, with respect to the same sale or exchange, including the taxes imposed in, or under the authority of, chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46 RCW.

**NEW SECTION. Sec. 106.** In computing tax, there may be deducted from the measure of tax amounts that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

**NEW SECTION. Sec. 107.** (1) In computing tax under this chapter for a taxable year, a taxpayer may deduct from the measure of tax the amount of adjusted capital gain derived in the taxable year from the sale of substantially all of the fair market value of the assets of, or the transfer of substantially all of the

taxpayer's interest in, a qualified family-owned small business, to the extent that such adjusted capital gain would otherwise be included in the taxpayer's Washington capital gains.

(2) For purposes of this section, the following definitions apply:

(a) "Assets" means real property and personal property, including tangible personal property and intangible property.

(b) "Family" means the same as "member of the family" in RCW 83.100.046.

(c)(i) "Materially participated" means an individual was involved in the operation of a business on a basis that is regular, continuous, and substantial.

(ii) The term "materially participated" must be interpreted consistently with the applicable treasury regulations for Title 26 U.S.C. Sec. 469 of the internal revenue code, to the extent that such interpretation does not conflict with any provision of this section.

(d) "Qualified family-owned small business" means a business:

(i) In which the taxpayer held a qualifying interest for at least eight years immediately preceding the sale or transfer described in subsection (1) of this section;

(ii) In which either the taxpayer or members of the taxpayer's family, or both, materially participated in operating the business for at least five of the eight years immediately preceding the sale or transfer described in subsection (1) of this section, unless such sale or transfer was to a qualified heir; and

(iii) That had worldwide gross revenue of \$10,000,000 or less in the 12-month period immediately preceding the sale or transfer described in subsection (1) of this section. The worldwide gross revenue amount under this subsection (2)(d)(iii) shall be adjusted annually as provided in section 115 of this act.

(e) "Qualified heir" means a member of the taxpayer's family.

(f) "Qualifying interest" means:

(i) An interest as a proprietor in a business carried on as a sole proprietorship; or

(ii) An interest in a business if at least:

(A) Fifty percent of the business is owned, directly or indirectly, by any combination of the taxpayer or members of the taxpayer's family, or both;

(B) Thirty percent of the business is owned, directly or indirectly, by any combination of the taxpayer or members of the taxpayer's family, or both, and at least:

(I) Seventy percent of the business is owned, directly or indirectly, by members of two families; or

(II) Ninety percent of the business is owned, directly or indirectly, by members of three families.

(g) "Substantially all" means at least 90 percent.

**NEW SECTION. Sec. 108.** (1) For purposes of the tax imposed under this chapter, long-term capital gains and losses are allocated to Washington as follows:

(a) Long-term capital gains or losses from the sale or exchange of tangible personal property are allocated to this state if the property was located in this state at the time of the sale or exchange. Long-term capital gains or losses from the sale or exchange of tangible personal property are also allocated to this state even though the property was not located in this state at the time of the sale or exchange if:

(i) The property was located in the state at any time during the taxable year in which the sale or exchange occurred or the immediately preceding taxable year;

(ii) The taxpayer was a resident at the time the sale or exchange occurred; and

(iii) The taxpayer is not subject to the payment of an income or excise tax legally imposed on the long-term capital gains or losses by another taxing jurisdiction.

(b) Long-term capital gains or losses derived from intangible personal property are allocated to this state if the taxpayer was domiciled in this state at the time the sale or exchange occurred.

(2)(a) A credit is allowed against the tax imposed in section 103 of this act equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another taxing jurisdiction on capital gains derived from capital assets within the other taxing jurisdiction to the extent such capital gains are included in the taxpayer's Washington capital gains. The amount of credit under this subsection may not exceed the total amount of tax due under this chapter, and there is no carryback or carryforward of any unused credits.

(b) As used in this section, "taxing jurisdiction" means a state of the United States other than the state of Washington, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

**NEW SECTION. Sec. 109.** (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed.

(b)(i) Except as provided in (b)(ii) of this subsection (1), returns and all supporting documents must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(ii) The department may waive the electronic filing requirement in this subsection for good cause as provided in RCW 82.32.080.

(2) In addition to the Washington return required to be filed under subsection (1) of this section, taxpayers owing tax under this chapter must file with the department on or before the date the federal return is required to be filed a copy of the federal income tax return along with all schedules and supporting documentation.

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, regardless of any filing extension. The tax must be paid by electronic funds transfer as defined in RCW 82.32.085 or by other forms of electronic payment as may be authorized by the department. The department may waive the electronic payment requirement for good cause as provided in RCW 82.32.080. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

(4) The department may by rule require that certain individuals and other persons file, at times and on forms prescribed by the department, informational returns for any period.

(5) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year, the taxpayer is entitled to the same extension of time for filing the return required under this section if the taxpayer provides the department, before the due date provided in subsection (1) of this section, the extension confirmation number or other evidence satisfactory to the department confirming the federal extension. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(6)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection

may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years.

**NEW SECTION. Sec. 110.** (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection, if the federal income tax liability of either spouse is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) In any case in which a joint return is filed under this section, the liability of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow Title 26 U.S.C. Sec. 6015.

**NEW SECTION. Sec. 111.** Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter.

**NEW SECTION. Sec. 112.** (1) Any taxpayer who knowingly attempts to evade payment of the tax imposed under this chapter is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

**NEW SECTION. Sec. 113.** A new section is added to chapter 82.04 RCW to read as follows:

(1) To avoid taxing the same sale or exchange under both the business and occupation tax and capital gains tax, a credit is allowed against taxes due under this chapter on a sale or exchange that is also subject to the tax imposed under section 103 of this act. The credit is equal to the amount of tax imposed under this chapter on such sale or exchange.

(2) The credit may be used against any tax due under this chapter.

(3) The credit under this section is earned in regards to a sale or exchange, and may be claimed against taxes due under this chapter, for the tax reporting period in which the sale or exchange occurred. The credit claimed for a tax reporting period may not exceed the tax otherwise due under this chapter for that tax reporting period. Unused credit may not be carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this section.

(4) The department must apply the credit first to taxes deposited into the general fund. If any remaining credit reduces the amount of taxes deposited into the workforce education investment account established in RCW 43.79.195, the department must notify the state treasurer of such amounts

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monthly, and the state treasurer must transfer those amounts from the general fund to the workforce education investment account.

**NEW SECTION. Sec. 114.** (1) All taxes, interest, and penalties collected under this chapter shall be distributed as follows:

(a) The first \$350,000,000 collected each fiscal year shall be deposited into the education legacy trust account created in RCW 83.100.230;

(b) The next \$100,000,000 collected each fiscal year shall be deposited into the general fund; and

(c) Any remainder collected each fiscal year shall be deposited into the taxpayer fairness account hereby created in the state treasury.

(2) The amounts specified under subsection (1)(a) and (b) of this section shall be adjusted annually as provided under section 115 of this act.

**NEW SECTION. Sec. 115.** (1) Beginning December 2023 and each December thereafter, the department must adjust the applicable amounts by multiplying the current applicable amounts by one plus the percentage by which the most current consumer price index available on December 1st of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest \$1,000. If an adjustment under this subsection (1) would reduce the applicable amounts, the department must not adjust the applicable amounts for use in the following year. The department must publish the adjusted applicable amounts on its public website by December 31st. The adjusted applicable amounts calculated under this subsection (1) take effect for taxes due and distributions made, as the case may be, in the following calendar year.

(2) For purposes of this section, the following definitions apply:

(a) "Applicable amounts" means:

(i) The threshold exclusion under section 102(13) of this act;

(ii) The worldwide gross revenue amount under section 107 of this act; and

(iii) The distribution amounts provided in section 114 of this act.

(b) "Consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle area as calculated by the United States bureau of labor statistics or its successor agency.

(c) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas.

**Part II**

**Miscellaneous Provisions**

**NEW SECTION. Sec. 201.** The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act.

**NEW SECTION. Sec. 202.** Sections 101 through 112, 114, and 115 of this act constitute a new chapter in Title 82 RCW.

**NEW SECTION. Sec. 203.** (1) If a court of competent jurisdiction, in a final judgment not subject to appeal, adjudges section 103 of this act unconstitutional, or otherwise invalid, in its entirety, section 113 of this act is null and void in its entirety. Any credits previously claimed under section 113 of this act must be repaid within 30 days of the department of revenue's notice to the taxpayer of the amount due.

(2) If the taxpayer fails to repay the credit by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

**NEW SECTION. Sec. 204.** 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. 205.** Sections 101 through 115 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."

On page 1, line 1 of the title, after "to" strike the remainder of the title and insert "investing in Washington families and creating a more progressive tax system in Washington by enacting an excise tax on the sale or exchange of certain capital assets; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 82 RCW; creating new sections; prescribing penalties; and declaring an emergency."

**WITHDRAWAL OF AMENDMENT**

On motion of Senator Rivers and without objection, floor amendment no. 403 by Senator Rivers on page 1, line 28 to Substitute Senate Bill No. 5096 was withdrawn.

**MOTION**

Senator Hobbs moved that the following floor amendment no. 413 by Senator Hobbs be adopted:

On page 1, beginning on line 28, after "transfers." strike all material through "institutions." on line 31

On page 13, beginning on line 17, strike all of section 205

On page 13, beginning on line 26, after "sections;" strike all material through "emergency" on line 27 and insert "and prescribing penalties"

Senator Hobbs spoke in favor of adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of floor amendment no. 413 by Senator Hobbs on page 1, line 28 to striking floor amendment no. 363.

The motion by Senator Hobbs carried and floor amendment no. 413 was adopted by voice vote.

**MOTION**

Senator Braun moved that the following floor amendment no. 434 by Senator Braun be adopted:

On page 3, beginning on line 23, after "82.45.032" strike all material through "chapter" on line 27

Senators Braun and Sheldon spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of floor amendment no. 434 by Senator Braun on page 3, line 23 to striking floor amendment no. 363.

The motion by Senator Braun did not carry and floor amendment no. 434 was not adopted by voice vote.

**MOTION**

Senator Fortunato moved that the following floor amendment no. 405 by Senator Fortunato be adopted:

On page 4, line 13, after "tax" strike "is" and insert "may be"

On page 4, line 15, after "gains." insert "The tax authorized under this section is voluntary. Taxpayers choosing to pay tax under this section are subject to the conditions and requirements of this chapter."

Senators Fortunato, Ericksen and Wilson, L. spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of floor amendment no. 405 by Senator Fortunato on page 4, line 13 to striking floor amendment no. 363.

The motion by Senator Fortunato did not carry and floor amendment no. 405 was not adopted by voice vote.

#### MOTION

Senator Short moved that the following floor amendment no. 425 by Senator Short be adopted:

On page 5, line 7, after "U.S.C." insert ", Subtitle A (income taxes),"

On page 5, line 22, after "U.S.C." insert ", Subtitle A (income taxes),"

On page 5, line 24, after "U.S.C." insert ", Subtitle A (income taxes),"

On page 5, line 36, after "U.S.C." insert ", Subtitle A (income taxes),"

On page 5, line 38, after "U.S.C." insert ", Subtitle A (income taxes),"

On page 6, line 8, after "U.S.C." insert ", Subtitle A (income taxes),"

On page 7, line 6, after "U.S.C." insert ", Subtitle A (income taxes),"

Senator Short spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of floor amendment no. 425 by Senator Short on page 5, line 7 to striking floor amendment no. 363.

The motion by Senator Short did not carry and floor amendment no. 425 was not adopted by voice vote.

#### MOTION

Senator Liias moved that the following floor amendment no. 420 by Senator Liias be adopted:

On page 5, after line 17, insert the following:

"(2) A controlling interest in an entity only to the extent that any long-term capital gain or loss from such sale or exchange is directly attributable to the entity's interest in real property and the sale or exchange was subject to tax under chapter 82.45 RCW. The department is not bound by the parties' agreement as to the allocation of consideration or fair market value, if such allocation or fair market value does not reflect the fair market value of the real property. For purposes of this subsection (2), "controlling interest" has the same meaning as in RCW 82.45.033;"

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

Senators Liias, Pedersen and Billig spoke in favor of adoption of the amendment to the striking amendment.

Senators Braun, Padden, Ericksen, Rivers and Sheldon spoke against adoption of the amendment to the striking amendment.

Senators Wilson, L., Rivers, and Rolfes spoke on adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the

adoption of floor amendment no. 420 by Senator Liias on page 5, line 17 to striking floor amendment no. 363.

The motion by Senator Liias carried and floor amendment no. 420 was adopted by voice vote.

#### MOTION

Senator Warnick moved that the following floor amendment no. 422 by Senator Warnick be adopted:

On page 5, beginning on line 32, after "livestock" strike all material through "ranching" on line 35

Senator Warnick spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of floor amendment no. 422 by Senator Warnick on page 5, line 32 to striking floor amendment no. 363.

The motion by Senator Warnick did not carry and floor amendment no. 422 was not adopted by voice vote.

#### MOTION

Senator Wilson, L. moved that the following floor amendment no. 426 by Senator Wilson, L. be adopted:

On page 6, line 23, after "(1)" insert "(a)"

On page 6, after line 30, insert the following:

"(b) In addition to the deduction under (a) of this subsection (1), in computing tax under this chapter for a taxable year, a taxpayer may deduct from the measure of tax the amount of adjusted capital gain derived in the taxable year from the sale of assets, or the transfer of the taxpayer's interest, in a qualified family-owned small business to a family member, to the extent that such adjusted capital gain would otherwise be included in the taxpayer's Washington capital gains."

On page 7, line 37, after "percent" insert "less the percentage, not to exceed 90 percent, of a sale or transfer to a family member"

Senators Wilson, L., Braun, Wagoner, Short and Brown spoke in favor of adoption of the amendment to the striking amendment.

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

Senator Short 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 Wilson, J. on page 6, line 23 to striking floor amendment no. 363.

#### ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Wilson, J. and the amendment was not adopted by the following vote: Yeas, 23; Nays, 26; Absent, 0; Excused, 0.

Voting yea: Senators Braun, Brown, Dozier, Ericksen, Fortunato, Gildon, Hawkins, Hobbs, Holy, Honeyford, King, McCune, Mullet, Muzzall, Padden, Rivers, Schoesler, Sheldon, Short, Wagoner, Warnick, Wilson, J. and Wilson, L.

Voting nay: Senators Billig, Carlyle, Cleveland, Conway, Darneille, Das, Dhingra, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Nguyen, Nobles, Pedersen, Randall,

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Robinson, Rolfes, Saldaña, Salomon, Stanford, Van De Wege, Wellman and Wilson, C.

## MOTION

Senator Rivers moved that the following floor amendment no. 402 by Senator Rivers be adopted:

On page 7, after line 37, insert the following:

**"NEW SECTION. Sec. 108.** In computing the tax under this chapter for a taxable year, a taxpayer may deduct from the measure of tax the entire amount donated by the taxpayer to a nonprofit organization during the same taxable year. "Nonprofit organization" means an organization exempt from tax under section 501(c)(3) of the federal internal revenue code, 26 U.S.C. Sec. 501(c)(3)."

Re-number the remaining sections consecutively and correct any internal references accordingly.

Senators Rivers, Short and Padden spoke in favor of adoption of the amendment to the striking amendment.

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

Senator Short 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 Rivers on page 7, line 37 to striking floor amendment no. 363.

## ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Rivers and the amendment was not adopted by the following vote: Yeas, 24; Nays, 25; Absent, 0; Excused, 0.

Voting yea: Senators Braun, Brown, Cleveland, Dozier, Ericksen, Fortunato, Gildon, Hawkins, Hobbs, Holy, Honeyford, King, McCune, Mullet, Muzzall, Padden, Rivers, Schoesler, Sheldon, Short, Wagoner, Warnick, Wilson, J. and Wilson, L.

Voting nay: Senators Billig, Carlyle, Conway, Darneille, Das, Dhingra, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Lias, Lovelett, Nguyen, Nobles, Pedersen, Randall, Robinson, Rolfes, Saldaña, Salomon, Stanford, Van De Wege, Wellman and Wilson, C.

## MOTION

Senator Fortunato moved that the following floor amendment no. 404 by Senator Fortunato be adopted:

On page 7, after line 37, insert the following:

**"NEW SECTION. Sec. 108.** In computing the tax under this chapter for a taxable year, a taxpayer may deduct from the measure of tax the entire amount donated by the taxpayer during the same taxable year to a nonprofit organization engaged in services for individuals with disabilities. "Nonprofit organization" means an organization exempt from tax under section 501(c) of the federal internal revenue code, 26 U.S.C. Sec. 501(c)."

Re-number the remaining sections consecutively and correct any internal references accordingly.

Senators Fortunato and Wagoner spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of floor amendment no. 404 by Senator Fortunato on page 7, line 37 to striking floor amendment no. 363.

The motion by Senator Fortunato did not carry and floor amendment no. 404 was not adopted by voice vote.

## MOTION

Senator Wilson, L. moved that the following floor amendment no. 416 by Senator Wilson, L. be adopted:

On page 8, beginning on line 12, after "occurred" strike all material through "year" on line 13

Senator Wilson, L. spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of floor amendment no. 416 by Senator Wilson, L. on page 8, line 12 to striking floor amendment no. 363

The motion by Senator Wilson, L. did not carry and floor amendment no. 416 was not adopted by voice vote.

## MOTION

Senator Braun moved that the following floor amendment no. 432 by Senator Braun be adopted:

On page 9, beginning on line 9, strike all of subsection (2)

Re-number the remaining subsections consecutively and correct any internal references accordingly.

Senators Braun, Short, Fortunato, and Wilson, L. spoke in favor of adoption of the amendment to the striking amendment.

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

## POINT OF INQUIRY

Senator Sheldon: "The bill that you are sponsoring today, how would the Department of Revenue know that you had a capital gain that was subject to this tax?"

Senator Robinson: "Thank you for that question. It is my understanding that there is a reciprocal agreement between the federal government and the state government, and the Department of Revenue will, has access, government to government, to federal income tax returns from the people of the state of Washington.

Senator Sheldon: "Just to follow up on that question Mr. President."

President Heck: "Proceed."

Senator Sheldon: "So, this is an income tax, correct?"

Senator Robinson: "The tax we are debating today is an excise tax on the sale of stocks and bonds and capital gains. The, on a federal income tax, there is a line for federal capital gains tax and that is the basis for the potential state excise tax on capital gains."

Senator Sheldon: "Just to close Senator. Then potential tax, in other words this is a starter income tax?"

#### REMARKS BY THE PRESIDENT

President Heck: "So, Senator Sheldon, the practice of asking senators to yield to questions is not meant to be of a serial and ongoing nature."

Senator Rivers spoke in favor of adoption of the amendment to the striking amendment.

Senator Dozier spoke on adoption of the amendment to the striking amendment.

#### REMARKS BY THE PRESIDENT

President Heck: "The President would like to indicate that he's allowed considerable latitude on this question. The President will adhere to the ruling of the previous presiding officer who indicates it's not the job of the presiding officer to indicate what terminology can or cannot be used as long as the remarks are relevant to the question before the body. I want to remind you all, that the question before the body is the proposed amendment by Senator Braun relating to a requirement for taxpayers owing the state tax to also file a copy of their federal income tax return. Please keep your remarks to the question before the body which is the amendment by Senator Braun."

Senators Braun and Wilson, L. spoke in favor of adoption of the amendment to the striking amendment.

#### REMARKS BY THE PRESIDENT

President Heck: "Once again, asking the members to keep their remarks to the amendment before us."

The President declared the question before the Senate to be the adoption of floor amendment no. 432 by Senator Braun on page 9, line 9 to striking floor amendment no. 363.

The motion by Senator Braun did not carry and floor amendment no. 432 was not adopted by voice vote.

#### MOTION

Senator Fortunato moved that the following floor amendment no. 406 by Senator Fortunato be adopted:

On page 12, line 3, after "treasury." insert "By July 1, 2023, and by each July 1st thereafter, the state treasurer shall, to the extent funds are available, transfer from the taxpayer fairness account to the general fund an amount equal to the estimated decrease in general fund revenues resulting from the sales and use tax exemptions provided in sections 116 through 118 of this act."

On page 12, after line 32, insert the following:

**"NEW SECTION. Sec. 116.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of clothing and footwear for human use.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a)(i) "Clothing" means all human wearing apparel suitable for general use. "Clothing" also includes:

(A) Protective equipment necessary for the daily work of the user; and

(B) Sewing equipment and supplies.

(ii) "Clothing" does not include: Clothing accessories or

equipment, fur clothing, and sport or recreational equipment.

(b) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing that are sold separately.

(c) "Fur clothing" means clothing that is required to be labeled as a fur product under 15 U.S.C. Sec. 69, and the value of the fur components in the product is more than three times the value of the next most valuable tangible component. For the purposes of this subsection, "fur" means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but does not include such skins that have been converted into leather or suede, or which in processing the hair, fleece, or fur fiber has been completely removed.

(d) "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(e) "Sewing equipment and supplies" means sewing materials including, but not limited to: Fabrics, thread, knitting yarn, buttons, and zippers, purchased by noncommercial purchasers for incorporation into clothing as a constituent part thereof.

(f) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use.

**Sec. 117.** RCW 82.08.0293 and 2019 c 8 s 401 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" includes "prepared food." "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume;

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco; and

(c) Marijuana, useable marijuana, or marijuana-infused products.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to (~~prepared food,~~) soft drinks, bottled water, or dietary supplements. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Bottled water" means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

(b) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel,

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gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(c)(i) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

(C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(I) Food that is only cut, repackaged, or pasteurized by the seller; or

(II) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

(ii) Food is "sold with eating utensils provided by the seller" if:

(A) The seller's customary practice for that item is to physically deliver or hand a utensil to the customer with the food or food ingredient as part of the sales transaction. If the food or food ingredient is prepackaged with a utensil, the seller is considered to have physically delivered a utensil to the customer unless the food and utensil are prepackaged together by a food manufacturer classified under sector 311 of the North American industry classification system (NAICS);

(B) A plate, glass, cup, or bowl is necessary to receive the food or food ingredient, and the seller makes those utensils available to its customers; or

(C)(I) The seller makes utensils available to its customers, and the seller has more than seventy-five percent prepared food sales. For purposes of this subsection (2)(c)(ii)(C), a seller has more than seventy-five percent prepared food sales if the seller's gross retail sales of prepared food under (c)(i)(A), (c)(i)(C), and (c)(ii)(B) of this subsection equal more than seventy-five percent of the seller's gross retail sales of all food and food ingredients, including prepared food, soft drinks, and dietary supplements.

(II) However, even if a seller has more than seventy-five percent prepared food sales, four servings or more of food or food ingredients packaged for sale as a single item and sold for a single price are not "sold with utensils provided by the seller" unless the seller's customary practice for the package is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction. Whenever available, the number of servings included in a package of food or food ingredients must be determined based on the manufacturer's product label. If no label is available, the seller must reasonably determine the number of servings.

(III) The seller must determine a single prepared food sales percentage annually for all the seller's establishments in the state based on the prior year of sales. The seller may elect to determine its prepared food sales percentage based either on the prior calendar year or on the prior fiscal year. A seller may not change its elected method for determining its prepared food percentage without the written consent of the department. The seller must determine its annual prepared food sales percentage as soon as possible after accounting records are available, but in no event later than ninety days after the beginning of the seller's calendar or fiscal year. A seller may make a good faith estimate of its first annual prepared food sales percentage if the seller's records for

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the prior year are not sufficient to allow the seller to calculate the prepared food sales percentage. The seller must adjust its good faith estimate prospectively if its relative sales of prepared foods in the first ninety days of operation materially depart from the seller's estimate.

(iii) "Prepared food" (~~does not include~~) includes the following items, if sold without eating utensils provided by the seller:

(A) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system—United States, 2002";

(B) Food sold in an unheated state by weight or volume as a single item; or

(C) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(d) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under 42 U.S.C. Sec. 1485; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42 of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine. Except as provided in (b) of this subsection, the selling price of food and food ingredients sold through a vending machine for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) For soft drinks, bottled water, and hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine, the selling price is the total gross receipts of such sales divided by the sum of one plus the sales tax rate expressed as a decimal.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived.

**NEW SECTION. Sec. 118.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of clothing and footwear for human use.

(2) For the purposes of this section, definitions, conditions, and requirements in section 116 of this act apply to this section."

On page 13, after line 20, insert the following:

**"NEW SECTION. Sec. 206.** Sections 116 through 118 of this act take effect January 1, 2023."

On page 13, beginning on line 24, after "assets;" strike all material through "emergency." on line 27 and insert "amending RCW 82.08.0293; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new chapter to Title 82 RCW; creating new sections; prescribing penalties; providing an effective date; and declaring an emergency."

Senators Fortunato, Short, Braun and Gildon spoke in favor of adoption of the amendment to the striking amendment.

Senators Robinson, Carlyle and Liias spoke against adoption of the amendment to the striking amendment.

Senators Frockt and Wilson, L. spoke on adoption of the amendment to the striking amendment.

#### REMARKS BY THE PRESIDENT

President Heck: "The President has been more than patient. The remarks should be directed to the amendments before us. There will be ample opportunity to make these kinds of arguments as there should be when we get to debating the underlying striking amendment and then again on final passage. The President respectfully requests that you keep your remarks to the amendment before us."

The President declared the question before the Senate to be the adoption of floor amendment no. 406 by Senator Fortunato on page 12, line 3 to striking floor amendment no. 363.

The motion by Senator Fortunato did not carry and floor amendment no. 406 was not adopted by voice vote.

#### MOTION

Senator Fortunato moved that the following floor amendment no. 407 by Senator Fortunato be adopted:

On page 12, after line 32, insert the following:

**"NEW SECTION. Sec. 116.** The legislature declares that it has never authorized cities or counties to impose a tax on the sale or exchange of capital assets similar to the tax authorized under section 103 of this act. The legislature further declares that the tax authorized in section 103 of this act shall not be construed in any way as providing such state authorization for cities or counties to impose a local tax on the sale or exchange of capital assets."

On page 13, line 1, after "112" strike all material through "115" and insert "and 114 through 116"

On page 13, line 17, after "through" strike "115" and insert "116"

Senators Fortunato, Rivers and Padden spoke in favor of adoption of the amendment to the striking amendment.

Senators Robinson and Liias spoke against adoption of the amendment to the striking amendment.

Senator Braun spoke on adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of floor amendment no. 407 by Senator Fortunato on page 12, line 32 to striking floor amendment no. 363.

The motion by Senator Fortunato did not carry and floor

amendment no. 407 was not adopted by voice vote.

#### MOTION

Senator Braun moved that the following floor amendment no. 431 by Senator Braun be adopted:

On page 13, after line 16, insert the following:

**"NEW SECTION. Sec. 205.** The legislature recognizes well-established state supreme court precedent declaring income to be property. The legislature also recognizes the fact that state voters have rejected six income tax constitutional amendments. If the capital gains tax under this act is challenged in court, the state attorney general is prohibited from requesting the court to reconsider its prior rulings declaring income to be property."

Re-number the remaining section consecutively and correct any internal references accordingly.

Senator Braun spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of floor amendment no. 431 by Senator Braun on page 13, line 16 to striking floor amendment no. 363.

The motion by Senator Braun did not carry and floor amendment no. 431 was not adopted by voice vote.

#### MOTION

Senator Wagoner moved that the following floor amendment no. 409 by Senator Wagoner be adopted:

On page 13, beginning on line 17, strike all of section 205 and insert the following:

**"NEW SECTION. Sec. 205.** This act takes effect July 1, 2025, to allow the legislature to review recommendations from the tax structure work group before imposing a state tax on capital gains."

On page 13, beginning on line 26, after "and" strike all material through "emergency" on line 27 and insert "providing an effective date"

Senator Wagoner spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of floor amendment no. 409 by Senator Wagoner on page 13, line 17 to striking floor amendment no. 363.

The motion by Senator Wagoner did not carry and floor amendment no. 409 was not adopted by voice vote.

#### MOTION

Senator Brown moved that the following floor amendment no. 421 by Senator Brown be adopted:

On page 13, beginning on line 17, strike all of section 205 and insert the following:

**"NEW SECTION. Sec. 205.** The legislature finds that while considering potential modifications to the tax code, the legislature should be mindful of the people's history of rejecting all forms of income tax, resoundingly. On 10 separate occasions, Washington voters have voted down income tax proposals. The following resolutions to impose an income tax have failed:



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- (1) House Joint Resolution No. 12 in 1934, failed with 57 percent of the votes;
- (2) Senate Joint Resolution No. 7 in 1936, failed with 78 percent of the votes;
- (3) Senate Joint Resolution No. 5 in 1938, failed with 67 percent of the votes;
- (4) Constitutional amendment, Article VII, section 2 in 1942, failed with 66 percent of the votes;
- (5) Initiative to the people No. 158 in 1944, failed with 70 percent of the votes;
- (6) House Joint Resolution No. 42 in 1970, failed with 68 percent of the votes;
- (7) House Joint Resolution No. 37 in 1973, failed with 77 percent of the votes;
- (8) Initiative to the people No. 314 in 1975, failed with 67 percent of the votes;
- (9) Initiative to the people No. 435 in 1982, failed with 66 percent of the votes; and
- (10) Initiative to the people No. 1098 in 2010, failed with 64 percent of the votes.

**NEW SECTION. Sec. 206.** The secretary of state shall submit this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation."

On page 13, beginning on line 26, after "and" strike all material through "emergency" on line 27 and insert "providing for submission of this act to a vote of the people"

Senator Brown spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of floor amendment no. 421 by Senator Brown on page 13, line 17 to striking floor amendment no. 363.

The motion by Senator Brown did not carry and floor amendment no. 421 was not adopted by voice vote.

MOTION

Senator Short moved that the following floor amendment no. 424 by Senator Short be adopted:

On page 13, beginning on line 22, after "insert" strike all material through "assets" on line 24 and insert "enacting a capital gains income tax"

Senators Short and Ericksen spoke in favor of adoption of the amendment to the striking amendment.

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

The President declared the question before the Senate to be the adoption of floor amendment no. 424 by Senator Short on page 13, line 22 to striking floor amendment no. 363.

The motion by Senator Short did not carry and floor amendment no. 424 was not adopted by voice vote.

Senators Wilson, L. and Sheldon spoke against adoption of the striking amendment as amended.

The President declared the question before the Senate to be the adoption of striking floor amendment no. 363 by Senator Robinson as amended to Substitute Senate Bill No. 5096.

The motion by Senator Robinson carried and striking floor

amendment no. 363 as amended was adopted by voice vote.

MOTION

On motion of Senator Robinson, the rules were suspended, Engrossed Substitute Senate Bill No. 5096 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

MOTION

At 4:19 p.m., on motion of Senator Liias, the Senate was declared to be at ease subject to the call of the President.

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The Senate was called to order at 4:38 p.m. by President Heck.

The Senate resumed consideration of Substitute Senate Bill No. 5096.

Senators Robinson, Saldaña, Kuderer, Dhingra, Nguyen and Carlyle spoke in favor of passage of the bill.

Senators Padden, Warnick, Dozier, Rivers, Schoesler, Braun, Fortunato, Wilson, J., Brown, Short, Wagoner, Hawkins, Holy, Muzzall, McCune and Wilson, L. spoke against passage of the bill.

REMARKS BY THE PRESIDENT

President Heck: "Happy Birthday Senator Wilson."

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5096.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5096 and the bill passed the Senate by the following vote: Yeas, 25; Nays, 24; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Carlyle, Conway, Darneille, Das, Dhingra, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Nguyen, Nobles, Pedersen, Randall, Robinson, Rolfes, Saldaña, Salomon, Stanford, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Braun, Brown, Cleveland, Dozier, Ericksen, Fortunato, Gildon, Hawkins, Hobbs, Holy, Honeyford, King, McCune, Mullet, Muzzall, Padden, Rivers, Schoesler, Sheldon, Short, Wagoner, Warnick, Wilson, J. and Wilson, L.

ENGROSSED SUBSTITUTE SENATE BILL NO. 5096, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 6:07 p.m., on motion of Senator Liias, the Senate adjourned until 11:00 o'clock a.m. Monday, March 8, 2021.

DENNY HECK, President of the Senate

BRAD HENDRICKSON, Secretary of the Senate

1033-S2		1357-S	
Introduction & 1st Reading.....	1	Introduction & 1st Reading.....	3
1034		1379-S	
Introduction & 1st Reading.....	1	Introduction & 1st Reading.....	3
Messages.....	1	Messages.....	1
1073-S2.E		1438-S	
Introduction & 1st Reading.....	1	Introduction & 1st Reading.....	3
1097-S.E		Messages.....	1
Introduction & 1st Reading.....	1	1446-S	
Messages.....	1	Introduction & 1st Reading.....	3
1113-S.E		1453.E	
Introduction & 1st Reading.....	1	Introduction & 1st Reading.....	3
1139-S2.E		1495	
Introduction & 1st Reading.....	1	Introduction & 1st Reading.....	3
Messages.....	1	Messages.....	1
1167		1504-S2.E	
Introduction & 1st Reading.....	2	Introduction & 1st Reading.....	3
1186-S2.E		1521-S.E	
Introduction & 1st Reading.....	2	Introduction & 1st Reading.....	3
1189-S.E		5096	
Introduction & 1st Reading.....	2	Second Reading .....	7
1197-S.E		5096-S	
Introduction & 1st Reading.....	2	Other Action.....	11, 17
Messages.....	1	Second Reading .....	7, 11, 12, 13, 14, 16, 17
1207-S		5096-S.E	
Introduction & 1st Reading.....	2	Third Reading Final Passage .....	17
1209-S		5237	
Introduction & 1st Reading.....	2	Second Reading .....	4
1220-S2.E		5237-S2	
Introduction & 1st Reading.....	2	Other Action.....	6
1227-S2.E		Second Reading .....	4, 5, 6, 7
Introduction & 1st Reading.....	2	5237-S2.E	
Messages.....	1	Third Reading Final Passage .....	7
1259-S		CHAPLAIN OF THE DAY	
Introduction & 1st Reading.....	2	Rule, Mr. Chris, Pastor, Orting Baptist	
1267-S.E		Church.....	1
Introduction & 1st Reading.....	2	FLAG BEARERS	
1287-S2.E		Washington State Patrol Honor Guard .....	1
Introduction & 1st Reading.....	2	GUESTS	
1301-S		Das, Mr. Narayan, Pledge of Allegiance .....	1
Introduction & 1st Reading.....	3	Das, Mr. Niam, Pledge of Allegiance .....	1
1333-S		PRESIDENT OF THE SENATE	
Introduction & 1st Reading.....	3	Remarks by the President.....	14, 16, 17
1335-S2.E		WASHINGTON STATE SENATE	
Introduction & 1st Reading.....	3	Point of Inquiry, Senator Sheldon.....	13
Messages.....	1		