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SIXTY-FIRST LEGISLATURE - REGULAR SESSION

SEVENTY FIRST DAY

House Chamber, Olympia, Monday, March 23, 2009

The House was called to order at 10:00 a.m. by the Speaker (Representative Hudgins presiding). The Clerk called the roll and a quorum was present.

The flags were escorted to the rostrum by a Sergeant at Arms Color Guard, Pages Kelsey Hopstad and Bradley Altoff. The Speaker (Representative Hudgins presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Reverend Ron Emmons, Orting Christian Church.

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

RESOLUTION

HOUSE RESOLUTION NO. 2009-4626, by Representatives Campbell and McCune

WHEREAS, The Washington State House of Representatives honors the unique and distinguishable achievements of its citizens; and

WHEREAS, The Miss Washington Scholarship Organization exists to provide personal and professional opportunities for young women and to promote their voices in culture, politics, and the community; and

WHEREAS, The Miss Washington Scholarship Organization makes available more than \$473,000 in scholarships for its contestants each year; and

WHEREAS, Janet Harding of Yelm was crowned as Miss Washington in July of 2008 at the Pantages Theater in Tacoma; and
WHEREAS, Ms. Harding is the daughter of Myrna and Ron Harding and a 2005 graduate of Yelm High School; and

WHEREAS, Ms. Harding is currently a student at Western Washington University, where she is studying elementary education, social studies, and communications; and

WHEREAS, Ms. Harding serves on the Board of Big Brothers Big Sisters of Northwest Washington and directed the first annual Miracle Bowl for Kids to benefit Children's Miracle Network; and

WHEREAS, Ms. Harding previously served as Miss Tahoma, and has volunteered for more than 30 nonprofit organizations; and

WHEREAS, Ms. Harding competed in Las Vegas as one of 52 national finalists for the crown of Miss America 2009, with the winner announced on January 24th; and

WHEREAS, Last year, the Miss America Organization and its state and local organizations made available more than \$45 million in cash and scholarship assistance; and

WHEREAS, Ms. Harding wants to continue her service in the future by reaching her career ambition as an elementary school teacher;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives does hereby acknowledge and honor Janet Harding,

Miss Washington 2008, for her commitment to public service and for aspiring to be a role model to young women across our state; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Chief Clerk of the House of Representatives to the Miss Washington Scholarship Organization, Miss Washington 2008 Janet Harding, and the Harding family.

Representative Campbell moved adoption of House Resolution No. 4626.

Representatives Campbell and McCune spoke in favor of the adoption of the resolution.

HOUSE RESOLUTION NO. 4626 was adopted.

MESSAGES FROM THE SENATE

March 20, 2009

Mr. Speaker:

The Senate concurred in the House amendment to the following bill and passed the bill as amended by the House: ENGROSSED SUBSTITUTE SENATE BILL NO. 5671, and the same is herewith transmitted.

Thomas Hoemann, Secretary

March 20, 2009

Mr. Speaker:

The Senate has passed: HOUSE BILL NO. 1562, and the same is herewith transmitted.

Thomas Hoemann, Secretary

INTRODUCTION AND FIRST READING

HB 2320 by Representatives Hunter and Roberts

AN ACT Relating to revising the tax code to ensure that products transferred electronically, and the gross income derived from such products, will continue to be subject to sales, use, and business and occupation taxes in a manner that complies with the streamlined sales and use tax agreement; amending RCW 82.04.190, 82.08.010, 82.12.010, 82.12.020, 82.04.060, 82.04.070, 82.04.110, 82.04.120, 82.04.2907, 82.04.297, 82.04.363, 82.04.4282, 82.04.470, 82.04.480, 82.04.065, 82.08.02525, 82.08.0253, 82.08.02535, 82.08.02537, 82.08.0256, 82.08.02565, 82.08.0257, 82.08.0273, 82.08.805, 82.08.995, 82.12.0251, 82.12.02525, 82.12.0255, 82.12.0257, 82.12.0258, 82.12.0259, 82.12.02595, 82.12.0272, 82.12.0284, 82.12.0315, 82.12.0345, 82.12.0347, 82.12.805, 82.12.860, 82.12.995, 82.32.730, 35.21.717, 48.14.080, 82.02.020,

82.04.44525, 82.08.040, 82.08.130, 82.12.035, 82.12.040, 82.14.465, 82.16.010, 82.32.020, and 82.32.023; reenacting and amending RCW 82.04.050; adding new sections to chapter 82.04 RCW; adding new sections to chapter 82.08 RCW; adding new sections to chapter 82.12 RCW; creating new sections; providing an effective date; and declaring an emergency.

Referred to Committee on Finance.

HB 2321 by Representatives Conway and Darneille

AN ACT Relating to the sale of liquor-related products in state liquor stores; and amending RCW 66.08.026, 66.08.165, and 66.16.010.

Referred to Committee on Ways & Means.

There being no objection, the bills listed on the day's introduction sheet under the fourth order of business were referred to the committees so designated.

REPORTS OF STANDING COMMITTEES

March 19, 2009

ESB 5013 Prime Sponsor, Senator Hargrove: Concerning fees collected by county clerks. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass as amended:

On page 4, line 8, after "as" strike "processing ex parte orders," and insert "~~(processing ex parte orders,)~~"

On page 4, line 12, after "(12)" insert "For processing ex parte orders, the clerk may collect a fee of thirty dollars."

(13)"

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

On page 5, beginning on line 24, after "(28)" strike all material through "(29)" on line 28

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

Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Flannigan; Kelley; Kirby; Ormsby and Roberts.

MINORITY recommendation: Do not pass. Signed by Representatives Shea, Assistant Ranking Minority Member; Ross and Warnick.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5055 Prime Sponsor, Committee on Environment, Water & Energy: Protecting the interests of customers of public service companies in proceedings before the Washington utilities and transportation commission. Reported by Committee on Technology, Energy & Communications

MAJORITY recommendation: Do pass. Signed by Representatives McCoy, Chair; Eddy, Vice Chair; Crouse,

Ranking Minority Member; Carlyle; Condotta; Finn; Hasegawa; Herrera; Hudgins; Jacks; McCune; Morris; Takko and Van De Wege.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5117 Prime Sponsor, Committee on Health & Long-Term Care: Establishing intensive behavior support services. Reported by Committee on Human Services

MAJORITY recommendation: Do pass. Signed by Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green; Klippert; Morrell; O'Brien and Walsh.

Referred to Committee on Health & Human Services Appropriations.

March 18, 2009

SSB 5131 Prime Sponsor, Committee on Human Services & Corrections: Concerning crisis referral services for criminal justice and correctional personnel. Reported by Committee on Public Safety & Emergency Preparedness

MAJORITY recommendation: Do pass. Signed by Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton; Goodman; Kirby and Ross.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5136 Prime Sponsor, Committee on Financial Institutions, Housing & Insurance: Regulating the use of solar energy panels by members of homeowners' associations. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Flannigan; Kelley; Kirby; Ormsby and Roberts.

MINORITY recommendation: Do not pass. Signed by Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Ross and Warnick.

Passed to Committee on Rules for second reading.

March 18, 2009

SB 5156 Prime Sponsor, Senator Brandland: Addressing certification actions of Washington peace officers. Reported by Committee on Public Safety & Emergency Preparedness

MAJORITY recommendation: Do pass. Signed by Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton; Goodman; Kirby and Ross.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5190 Prime Sponsor, Committee on Human Services & Corrections: Making technical corrections to community custody provisions. Reported by Committee on Human Services

MAJORITY recommendation: Do pass. Signed by Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green; Klippert; Morrell; O'Brien and Walsh.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5195 Prime Sponsor, Committee on Financial Institutions, Housing & Insurance: Adopting the life settlements model act. Reported by Committee on Financial Institutions & Insurance

MAJORITY recommendation: Do pass. Signed by Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst; McCoy; Nelson; Roach; Rodne; Santos and Simpson.

Referred to Committee on General Government Appropriations.

March 18, 2009

SSB 5261 Prime Sponsor, Committee on Human Services & Corrections: Creating an electronic statewide unified sex offender notification and registration program. Reported by Committee on Public Safety & Emergency Preparedness

MAJORITY recommendation: Do pass. Signed by Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton; Goodman; Kirby and Ross.

Passed to Committee on Rules for second reading.

March 19, 2009

ESSB 5263 Prime Sponsor, Committee on Judiciary: Prohibiting devices in schools that are designed to administer to a person or an animal an electric shock, charge, or impulse. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan; Kelley; Kirby; Ormsby; Roberts and Ross.

MINORITY recommendation: Do not pass. Signed by Representative Warnick.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5268 Prime Sponsor, Committee on Natural Resources, Ocean & Recreation: Creating the fish and wildlife equipment revolving account. Reported by Committee on Agriculture & Natural Resources

MAJORITY recommendation: Do pass as amended:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 77.12 RCW to read as follows:

(1) The fish and wildlife equipment revolving account is created in the custody of the state treasurer. The department must reimburse the account for all moneys expended from the account. Reimbursements may be made with moneys appropriated to the department or from other moneys otherwise available to the department. All moneys generated by the use or repair of vehicles, water vessels, and heavy equipment or generated by the sale or surplusing of vehicles, water vessels, and heavy equipment must be deposited in the account. The department's reimbursements may be prorated over the useful life of the vehicle, water vessel, or heavy equipment acquired with moneys from the account.

(2) Expenditures from the account may be used only for the purchase or lease of vehicles, water vessels, and heavy equipment, to include the payment of costs for the operation, repair, and maintenance of the vehicles, water vessels, and heavy equipment.

(3) Only the director of fish and wildlife or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) For the purposes of this section, the terms and charges for the intra-agency use of vehicles, water vessels, or heavy equipment or for the disposal through sale of vehicles, water vessels, or heavy equipment is solely within the discretion of the department and the department's determination of the terms, charges, or sale price is considered a reasonable term, charge, or sale price."

Correct the title.

Signed by Representatives Blake, Chair; Jacks, Vice Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Grant-Herriot; Kretz; McCoy; Nelson; Ormsby; Pearson; Van De Wege and Warnick.

Referred to Committee on General Government Appropriations.

March 19, 2009

SB 5277 Prime Sponsor, Senator Hatfield: Regarding fees allowed as court costs in district courts. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass as amended:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 3.62.060 and 2007 c 46 s 3 are each amended to read as follows:

Clerks of the district courts shall collect the following fees for their official services:

(1) In any civil action commenced before or transferred to a district court, the plaintiff shall, at the time of such commencement or transfer, pay to such court a filing fee of forty-three dollars plus any surcharge authorized by RCW 7.75.035. Any party filing a counterclaim, cross-claim, or third-party claim in such action shall pay to the court a filing fee of forty-three dollars plus any surcharge authorized by RCW 7.75.035. No party shall be compelled to pay to

the court any other fees or charges up to and including the rendition of judgment in the action other than those listed.

(2) For issuing a writ of garnishment or other writ, or for filing an attorney issued writ of garnishment, a fee of twelve dollars.

(3) For filing a supplemental proceeding a fee of twenty dollars.

(4) For demanding a jury in a civil case a fee of one hundred twenty-five dollars to be paid by the person demanding a jury.

(5) For preparing a transcript of a judgment a fee of twenty dollars.

(6) For certifying any document on file or of record in the clerk's office a fee of five dollars.

(7) At the option of the district court:

(a) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar;

(b) For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed;

(c) For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page;

(d) When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page;

(e) For copies made on a compact disc, an additional fee of twenty dollars for each compact disc.

(8) For preparing the record of a case for appeal to superior court a fee of forty dollars including any costs of tape duplication as governed by the rules of appeal for courts of limited jurisdiction (RALJ).

((8)) (9) At the option of the district court, for clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting exceptional record searches, a fee not to exceed twenty dollars per hour or portion of an hour.

(10) For duplication of part or all of the electronic recording of a proceeding ten dollars per tape or other electronic storage medium.

((9)) (11) For filing any abstract of judgment or transcript of judgment from a municipal court or municipal department of a district court organized under the laws of this state a fee of forty-three dollars.

(12) At the option of the district court, a service fee of up to three dollars for the first page and one dollar for each additional page for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded."

Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Flannigan; Kelley; Kirby; Ormsby and Roberts.

MINORITY recommendation: Do not pass. Signed by Representatives Shea, Assistant Ranking Minority Member; Ross and Warnick.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5290 Prime Sponsor, Committee on Environment, Water & Energy: Concerning requests made by a party relating to gas or electrical company discounts for low-income senior customers and low-income customers.

Reported by Committee on Technology, Energy & Communications

MAJORITY recommendation: Do pass. Signed by Representatives McCoy, Chair; Eddy, Vice Chair; Crouse, Ranking Minority Member; Carlyle; Condotta; Finn; Hasegawa; Herrera; Hudgins; Jacks; McCune; Morris; Takko and Van De Wege.

Passed to Committee on Rules for second reading.

March 18, 2009

SB 5297 Prime Sponsor, Senator Kline: Concerning the procedure for filing a declaration of completion of probate. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass as amended:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 11.68.110 and 1998 c 292 s 202 are each amended to read as follows:

(1) If a personal representative who has acquired nonintervention powers does not apply to the court for either of the final decrees provided for in RCW 11.68.100 as now or hereafter amended, the personal representative shall, when the administration of the estate has been completed, file a declaration that must state as follows:

(a) The date of the decedent's death and the decedent's residence at the time of death;

(b) Whether or not the decedent died testate or intestate;

(c) If the decedent died testate, the date of the decedent's last will and testament and the date of the order probating the will;

(d) That each creditor's claim which was justly due and properly presented as required by law has been paid or otherwise disposed of by agreement with the creditor, and that the amount of estate taxes due as the result of the decedent's death has been determined, settled, and paid;

(e) That the personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed;

(f) If the decedent died intestate, the names, addresses (if known), and relationship of each heir of the decedent, together with the distributive share of each heir; and

(g) The amount of fees paid or to be paid to each of the following: (i) Personal representative or representatives; (ii) lawyer or lawyers; (iii) appraiser or appraisers; and (iv) accountant or accountants; and that the personal representative believes the fees to be reasonable and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting to the court for approval.

(2) Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee of a decedent petitions the court either for an order requiring the personal representative to obtain court approval of the amount of fees paid or to be paid to the personal representative, lawyers, appraisers, or accountants, or for an order requiring an accounting, or both, within thirty days from the date of filing a declaration of completion of probate, the personal representative will be automatically discharged without further order of the court and the representative's powers will cease thirty days after the filing of the declaration of completion of probate, and the declaration of completion of probate shall, at that time, be the

equivalent of the entry of a decree of distribution in accordance with chapter 11.76 RCW for all legal intents and purposes.

(3) Within five days of the date of the filing of the declaration of completion, the personal representative or the personal representative's lawyer shall mail a copy of the declaration of completion to each heir, legatee, or devisee of the decedent, who: (a) Has not waived notice of the filing, in writing, filed in the cause; and (b) either has not received the full amount of the distribution to which the heir, legatee, or devisee is entitled or has a property right that might be affected adversely by the discharge of the personal representative under this section, together with a notice which shall be substantially as follows:

| | |
|-----------------------|--|
| CAPTION OF CASE | NOTICE OF FILING OF DECLARATION OF COMPLETION OF PROBATE |
|-----------------------|--|

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the day of, ((19.)) 20 . . ; unless you shall file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative's lawyer, and each heir, legatee, and devisee to whom the personal representative sent a copy of this Declaration of Completion of Probate, within thirty days after the date of the filing, the amount of fees paid or to be paid will be deemed reasonable, the acts of the personal representative will be deemed approved, the personal representative will be automatically discharged without further order of the court, and the Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW.

If you file and serve a petition within the period specified, ((the undersigned will)) you must request the court to fix a time and place for the hearing of your petition, and you ((will be notified)) must provide notice of the time and place thereof to the personal representative or the personal representative's lawyer, and to each heir, legatee, and devisee to whom the personal representative sent a copy of this Declaration of Completion of Probate, by mail((,)) or personal service, not less than ten days before the hearing on the petition.

If you file and serve a petition but do not provide notice of the hearing time and place, the acts of the personal representative will be deemed approved, and the personal representative will be automatically discharged as provided in RCW 11.68.110.

Dated this day of,
((19.)) 20 . .

.....
.....
Personal Representative

(4) If all heirs, devisees, and legatees of the decedent entitled to notice under this section waive, in writing, the notice required by this section, the personal representative will be automatically discharged without further order of the court and the declaration of completion of probate will become effective as a decree of distribution upon the date of filing thereof. In those instances where the personal representative has been required to furnish bond, and a declaration of completion is filed pursuant to this section, any bond furnished by the

personal representative shall be automatically discharged upon the discharge of the personal representative.

Sec. 2. RCW 11.68.114 and 1998 c 292 s 203 are each amended to read as follows:

(1) The personal representative retains the powers to: Deal with the taxing authority of any federal, state, or local government; hold a reserve in an amount not to exceed three thousand dollars, for the determination and payment of any additional taxes, interest, and penalties, and of all reasonable expenses related directly or indirectly to such determination or payment; pay from the reserve the reasonable expenses, including compensation for services rendered or goods provided by the personal representative or by the personal representative's employees, independent contractors, and other agents, in addition to any taxes, interest, or penalties assessed by a taxing authority; receive and hold any credit, including interest, from any taxing authority; and distribute the residue of the reserve to the intended beneficiaries of the reserve; if:

(a) In lieu of the statement set forth in RCW 11.68.110(1)(e), the declaration of completion of probate states that:

The personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed, except for the determination of taxes and of interest and penalties thereon as permitted under this section;

and

(b) The notice of the filing of declaration of completion of probate must be in substantially the following form:

| | |
|-----------------------|--|
| CAPTION OF CASE | NOTICE OF FILING OF DECLARATION OF COMPLETION OF PROBATE |
|-----------------------|--|

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the . . . day of; unless you file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative's lawyer, and each heir, legatee, and devisee to whom the personal representative sent a copy of this Declaration of Completion of Probate, within thirty days after the date of the filing:

(i) The schedule of fees set forth in the Declaration of Completion of Probate will be deemed reasonable;

(ii) The Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW;

(iii) The acts that the personal representative performed before the Declaration of Completion of Probate was filed will be deemed approved, and the personal representative will be automatically discharged without further order of the court with respect to all such acts; and

(iv) The personal representative will retain the power to deal with the taxing authorities, together with \$. . . for the determination and payment of all remaining tax obligations. Only that portion of the reserve that remains after the settlement of any tax liability, and the payment of any expenses associated with such settlement, will be distributed to the persons legally entitled to the reserve.

(2) If the requirements in subsection (1) of this section are met, the personal representative is discharged from all claims other than those relating to the settlement of any tax obligations and the actual distribution of the reserve, at the effective date of the declaration of completion. The personal representative is discharged from liability from the settlement of any tax obligations and the distribution of the reserve, and the personal representative's powers cease, thirty days after the personal representative has mailed to those persons who would have shared in the distribution of the reserve had the reserve remained intact and has filed with the court copies of checks or receipts showing how the reserve was in fact distributed, unless a person with an interest in the reserve petitions the court earlier within the thirty-day period for an order requiring an accounting of the reserve or an order determining the reasonableness, or lack of reasonableness, of distributions made from the reserve. If the personal representative has been required to furnish a bond, any bond furnished by the personal representative is automatically discharged upon the final discharge of the personal representative."

Correct the title.

Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan; Kelley; Kirby; Ormsby; Roberts; Ross and Warnick.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5326 Prime Sponsor, Committee on Human Services & Corrections: Concerning notice to individuals convicted of a sex offense as a juvenile of their ability to terminate registration requirements. Reported by Committee on Human Services

MAJORITY recommendation: Do pass. Signed by Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green; Klippert; Morrell; O'Brien and Walsh.

Passed to Committee on Rules for second reading.

March 19, 2009

SB 5356 Prime Sponsor, Senator Haugen: Regarding direct retail licenses issued by the department of fish and wildlife. Reported by Committee on Agriculture & Natural Resources

MAJORITY recommendation: Do pass. Signed by Representatives Blake, Chair; Jacks, Vice Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Grant-Herriot; Kretz; McCoy; Nelson; Ormsby; Pearson; Van De Wege and Warnick.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5369 Prime Sponsor, Committee on Health & Long-Term Care: Regarding counseling professions subject to the authority of the secretary of health. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass. Signed by Representatives Cody, Chair; Driscoll, Vice Chair; Erickson, Ranking Minority Member; Bailey; Clibborn; Green; Herrera; Hinkle; Kelley; Moeller; Morrell and Pedersen.

Passed to Committee on Rules for second reading.

March 18, 2009

SB 5413 Prime Sponsor, Senator Eide: Concerning the assault of a law enforcement officer or other employee of a law enforcement agency. Reported by Committee on Public Safety & Emergency Preparedness

MAJORITY recommendation: Do pass. Signed by Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton; Kirby and Ross.

MINORITY recommendation: Do not pass. Signed by Representative Goodman.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5451 Prime Sponsor, Committee on Environment, Water & Energy: Changing the date for setting the amount of pipeline safety fees. Reported by Committee on Technology, Energy & Communications

MAJORITY recommendation: Do pass. Signed by Representatives McCoy, Chair; Eddy, Vice Chair; Crouse, Ranking Minority Member; Carlyle; Condotta; Finn; Hasegawa; Herrera; Hudgins; Jacks; McCune; Morris; Takko and Van De Wege.

Passed to Committee on Rules for second reading.

March 20, 2009

SB 5492 Prime Sponsor, Senator Marr: Applying RCW 41.56.430 through 41.56.490 to employees working under a site certificate issued under chapter 80.50 RCW. Reported by Committee on Commerce & Labor

MAJORITY recommendation: Do pass. Signed by Representatives Conway, Chair; Wood, Vice Chair; Green; Moeller and Williams.

MINORITY recommendation: Do not pass. Signed by Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

Passed to Committee on Rules for second reading.

March 19, 2009

SSB 5659 Prime Sponsor, Committee on Financial Institutions, Housing & Insurance: Authorizing the consideration of mitigating factors for enforcement actions under the mortgage broker practices act. Reported by Committee on Financial Institutions & Insurance

MAJORITY recommendation: Do pass. Signed by Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst; McCoy; Nelson; Roach; Rodne; Santos and Simpson.

Passed to Committee on Rules for second reading.

March 18, 2009

SSB 5718 Prime Sponsor, Committee on Human Services & Corrections: Concerning the commitment of sexually violent predators. Reported by Committee on Public Safety & Emergency Preparedness

MAJORITY recommendation: Do pass as amended:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 71.09.020 and 2006 c 303 s 10 are each amended to read as follows:

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

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

(2) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

(7) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

(10) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of

casual acquaintance with whom no substantial personal relationship exists.

~~((+0))~~ (11) "Prosecuting agency" means the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney, as provided in RCW 71.09.030.

(12) "Recent overt act" means any act ~~((or))~~ threat, or combination thereof that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

~~((+1))~~ (13) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

~~((+2))~~ (14) "Secretary" means the secretary of social and health services or the secretary's designee.

~~((+3))~~ (15) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

~~((+4))~~ (16) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

~~((+5))~~ (17) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal

solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

~~((+6))~~ (18) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

~~((+7))~~ (19) "Total confinement facility" means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary.

Sec. 2. RCW 71.09.025 and 2008 c 213 s 11 are each amended to read as follows:

(1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in RCW 71.09.020 (16), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county ~~((where that person was charged))~~ in which an action under this chapter may be filed pursuant to RCW 71.09.030 and the attorney general, three months prior to:

(i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;

(ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;

(iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.086(4); or

(iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

(b) The agency shall provide the ~~((prosecutor))~~ prosecuting agency with all relevant information including but not limited to the following information:

(i) A complete copy of the institutional records compiled by the department of corrections relating to the person, and any such out-of-state department of corrections' records, if available;

(ii) A complete copy, if applicable, of any file compiled by the indeterminate sentence review board relating to the person;

(iii) All records relating to the psychological or psychiatric evaluation and/or treatment of the person;

(iv) A current record of all prior arrests and convictions, and full police case reports relating to those arrests and convictions; and

(v) A current mental health evaluation or mental health records review.

(c) The prosecuting agency has the authority, consistent with RCW 72.09.345(3), to obtain all records relating to the person if the prosecuting agency deems such records are necessary to fulfill its duties under this chapter. The prosecuting agency may only disclose such records in the course of performing its duties pursuant to this chapter, unless otherwise authorized by law.

(d) The prosecuting agency has the authority to utilize the inquiry judge procedures of chapter 10.27 RCW prior to the filing of any action under this chapter to seek the issuance of compulsory process for the production of any records necessary for a determination of whether to seek the civil commitment of a person under this chapter. Any records obtained pursuant to this process may only be disclosed by the prosecuting agency in the course of performing its duties pursuant to this chapter, or unless otherwise authorized by law.

(2) ~~((This section applies to acts committed before, on, or after March 26, 1992.~~

~~---~~ ~~(3))~~ The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

~~((+4))~~ (3) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services.

Sec. 3. RCW 71.09.030 and 2008 c 213 s 12 are each amended to read as follows:

(1) A petition may be filed alleging that a person is a sexually violent predator and stating sufficient facts to support such allegation when it appears that: ~~((+1))~~ (a) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement ~~((on, before, or after July 1, 1990))~~; ~~((2))~~ (b) a person found to have committed a sexually violent offense as a juvenile is about to be released from total confinement ~~((on, before, or after July 1, 1990))~~; ~~((3))~~ (c) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released ~~((on, before, or after July 1, 1990))~~, pursuant to RCW 10.77.086(4); ~~((4))~~ (d) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released ~~((on, before, or after July 1, 1990))~~, pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or ~~((5))~~ (e) a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act ~~((; and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a "sexually violent predator" and stating sufficient facts to support such allegation))~~.

(2) The petition may be filed by:

(a) The prosecuting attorney of a county in which:

(i) The person has been charged or convicted with a sexually violent offense;

(ii) A recent overt act occurred involving a person covered under subsection (1)(e) of this section; or

(iii) The person committed a recent overt act, or was charged or convicted of a criminal offense that would qualify as a recent overt act, if the only sexually violent offense charge or conviction occurred in a jurisdiction other than Washington; or

(b) The attorney general, if requested by the county prosecuting attorney identified in (a) of this subsection. If the county prosecuting attorney requests that the attorney general file and prosecute a case under this chapter, then the county shall charge the attorney general only the fees, including filing and jury fees, that would be charged and paid by the county prosecuting attorney, if the county prosecuting attorney retained the case.

Sec. 4. RCW 71.09.040 and 2001 c 286 s 6 are each amended to read as follows:

(1) Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody.

(2) Within seventy-two hours after a person is taken into custody pursuant to subsection (1) of this section, the court shall provide the person with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. In order to assist the person at the hearing, within twenty-four hours of service of the petition, the prosecuting

agency shall provide to the person or his or her counsel a copy of all materials provided to the prosecuting agency by the referring agency pursuant to RCW 71.09.025, or obtained by the prosecuting agency pursuant to RCW 71.09.025(1)(c) and (d). At this hearing, the court shall (a) verify the person's identity, and (b) determine whether probable cause exists to believe that the person is a sexually violent predator. At the probable cause hearing, the state may rely upon the petition and certification for determination of probable cause filed pursuant to RCW 71.09.030. The state may supplement this with additional documentary evidence or live testimony. The person may be held in total confinement at the county jail until the trial court renders a decision after the conclusion of the seventy-two hour probable cause hearing. The county shall be entitled to reimbursement for the cost of housing and transporting the person pursuant to rules adopted by the secretary.

(3) At the probable cause hearing, the person shall have the following rights in addition to the rights previously specified: (a) To be represented by counsel; (b) to present evidence on his or her behalf; (c) to cross-examine witnesses who testify against him or her; (d) to view and copy all petitions and reports in the court file. The court must permit a witness called by either party to testify by telephone. Because this is a special proceeding, discovery pursuant to the civil rules shall not occur until after the hearing has been held and the court has issued its decision.

(4) If the probable cause determination is made, the judge shall direct that the person be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall consult with the department of health and the department of corrections. In no event shall the person be released from confinement prior to trial. A witness called by either party shall be permitted to testify by telephone.

Sec. 5. RCW 71.09.050 and 1995 c 216 s 5 are each amended to read as follows:

(1) Within forty-five days after the completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist him or her. The person shall be confined in a secure facility for the duration of the trial.

(2) Whenever any person is subjected to an examination under this chapter, he or she may retain experts or professional persons to perform an examination on their behalf. When the person wishes to be examined by a qualified expert or professional person of his or her own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(3) The person, the prosecuting ~~((attorney or attorney general))~~ agency, or the judge shall have the right to demand that the trial be

before a twelve-person jury. If no demand is made, the trial shall be before the court.

Sec. 6. RCW 71.09.060 and 2008 c 213 s 13 are each amended to read as follows:

(1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. In determining whether or not the person would be likely to engage in predatory acts of sexual violence if not confined in a secure facility, the fact finder may consider only placement conditions and voluntary treatment options that would exist for the person if unconditionally released from detention on the sexually violent predator petition. The community protection program under RCW 71A.12.230 may not be considered as a placement condition or treatment option available to the person if unconditionally released from detention on a sexually violent predator petition. When the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in RCW 71.09.020(15)(c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030.

If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as: (a) The person's condition has so changed that the person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative as set forth in RCW 71.09.092 is in the best interest of the person and conditions can be imposed that would adequately protect the community.

If the court or unanimous jury decides that the state has not met its burden of proving that the person is a sexually violent predator, the court shall direct the person's release.

If the jury is unable to reach a unanimous verdict, the court shall declare a mistrial and set a retrial within forty-five days of the date of the mistrial unless the prosecuting agency earlier moves to dismiss the petition. The retrial may be continued upon the request of either party accompanied by a showing of good cause, or by the court on its own motion in the due administration of justice provided that the respondent will not be substantially prejudiced. In no event may the person be released from confinement prior to retrial or dismissal of the case.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to ~~((be))~~ be or has been released pursuant to RCW 10.77.086(4), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.086(4) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the

person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) Except as otherwise provided in this chapter, the state shall comply with RCW 10.77.220 while confining the person ((pursuant to this chapter, except that)). During all court proceedings where the person is present, the person shall be detained in a secure facility. If the proceedings last more than one day, the person may be held in the county jail for the duration of the proceedings, except the person may be returned to the department's custody on weekends and court holidays if the court deems such a transfer feasible. The county shall be entitled to reimbursement for the cost of housing and transporting the person pursuant to rules adopted by the secretary. The department shall not place the person, even temporarily, in a facility on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

(4) A court has jurisdiction to order a less restrictive alternative placement only after a hearing ordered pursuant to RCW 71.09.090 following initial commitment under this section and in accord with the provisions of this chapter.

Sec. 7. RCW 71.09.080 and 1995 c 216 s 8 are each amended to read as follows:

(1) Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter, or as otherwise authorized by law.

(2) Any person committed pursuant to this chapter has the right to adequate care and individualized treatment. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting attorney, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(3) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this subsection, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

(4) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

(5) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable

clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so.

(6) If a civil commitment petition is dismissed, or a trier of fact determines that a person does not meet civil commitment criteria, the person shall be released within twenty-four hours of service of the release order on the superintendent of the special commitment center, or later by agreement of the person who is the subject of the petition.

Sec. 8. RCW 71.09.090 and 2005 c 344 s 2 are each amended to read as follows:

(1) If the secretary determines that the person's condition has so changed that either: (a) The person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall within forty-five days order a hearing.

(2)(a) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (i) He or she no longer meets the definition of a sexually violent predator; or (ii) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(b) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which may be conducted solely on the basis of affidavits or declarations, but the person is not entitled to be present at the show cause hearing. At the show cause hearing, the prosecuting attorney or attorney general shall present prima facie evidence establishing that the committed person continues to meet the definition of a sexually violent predator and that a less restrictive alternative is not in the best interest of the person and conditions cannot be imposed that adequately protect the community. In making this showing, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070. The committed person may present responsive affidavits or declarations to which the state may reply.

(c) If the court at the show cause hearing determines that either: (i) The state has failed to present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator and that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community; or (ii) probable cause exists to believe that the person's condition has so changed that: (A) The

person no longer meets the definition of a sexually violent predator; or (B) release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, then the court shall set a hearing on either or both issues.

(d) If the court has not previously considered the issue of release to a less restrictive alternative, either through a trial on the merits or through the procedures set forth in RCW 71.09.094(1), the court shall consider whether release to a less restrictive alternative would be in the best interests of the person and conditions can be imposed that would adequately protect the community, without considering whether the person's condition has changed. The court may not find probable cause for a trial addressing less restrictive alternatives unless a proposed less restrictive alternative placement meeting the conditions of RCW 71.09.092 is presented to the court at the show cause hearing.

(3)(a) At the hearing resulting from subsection (1) or (2) of this section, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting agency (~~(or the attorney general if requested by the county)~~) shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to a jury trial and the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) If the issue at the hearing is whether the person should be unconditionally discharged, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible. The recommitment proceeding shall otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

(c) If the issue at the hearing is whether the person should be conditionally released to a less restrictive alternative, the burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that conditional release to any proposed less restrictive alternative either: (i) Is not in the best interest of the committed person; or (ii) does not include conditions that would adequately protect the community. Evidence of the prior commitment trial and disposition is admissible.

(4)(a) Probable cause exists to believe that a person's condition has "so changed," under subsection (2) of this section, only when evidence exists, since the person's last commitment trial, or less restrictive alternative revocation proceeding, of a substantial change in the person's physical or mental condition such that the person either no longer meets the definition of a sexually violent predator or that a conditional release to a less restrictive alternative is in the person's best interest and conditions can be imposed to adequately protect the community.

(b) A new trial proceeding under subsection (3) of this section may be ordered, or a trial proceeding may be held, only when there is current evidence from a licensed professional of one of the following and the evidence presents a change in condition since the person's last commitment trial proceeding:

(i) An identified physiological change to the person, such as paralysis, stroke, or dementia, that renders the committed person unable to commit a sexually violent act and this change is permanent; or

(ii) A change in the person's mental condition brought about through positive response to continuing participation in treatment which indicates that the person meets the standard for conditional release to a less restrictive alternative or that the person would be safe to be at large if unconditionally released from commitment.

(c) For purposes of this section, a change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under subsection (3) of this section. As used in this section, a single demographic factor includes, but is not limited to, a change in the chronological age, marital status, or gender of the committed person.

(5) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged.

Sec. 9. RCW 71.09.092 and 1995 c 216 s 10 are each amended to read as follows:

Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists in Washington that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and (5) the person will be under the supervision of the department of corrections and is willing to comply with supervision requirements imposed by the department of corrections.

Sec. 10. RCW 71.09.096 and 2001 c 286 s 12 are each amended to read as follows:

(1) If the court or jury determines that conditional release to a less restrictive alternative is in the best interest of the person and includes conditions that would adequately protect the community, and the court determines that the minimum conditions set forth in RCW 71.09.092 and in this section are met, the court shall enter judgment and direct a conditional release.

(2) The court shall impose any additional conditions necessary to ensure compliance with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the person's compliance with treatment and protect the community, then the person shall be remanded to the custody of the department of social and health services for control, care, and treatment in a secure facility as designated in RCW 71.09.060(1).

(3) If the service provider designated by the court to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of a person's placement in a less restrictive alternative is other than the department of social and health services or the department of corrections, then the service provider so designated must agree in writing to provide such treatment, monitoring, or supervision in accord with this section. Any person providing or agreeing to provide treatment, monitoring, or supervision services pursuant to this chapter may be compelled to

testify and any privilege with regard to such person's testimony is deemed waived.

(4) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. The court shall order the department of corrections to investigate the less restrictive alternative and recommend any additional conditions to the court. These conditions shall include, but are not limited to the following: Specification of residence, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, monitoring through the use of global positioning satellite technology, supervision by a department of corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(5) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the ~~((prosecutor of the county in which the person was found to be a sexually violent predator))~~ prosecuting agency, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and conditions of the conditional release to a less restrictive alternative.

(6) Each person released to a less restrictive alternative shall have his or her case reviewed by the court that released him or her no later than one year after such release and annually thereafter until the person is unconditionally discharged. Review may occur in a shorter time or more frequently, if the court, in its discretion on its own motion, or on motion of the person, the secretary, or the prosecuting ~~((attorney))~~ agency so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released to a less restrictive alternative. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection (5) of this section and the opinions of the secretary and other experts or professional persons.

Sec. 11. RCW 71.09.098 and 2006 c 282 s 1 are each amended to read as follows:

~~((1) Any service provider submitting reports pursuant to RCW 71.09.096(6), the supervising community corrections officer, the prosecuting attorney, or the attorney general may petition the court, or the court on its own motion may schedule an immediate hearing, for the purpose of revoking or modifying the terms of the person's conditional release to a less restrictive alternative if the petitioner or the court believes the released person is not complying with the terms and conditions of his or her release or is in need of additional care, monitoring, supervision, or treatment.~~

~~— (2) If the prosecuting attorney, the supervising community corrections officer, or the court, based upon information received by them, reasonably believes that a conditionally released person is not complying with the terms and conditions of his or her conditional release to a less restrictive alternative, the court or community corrections officer may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the person's conditional release should be revoked or modified. A law enforcement officer, who has responded to a request for assistance~~

~~from a department employee, may apprehend and take into custody the conditionally released person if the law enforcement officer reasonably believes that the conditionally released person is not complying with the terms and conditions of his or her conditional release to a less restrictive alternative. The conditionally released person may be detained in the county jail or returned to the secure community transition facility. The court shall be notified before the close of the next judicial day of the person's apprehension. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.~~

~~— (3) The court, upon receiving notification of the person's apprehension, shall promptly schedule a hearing. The issue to be determined is whether the state has proven by a preponderance of the evidence that the conditionally released person did not comply with the terms and conditions of his or her release. Hearsay evidence is admissible if the court finds it otherwise reliable. At the hearing, the court shall determine whether the person shall continue to be conditionally released on the same or modified conditions or whether his or her conditional release shall be revoked and he or she shall be committed to total confinement, subject to release only in accordance with provisions of this chapter.)~~

(1) Any service provider submitting reports pursuant to RCW 71.09.096(6), the supervising community corrections officer, the prosecuting agency, or the secretary's designee may petition the court for an immediate hearing for the purpose of revoking or modifying the terms of the person's conditional release to a less restrictive alternative if the petitioner believes the released person: (a) Violated or is in violation of the terms and conditions of the court's conditional release order; or (b) is in need of additional care, monitoring, supervision, or treatment.

(2) The community corrections officer or the secretary's designee may restrict the person's movement in the community until the petition is determined by the court. The person may be taken into custody if:

(a) The supervising community corrections officer, the secretary's designee, or a law enforcement officer reasonably believes the person has violated or is in violation of the court's conditional release order; or

(b) The supervising community corrections officer or the secretary's designee reasonably believes that the person is in need of additional care, monitoring, supervision, or treatment because the person presents a danger to himself or herself or others if his or her conditional release under the conditions imposed by the court's release order continues.

(3)(a) Persons taken into custody pursuant to subsection (2) of this section shall:

(i) Not be released until such time as a hearing is held to determine whether to revoke or modify the person's conditional release order and the court has issued its decision; and

(ii) Be held in the county jail, at a secure community transition facility, or at the total confinement facility, at the discretion of the secretary's designee.

(b) The court shall be notified before the close of the next judicial day that the person has been taken into custody and shall promptly schedule a hearing.

(4) Before any hearing to revoke or modify the person's conditional release order, both the prosecuting agency and the released person shall have the right to request an immediate mental examination of the released person. If the conditionally released

person is indigent, the court shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(5) At any hearing to revoke or modify the conditional release order:

(a) The prosecuting agency shall represent the state, including determining whether to proceed with revocation or modification of the conditional release order;

(b) Hearsay evidence is admissible if the court finds that it is otherwise reliable; and

(c) The state shall bear the burden of proving by a preponderance of the evidence that the person has violated or is in violation of the court's conditional release order or that the person is in need of additional care, monitoring, supervision, or treatment.

(6)(a) If the court determines that the state has met its burden referenced in subsection (5)(c) of this section, and the issue before the court is revocation of the court's conditional release order, the court shall consider the evidence presented by the parties and the following factors relevant to whether continuing the person's conditional release is in the person's best interests or adequate to protect the community:

(i) The nature of the condition that was violated by the person or that the person was in violation of in the context of the person's criminal history and underlying mental conditions;

(ii) The degree to which the violation was intentional or grossly negligent;

(iii) The ability and willingness of the released person to strictly comply with the conditional release order;

(iv) The degree of progress made by the person in community-based treatment; and

(v) The risk to the public or particular persons if the conditional release continues under the conditional release order that was violated.

(b) Any factor alone, or in combination, shall support the court's determination to revoke the conditional release order.

(7) If the court determines the state has met its burden referenced in subsection (5)(c) of this section, and the issue before the court is modification of the court's conditional release order, the court shall modify the conditional release order by adding conditions if the court determines that the person is in need of additional care, monitoring, supervision, or treatment. The court has authority to modify its conditional release order by substituting a new treatment provider, requiring new housing for the person, or imposing such additional supervision conditions as the court deems appropriate.

(8) A person whose conditional release has been revoked shall be remanded to the custody of the secretary for control, care, and treatment in a total confinement facility as designated in RCW 71.09.060(1). The person is thereafter eligible for conditional release only in accord with the provisions of RCW 71.09.090 and related statutes.

NEW SECTION. Sec. 12. A new section is added to chapter 71.09 RCW to read as follows:

The department of social and health services shall provide to the prosecuting agency a copy of all reports made by the department to law enforcement in which a person detained or committed under this chapter is named or listed as a suspect, witness, or victim, as well as a copy of all reports received from law enforcement.

Sec. 13. RCW 71.09.112 and 2002 c 19 s 1 are each amended to read as follows:

A person subject to court order under the provisions of this chapter who is thereafter convicted of a criminal offense remains under the jurisdiction of the department and shall be returned to the

custody of the department following: (1) Completion of the criminal sentence; or (2) release from confinement in a state, federal, or local correctional facility(~~(- and shall be returned to the custody of the department)~~). Any conditional release order shall be immediately revoked upon conviction for a criminal offense.

This section does not apply to persons subject to a court order under the provisions of this chapter who are thereafter sentenced to life without the possibility of release.

Sec. 14. RCW 71.09.350 and 2004 c 38 s 14 are each amended to read as follows:

(1) Examinations and treatment of sexually violent predators who are conditionally released to a less restrictive alternative under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department of social and health services finds that: (a) The ~~((court-ordered less restrictive alternative placement is located in another state; (b) the))~~ treatment provider is employed by the department; or ~~((c))~~ (b)(i) all certified sex offender treatment providers or certified affiliate sex offender treatment providers become unavailable to provide treatment within a reasonable geographic distance of the person's home, as determined in rules adopted by the department of social and health services; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of social and health services.

A treatment provider approved by the department of social and health services under ~~((c))~~ (b) of this subsection, who is not certified by the department of health, shall consult with a certified sex offender treatment provider during the person's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A treatment provider, whether or not he or she is employed or approved by the department of social and health services under subsection (1) of this section or otherwise certified, may not perform or provide treatment of sexually violent predators under this section if the treatment provider has been:

(a) Convicted of a sex offense, as defined in RCW 9.94A.030;

(b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or

(c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.

(3) Nothing in this section prohibits a qualified expert from examining or evaluating a sexually violent predator who has been conditionally released for purposes of presenting an opinion in court proceedings.

NEW SECTION. Sec. 15. This act applies to all persons currently committed or awaiting commitment under chapter 71.09 RCW either on, before, or after the effective date of this act, whether confined in a secure facility or on conditional release.

NEW SECTION. Sec. 16. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. Sec. 17. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Correct the title.

Signed by Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton; Goodman; Kirby and Ross.

Passed to Committee on Rules for second reading.

March 19, 2009
SB 5739 Prime Sponsor, Senator King: Revising provisions relating to renewing a concealed pistol license by members of the armed forces. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan; Kelley; Kirby; Ormsby; Roberts; Ross and Warnick.

Passed to Committee on Rules for second reading.

March 18, 2009
SB 5832 Prime Sponsor, Senator Kohl-Welles: Allowing the prosecution of sex offenses against minor victims until the victim's twenty-eighth birthday if the offense is listed in RCW 9A.04.080(1) (b)(iii)(A) or (c). Reported by Committee on Public Safety & Emergency Preparedness

MAJORITY recommendation: Do pass. Signed by Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton; Goodman; Kirby and Ross.

Passed to Committee on Rules for second reading.

March 19, 2009
ESSB 6032 Prime Sponsor, Committee on Financial Institutions, Housing & Insurance: Concerning exchange facilitators. Reported by Committee on Financial Institutions & Insurance

MAJORITY recommendation: Do pass. Signed by Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst; McCoy; Nelson; Roach; Rodne; Santos and Simpson.

Passed to Committee on Rules for second reading.

March 19, 2009
SJM 8001 Prime Sponsor, Senator Hatfield: Requesting the United States fish and wildlife service to work cooperatively with the state's regulatory agencies and energy producers with respect to the federal endangered species act. Reported by Committee on Agriculture & Natural Resources

MAJORITY recommendation: Do pass. Signed by Representatives Blake, Chair; Jacks, Vice Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Grant-Herriot; Kretz; Ormsby; Pearson and Warnick.

MINORITY recommendation: Do not pass. Signed by Representatives McCoy; Nelson and Van De Wege.

Passed to Committee on Rules for second reading.

There being no objection, the bills and memorial listed on the day's committee reports under the fifth order of business were referred to the committees so designated.

The Speaker (Representative Moeller presiding) called upon Representative Morris to preside.

SECOND READING

HOUSE BILL NO. 2295, by Representatives Cody, Williams, Seaquist and Darneille

Concerning the organization of the department of social and health services.

The bill was read the second time.

There being no objection, Substitute House Bill No. 2295 was substituted for House Bill No. 2295 and the substitute bill was placed on the second reading calendar.

SUBSTITUTE HOUSE BILL NO. 2295 was read the second time.

Representative Alexander moved the adoption of amendment (384):

On page 1, after line 12, insert the following:

"(3) The department shall achieve at least the same percentage of administrative savings at the regional and headquarters level as realized through the reduction in regional support networks as provided in section 3 of this act."

Representatives Alexander and Cody spoke in favor of the adoption of the amendment.

Amendment (384) was adopted.

With the consent of the House, amendment (432) was withdrawn.

Representative Santos moved the adoption of amendment (433):

On page 2, after line 22, insert the following:

"NEW SECTION. Sec. 4. (1) The legislature finds that the administration of the refugee immigrant assistance program by the department of social and health services lacks transparency and accountability. Specifically, the legislature finds that the department has failed to manage appropriated funds in a manner that ensures full and timely communications with community-based providers about contracting, billing, and payments. This gross failure to work cooperatively with contract providers has contributed to the underspending of appropriated funds in the biennium, effectively thus denying needed assistance to individuals who are eligible for services through the refugee immigrant assistance program. The legislature

further finds that the department is aware of these grave administrative deficiencies, but has not adequately resolved these issues in a satisfactory manner. Therefore, the legislature determines that any reorganization of the department of social and health services required under this act must improve the transparency of and administrative accountability for the refugee immigrant assistance program. The secretary shall conduct quality improvement and quality assurance surveys with contract providers and consumers of refugee immigrant assistance program services to determine how reorganization of the department affects the delivery of services and shall report these results to the appropriate legislative committees.

(2) If the secretary of the department of social and health services does not adequately correct the deficiencies in the refugee immigrant assistance program by June 1, 2009, the program shall be transferred to the department of community, trade, and economic development effective July 1, 2009, and the 2009-2011 biennial budget shall be adjusted to maintain funding for the program at the level appropriated by the legislature for the 2007-2009 biennium."

Correct the title.

POINT OF ORDER

Representative Hudgins requested a scope and object ruling on amendment (433) to Substitute House Bill No. 2295.

SPEAKER'S RULING

Mr. Speaker (Representative Morris presiding): "Substitute House Bill No. 2295 is titled an act relating to "the organization of the department of social and health services." The bill's objective is to streamline service delivery by the department and to achieve administrative efficiency by requiring reorganization of regional service delivery systems into consistent boundaries, eliminating an assistant secretary, and reducing the number of regional support networks.

Amendment (433) declares a legislative finding that the Refugee Immigrant Assistance Programs in the department is seriously mismanaged, and that any department re-organization must address this problem; transfers jurisdiction of the program to another department if deficiencies are not adequately addressed, and requires the 2009-11 biennial budget to maintain funding at current levels. Funding levels for this particular program are clearly outside the scope and object of the underlying bill.

The point of order is well taken."

Amendment (288), amending amendment (433), was ruled out of order.

Representative Armstrong moved the adoption of amendment (275):

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that the department of social and health services has grown significantly to now encompass thirty percent of the near general fund-state operating budget and thirty-four percent of the total operating budget. The agency has become so large that it: (a) Is difficult to administer; (b) does not have enough focus on critical functions such as protecting children and other vulnerable persons; (c) does not effectively deliver the extensive number of services and programs it is responsible for; (d) leads to higher state costs through the inefficiencies due to the

size of the agency; and (e) is difficult to measure the performance of the agency in meeting its goals and responsibilities.

(2) The legislature intends to improve the delivery of programs and services, provide more focus on critical functions, and save costs over time by creating four agencies to replace the department of social and health services that are easier to administer and are more flexible in responding to changing circumstances and service delivery. This act abolishes the department of social and health services effective July 1, 2011, and creates the following four agencies in its place: (a) The department of economic services, which will conduct financial eligibility evaluations for all the newly created agencies; (b) the department of medical assistance; (c) the department of health and rehabilitative services, which will consist of the long-term care, developmentally disabled, vocational-rehabilitation, mental health, and drug and alcohol substance abuse programs, and the special commitment center; and (d) the department of children's services.

(3) The office of financial management and the department of social and health services will develop a plan to implement this act and report to the legislature during the 2010 legislative session. The code reviser will propose changes to the Revised Code of Washington for the 2012 legislative session to make technical corrections necessary as a result of implementing this act.

PART I ABOLITION OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

NEW SECTION. Sec. 101. (1) The department of social and health services is abolished and its powers, duties, and functions are transferred to the appropriate department as divided by the transition team established under section 604 of this act. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the director of the appropriate department, or the appropriate department, created under this act.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of social and health services shall be delivered to the custody of the transition team created under section 604 of this act to be transferred to the appropriate department created under this act. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of social and health services shall be made available to the transition team to be transferred to the appropriate department. All funds, credits, or other assets held by the department of social and health services shall be assigned to the appropriate department by the transition team.

(b) Any appropriations made to the department of social and health services shall, on the effective date of this section, be transferred and credited to the appropriate department by the transition team.

(3) All employees of the department of social and health services are transferred to the jurisdiction of the transition team established under section 604 of this act to be transferred to the appropriate department. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to their respective departments to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of social and health services shall be continued and acted upon by the

appropriate department created under this act. All existing contracts and obligations shall remain in full force and shall be performed by the appropriate department.

(5) The transfer of the powers, duties, functions, and personnel of the department of social and health services shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the public employment relations commission as provided by law.

PART II DEPARTMENT OF ECONOMIC SERVICES

NEW SECTION. Sec. 201. There is created a department of state government to be known as the department of economic services. The department is vested with all powers and duties transferred to it under this chapter, section 604 of this act, and such other powers and duties as may be authorized by law. The department shall be located in the facilities of the department of social and health services.

NEW SECTION. Sec. 202. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of economic services.

(2) "Director" means the director of economic services.

NEW SECTION. Sec. 203. The executive head and appointing authority of the department is the director. The director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The director shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040. If a vacancy occurs in the position while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate.

NEW SECTION. Sec. 204. It is the intent of the legislature wherever possible to place the internal affairs of the department under the control of the director in order that the director may institute therein the flexible, alert, and intelligent management of its business that changing contemporary circumstances require. Therefore, whenever the director's authority is not specifically limited by law, the director has complete charge and supervisory powers over the department. The director may create such administrative structures as the director considers appropriate, except as otherwise specified by law. The director may employ such assistants and personnel as necessary for the general administration of the department. This employment shall be in accordance with the state civil service law, chapter 41.06 RCW, except as otherwise provided.

NEW SECTION. Sec. 205. The director shall appoint a deputy director, a department personnel director, and such assistant directors as may be needed to administer the department. The deputy director shall have charge and general supervision of the department in the absence or disability of the director and, in case of a vacancy in the office of director, shall continue in charge of the department until a successor is appointed and qualified, or until the governor appoints an acting director.

NEW SECTION. Sec. 206. Any power or duty vested in or transferred to the director by law or executive order may be delegated by the director to the deputy director or to any other assistant or subordinate; but the director shall be responsible for the official acts of the officers and employees of the department.

NEW SECTION. Sec. 207. In furtherance of the policy of the state to cooperate with the federal government in all of the programs under the jurisdiction of the department, such rules as may become necessary to entitle the state to participate in federal funds may be adopted, unless expressly prohibited by law. Any internal reorganization carried out under the terms of this chapter shall meet federal requirements that are a necessary condition to state receipt of federal funds. Any section or provision of law dealing with the department that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department. If any law dealing with the department is ruled to be in conflict with federal requirements that are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, the conflicting part is declared to be inoperative solely to the extent of the conflict.

NEW SECTION. Sec. 208. A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of economic services to the director, the director's personal secretary, the deputy director, all division directors and assistant directors, and one confidential secretary for each of these officers.

PART III DEPARTMENT OF MEDICAL ASSISTANCE

NEW SECTION. Sec. 301. There is created a department of state government to be known as the department of medical assistance. The department is vested with all powers and duties transferred to it under this chapter, section 604 of this act, and such other powers and duties as may be authorized by law. The department shall be located in the facilities of the department of social and health services.

NEW SECTION. Sec. 302. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of medical assistance.

(2) "Director" means the director of medical assistance.

NEW SECTION. Sec. 303. The executive head and appointing authority of the department is the director. The director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The director shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040. If a vacancy occurs in the position while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate.

NEW SECTION. Sec. 304. It is the intent of the legislature wherever possible to place the internal affairs of the department under the control of the director in order that the director may institute therein the flexible, alert, and intelligent management of its business that changing contemporary circumstances require. Therefore, whenever the director's authority is not specifically limited by law, the director has complete charge and supervisory powers over the department. The director may create such administrative structures as the director considers appropriate, except as otherwise specified by law. The director may employ such assistants and

personnel as necessary for the general administration of the department. This employment shall be in accordance with the state civil service law, chapter 41.06 RCW, except as otherwise provided.

NEW SECTION. Sec. 305. The director shall appoint a deputy director, a department personnel director, and such assistant directors as may be needed to administer the department. The deputy director shall have charge and general supervision of the department in the absence or disability of the director and, in case of a vacancy in the office of director, shall continue in charge of the department until a successor is appointed and qualified, or until the governor appoints an acting director.

NEW SECTION. Sec. 306. Any power or duty vested in or transferred to the director by law or executive order may be delegated by the director to the deputy director or to any other assistant or subordinate; but the director shall be responsible for the official acts of the officers and employees of the department.

NEW SECTION. Sec. 307. In furtherance of the policy of the state to cooperate with the federal government in all of the programs under the jurisdiction of the department, such rules as may become necessary to entitle the state to participate in federal funds may be adopted, unless expressly prohibited by law. Any internal reorganization carried out under the terms of this chapter shall meet federal requirements that are a necessary condition to state receipt of federal funds. Any section or provision of law dealing with the department that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department. If any law dealing with the department is ruled to be in conflict with federal requirements that are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, the conflicting part is declared to be inoperative solely to the extent of the conflict.

NEW SECTION. Sec. 308. A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of medical assistance to the director, the director's personal secretary, the deputy director, all division directors and assistant directors, and one confidential secretary for each of these officers.

PART IV DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

NEW SECTION. Sec. 401. There is created a department of state government to be known as the department of health and rehabilitative services. The department is vested with all powers and duties transferred to it under this chapter, section 604 of this act, and such other powers and duties as may be authorized by law. The department shall be located in the facilities of the department of social and health services.

NEW SECTION. Sec. 402. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of health and rehabilitative services.

(2) "Director" means the director of health and rehabilitative services.

NEW SECTION. Sec. 403. The executive head and appointing authority of the department is the director. The director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The director shall be

paid a salary to be fixed by the governor in accordance with RCW 43.03.040. If a vacancy occurs in the position while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate.

NEW SECTION. Sec. 404. It is the intent of the legislature wherever possible to place the internal affairs of the department under the control of the director in order that the director may institute therein the flexible, alert, and intelligent management of its business that changing contemporary circumstances require. Therefore, whenever the director's authority is not specifically limited by law, the director has complete charge and supervisory powers over the department. The director may create such administrative structures as the director considers appropriate, except as otherwise specified by law. The director may employ such assistants and personnel as necessary for the general administration of the department. This employment shall be in accordance with the state civil service law, chapter 41.06 RCW, except as otherwise provided.

NEW SECTION. Sec. 405. The director shall appoint a deputy director, a department personnel director, and such assistant directors as may be needed to administer the department. The deputy director shall have charge and general supervision of the department in the absence or disability of the director and, in case of a vacancy in the office of director, shall continue in charge of the department until a successor is appointed and qualified, or until the governor appoints an acting director.

NEW SECTION. Sec. 406. Any power or duty vested in or transferred to the director by law or executive order may be delegated by the director to the deputy director or to any other assistant or subordinate; but the director shall be responsible for the official acts of the officers and employees of the department.

NEW SECTION. Sec. 407. In furtherance of the policy of the state to cooperate with the federal government in all of the programs under the jurisdiction of the department, such rules as may become necessary to entitle the state to participate in federal funds may be adopted, unless expressly prohibited by law. Any internal reorganization carried out under the terms of this chapter shall meet federal requirements that are a necessary condition to state receipt of federal funds. Any section or provision of law dealing with the department that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department. If any law dealing with the department is ruled to be in conflict with federal requirements that are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, the conflicting part is declared to be inoperative solely to the extent of the conflict.

NEW SECTION. Sec. 408. A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of health and rehabilitative services to the director, the director's personal secretary, the deputy director, all division directors and assistant directors, and one confidential secretary for each of these officers.

PART V DEPARTMENT OF CHILDREN'S SERVICES

NEW SECTION. Sec. 501. There is created a department of state government to be known as the department of children's services. The department is vested with all powers and duties transferred to it under this chapter, section 604 of this act, and such other powers and duties as may be authorized by law. The

department shall be located in the facilities of the department of social and health services.

NEW SECTION. Sec. 502. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of children's services.
- (2) "Director" means the director of children's services.

NEW SECTION. Sec. 503. The executive head and appointing authority of the department is the director. The director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The director shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040. If a vacancy occurs in the position while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate.

NEW SECTION. Sec. 504. It is the intent of the legislature wherever possible to place the internal affairs of the department under the control of the director in order that the director may institute therein the flexible, alert, and intelligent management of its business that changing contemporary circumstances require. Therefore, whenever the director's authority is not specifically limited by law, the director has complete charge and supervisory powers over the department. The director may create such administrative structures as the director considers appropriate, except as otherwise specified by law. The director may employ such assistants and personnel as necessary for the general administration of the department. This employment shall be in accordance with the state civil service law, chapter 41.06 RCW, except as otherwise provided.

NEW SECTION. Sec. 505. The director shall appoint a deputy director, a department personnel director, and such assistant directors as may be needed to administer the department. The deputy director shall have charge and general supervision of the department in the absence or disability of the director and, in case of a vacancy in the office of director, shall continue in charge of the department until a successor is appointed and qualified, or until the governor appoints an acting director.

NEW SECTION. Sec. 506. Any power or duty vested in or transferred to the director by law or executive order may be delegated by the director to the deputy director or to any other assistant or subordinate; but the director shall be responsible for the official acts of the officers and employees of the department.

NEW SECTION. Sec. 507. In furtherance of the policy of the state to cooperate with the federal government in all of the programs under the jurisdiction of the department, such rules as may become necessary to entitle the state to participate in federal funds may be adopted, unless expressly prohibited by law. Any internal reorganization carried out under the terms of this chapter shall meet federal requirements that are a necessary condition to state receipt of federal funds. Any section or provision of law dealing with the department that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department. If any law dealing with the department is ruled to be in conflict with federal requirements that are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, the conflicting part is declared to be inoperative solely to the extent of the conflict.

NEW SECTION. Sec. 508. A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of children's services to the director, the director's personal secretary,

the deputy director, all division directors and assistant directors, and one confidential secretary for each of these officers.

PART VI MISCELLANEOUS PROVISIONS

Sec. 601. RCW 43.17.010 and 2007 c 341 s 46 are each amended to read as follows:

There shall be departments of the state government which shall be known as (1) ~~((the department of social and health services, (2)))~~ the department of ecology, ~~((3))~~ (2) the department of labor and industries, ~~((4))~~ (3) the department of agriculture, ~~((5))~~ (4) the department of fish and wildlife, ~~((6))~~ (5) the department of transportation, ~~((7))~~ (6) the department of licensing, ~~((8))~~ (7) the department of general administration, ~~((9))~~ (8) the department of community, trade, and economic development, ~~((10))~~ (9) the department of veterans affairs, ~~((11))~~ (10) the department of revenue, ~~((12))~~ (11) the department of retirement systems, ~~((13))~~ (12) the department of corrections, ~~((14))~~ (13) the department of health, ~~((15))~~ (14) the department of financial institutions, ~~((16))~~ (15) the department of archaeology and historic preservation, ~~((17))~~ (16) the department of early learning, ~~((and (18)))~~ (17) the Puget Sound partnership, (18) the department of economic services, (19) the department of medical assistance, (20) the department of health and rehabilitative services, and (21) the department of children's services, which shall be charged with the execution, enforcement, and administration of such laws, and invested with such powers and required to perform such duties, as the legislature may provide.

Sec. 602. RCW 43.17.020 and 2007 c 341 s 47 are each amended to read as follows:

There shall be a chief executive officer of each department to be known as: (1) ~~((The secretary of social and health services, (2)))~~ The director of ecology, ~~((3))~~ (2) the director of labor and industries, ~~((4))~~ (3) the director of agriculture, ~~((5))~~ (4) the director of fish and wildlife, ~~((6))~~ (5) the secretary of transportation, ~~((7))~~ (6) the director of licensing, ~~((8))~~ (7) the director of general administration, ~~((9))~~ (8) the director of community, trade, and economic development, ~~((10))~~ (9) the director of veterans affairs, ~~((11))~~ (10) the director of revenue, ~~((12))~~ (11) the director of retirement systems, ~~((13))~~ (12) the secretary of corrections, ~~((14))~~ (13) the secretary of health, ~~((15))~~ (14) the director of financial institutions, ~~((16))~~ (15) the director of the department of archaeology and historic preservation, ~~((17))~~ (16) the director of early learning, ~~((and (18)))~~ (17) the executive director of the Puget Sound partnership, (18) the director of economic services, (19) the director of medical assistance, (20) the director of health and rehabilitative services, and (21) the director of children's services.

Such officers, except the director of fish and wildlife, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director of fish and wildlife shall be appointed by the fish and wildlife commission as prescribed by RCW 77.04.055.

Sec. 603. RCW 42.17.2401 and 2007 c 341 s 48, 2007 c 241 s 2, and 2007 c 15 s 1 are each reenacted and amended to read as follows:

For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the administrator of the Washington basic health plan, the director of the department of services for the blind, the director of the state system of community and technical colleges, the director of community, trade, and economic development, the secretary of

corrections, the director of early learning, the director of ecology, the commissioner of employment security, the chair of the energy facility site evaluation council, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the executive director of the Puget Sound partnership, the director of the recreation and conservation office, the director of retirement systems, the director of revenue, ~~((the secretary of social and health services,))~~ the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, ~~((and))~~ each district and each campus president of each state community college, the director of economic services, the director of medical assistance, the director of health and rehabilitative services, and the director of children's services;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, the boards of trustees of each community college and each technical college, each member of the state board for community and technical colleges, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, executive ethics board, forest practices appeals board, forest practices board, gambling commission, life sciences discovery fund authority board of trustees, Washington health care facilities authority, each member of the Washington health services commission, higher education coordinating board, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, information services board, ~~((recreation and conservation funding board,))~~ state investment board, commission on judicial conduct, legislative ethics board, liquor control board, lottery commission, marine oversight board, Pacific Northwest electric power and conservation planning council, parks and recreation commission, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines ~~((hearings))~~ hearings board, public employees' benefits board, recreation and conservation funding board, salmon recovery funding board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington personnel resources board, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and fish and wildlife commission.

NEW SECTION. Sec. 604. (1) By July 1, 2009, the governor shall appoint a transition team to direct the details of administration of this act. The team shall consist of representatives from the office of financial management and the divisions of the department of social and health services.

(2) The transition team shall divide up the functions of the department of social and health services into the new departments set out under this act after the effective date of this section.

NEW SECTION. Sec. 605. (1) The transition team created in section 604 of this act shall, by January 1, 2010, submit a plan and necessary implementing legislation to the legislature for the division of the department of social and health services so that the new agencies will be operating by July 1, 2011.

(2) The plan shall include, but is not limited to, the following elements:

(a) Strategies for dividing the existing functions and responsibilities of the department into the appropriate new agency including a strategic plan for each new agency created in this act that includes implementation steps, performance measures, evaluation measures, and methods for collaboration among programs;

(b) Recommendations for changes in existing programs and functions of the department of social and health services; and

(c) Implementation steps necessary to bring about operation of the new agencies.

(3) By December 1, 2011, the code reviser's office shall prepare corrective legislation.

NEW SECTION. Sec. 606. Sections 201 through 207 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 607. Sections 301 through 307 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 608. Sections 401 through 407 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 609. Sections 501 through 507 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 610. Part headings used in this act are not part of the law.

NEW SECTION. Sec. 611. Section 604 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. Sec. 612. Sections 101, 201 through 208, 301 through 308, 401 through 408, 501 through 508, and 601 through 603 of this act take effect July 1, 2011.

NEW SECTION. Sec. 613. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Correct the title.

POINT OF ORDER

Representative Hudgins requested a scope and object ruling on amendment (275) to Substitute House Bill No. 2295.

SPEAKER'S RULING

Mr. Speaker (Representative Morris presiding): "Amendment (275) abolishes the department and replaces it with 4 new departments. While the proponents may argue that this is necessary to streamline service delivery and achieve administrative efficiency, the Speaker finds that the amendment greatly exceeds the limited

structural change contemplated by the underlying bill, and therefore exceeds its scope and object.

Your point is well taken."

Amendment (288) was ruled out of order, it was written to amendment (433) which was ruled out of order.

The bill was ordered engrossed.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Cody and Linville spoke in favor of the passage of the bill.

Representatives Armstrong, Angel, Walsh, Cox, Ross, Ericksen and Johnson spoke against the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2295.

MOTIONS

On motion of Representative Santos, Representatives Appleton, Hunt, Moeller and Wallace were excused. On motion of Representative Parker, Representative Hinkle was excused.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2295 and the bill passed the House by the following vote: Yeas, 57; Nays, 35; Absent, 0; Excused, 5.

Voting yea: Representatives Anderson, Blake, Campbell, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunter, Hurst, Jacks, Kagi, Kelley, Kenney, Kessler, Kirby, Liias, Linville, Maxwell, McCoy, Miloscia, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Probst, Quall, Roberts, Rodne, Santos, Seaquist, Sells, Simpson, Springer, Sullivan, Takko, Upthegrove, Van De Wege, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Angel, Armstrong, Bailey, Carlyle, Chandler, Condotta, Cox, Crouse, Dammeier, DeBolt, Ericksen, Finn, Grant-Herriot, Haler, Herrera, Hope, Johnson, Klippert, Kretz, Kristiansen, McCune, Orcutt, Parker, Pearson, Priest, Roach, Rolfes, Ross, Schmick, Shea, Short, Smith, Walsh and Warnick.

Excused: Representatives Appleton, Hinkle, Hunt, Moeller and Wallace.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2295, having received the necessary constitutional majority, was declared passed.

There being no objection, the House advanced to the eighth order of business.

There being no objection, the Committee on Transportation was relieved of SUBSTITUTE SENATE BILL NO. 6088, and the bill was referred to the Committee on Capital Budget.

There being no objection, the Committee on State Government & Tribal Affairs was relieved of SUBSTITUTE SENATE BILL NO. 5760, and the bill was referred to the Committee on Capital Budget.

There being no objection, the House advanced to the eleventh order of business.

There being no objection, the House adjourned until 9:55 a.m., March 24, 2009, the 72nd Day of the Regular Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk

