

ONE-HUNDREDTH DAY

MORNING SESSION

Senate Chamber, Olympia, Tuesday, April 17, 2007

The Senate was called to order at 9:30 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Brown, Carrell, Hargrove and Pflug.

The Sergeant at Arms Color Guard consisting of Pages Campbell Brett and Ben Leonard, presented the Colors. Pastor Dennis Magnuson of the Light of the Hill United Methodist Church offered the prayer.

MOTION

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

MOTION

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

INTRODUCTION AND FIRST READING

SB 6172 by Senators Carrell, Regala, Hargrove and Kohl-Welles

AN ACT Relating to reducing offender recidivism by increasing access and coordination of offender services in communities; by improving liability protections for government entities and its employees charged with supervision; by developing and implementing individual reentry plans; by improving transition facilities for offenders under the jurisdiction of department of corrections; by permitting partial confinement in lieu of earned early release up to three months; by requiring, upon the third violation hearing, the return of an offender to total confinement to serve up to the remaining portion of his or her sentence unless it is determined that returning the offender would substantially interfere with the offender's ability to maintain community supports to participate in treatment or would increase the likelihood of reoffending; by requiring an offender arrested for a new felony to be held in confinement until a hearing before the department or until a formal charge, whichever is earlier; by conducting a review of current laws and policy regarding the supervision of offenders; by improving educational opportunities; by increasing access to housing; by increasing employment opportunities; by increasing offenders' opportunities for civic participation; and by increasing legislative oversight of the department of corrections; amending RCW 72.09.300, 72.09.015, 9.94A.728, 9.94A.737, 9.94A.850, 72.09.460, 72.09.480, 72.09.450, 72.09.111, 29A.04.079, 29A.08.520, 9.92.066, 9.94A.637, 9.96.050, and 10.64.140; adding new sections to chapter 4.24 RCW; adding new sections to chapter 72.09 RCW; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.16 RCW; adding a new section to chapter 59.18 RCW; adding a new section to chapter 35.82 RCW; adding new sections to chapter 43.185C RCW; adding a new chapter to Title 72 RCW; creating new sections; repealing RCW 10.64.021 and 29A.08.660; and providing expiration dates.

HELD ON FIRST READING.

INTRODUCTION AND FIRST READING OF HOUSE BILLS

HB 2395 by Representatives Fromhold, McDonald and Morrell

AN ACT Relating to leasing state lands and development rights on state lands to public agencies; amending RCW 79.13.010, 79.13.060, and 79.13.110; creating a new section; and declaring an emergency.

HB 2396 by Representatives Fromhold and McDonald

AN ACT Relating to investment of moneys in the permanent common school fund; amending RCW 28A.515.300 and 43.84.170; adding a new section to chapter 43.84 RCW; and adding a new section to chapter 28A.515 RCW.

MOTION

On motion of Senator Eide, the rules were suspended and Senate Bill No. 6172 was held at the desk, House Bill No. 2395 and House Bill No. 2396 were placed on the second reading calendar.

MOTION

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

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Prentice moved that Gubernatorial Appointment No. 9140, Ruthann Kurose, as a member of the Liquor Control Board, be confirmed.

Senator Prentice spoke in favor of the motion.

MOTION

On motion of Senator Brandland, Senators Benton, Carrell, Pflug and Roach were excused.

MOTION

On motion of Senator Regala, Senators Hargrove and Kauffman were excused.

APPOINTMENT OF RUTHANN KUROSE

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9140, Ruthann Kurose as a member of the Liquor Control Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9140, Ruthann Kurose as a member of the Liquor Control Board and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 1; Excused, 3.

Voting yea: Senators Benton, Berkey, Brandland, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 45

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Absent: Senator Brown - 1  
Excused: Senators Carrell, Hargrove and Pflug - 3  
Gubernatorial Appointment No. 9140, Ruthann Kurose, having received the constitutional majority was declared confirmed as a member of the Liquor Control Board.

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

MESSAGE FROM THE HOUSE

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SIGNED BY THE PRESIDENT

The President signed:  
SUBSTITUTE SENATE BILL NO. 5002,  
SENATE BILL NO. 5014,  
ENGROSSED SUBSTITUTE SENATE BILL NO. 5037,  
SUBSTITUTE SENATE BILL NO. 5053,  
SENATE BILL NO. 5084,  
SENATE BILL NO. 5088,  
ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5098,  
SUBSTITUTE SENATE BILL NO. 5101,  
ENGROSSED SUBSTITUTE SENATE BILL NO. 5112,  
SECOND SUBSTITUTE SENATE BILL NO. 5188,  
SUBSTITUTE SENATE BILL NO. 5243,  
ENGROSSED SUBSTITUTE SENATE BILL NO. 5290,  
SUBSTITUTE SENATE BILL NO. 5321,  
SENATE BILL NO. 5332,  
SENATE BILL NO. 5402,  
SENATE BILL NO. 5429,  
SUBSTITUTE SENATE BILL NO. 5503,  
ENGROSSED SENATE BILL NO. 5508,  
SENATE BILL NO. 5512,  
SUBSTITUTE SENATE BILL NO. 5533,  
SUBSTITUTE SENATE BILL NO. 5534,

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Prentice moved that Gubernatorial Appointment No. 9221, Lorraine Lee, as Chair of the Liquor Control Board, be confirmed.

Senator Prentice spoke in favor of the motion.

MOTION

On motion of Senator Regala, Senator Brown was excused.

APPOINTMENT OF LORRAINE LEE

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9221, Lorraine Lee as Chair of the Liquor Control Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9221, Lorraine Lee as Chair of the Liquor Control Board and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Benton, Berkey, Brandland, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 45

Excused: Senators Brown, Carrell, Hargrove and Pflug - 4

Gubernatorial Appointment No. 9221, Lorraine Lee, having received the constitutional majority was declared confirmed as Chair of the Liquor Control Board.

MOTION

The House refuses to concur in the Senate amendment(s) to HOUSE BILL NO. 1051 and asks Senate to recede therefrom. and the same is herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

On motion of Senator McAuliffe, the Senate refuses to concur and insists on its position regarding the Senate amendment(s) to House Bill No. 1051 and asks of the House to concur therein.

MOTION

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

MOTION

On motion of Senator Eide, Senators Kohl-Welles and Regala were excused.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Hewitt moved that Gubernatorial Appointment No. 9178, Manford Simcock, as a member of the Higher Education Facilities Authority, be confirmed.

Senator Hewitt spoke in favor of the motion.

MOTION

On motion of Senator Delvin, Senators Benton and Swecker were excused.

APPOINTMENT OF MANFORD SIMCOCK

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9178, Manford Simcock as a member of the Higher Education Facilities Authority.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9178, Manford Simcock as a member of the Higher Education Facilities Authority and the appointment was confirmed by the following vote: Yeas, 44; Nays, 0; Absent, 0; Excused, 5.

Voting yea: Senators Berkey, Brandland, Brown, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Poulsen, Prentice, Pridemore, Rasmussen, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 44

Excused: Senators Benton, Carrell, Hargrove, Pflug and Regala - 5

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Gubernatorial Appointment No. 9178, Manford Simcock, having received the constitutional majority was declared confirmed as a member of the Higher Education Facilities Authority.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Zarelli moved that Gubernatorial Appointment No. 9096, Michael Ciraulo, as a member of the Higher Education Facilities Authority, be confirmed.

Senator Zarelli spoke in favor of the motion.

APPOINTMENT OF MICHAEL CIRAULO

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9096, Michael Ciraulo as a member of the Higher Education Facilities Authority.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9096, Michael Ciraulo as a member of the Higher Education Facilities Authority and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Excused: Senators Carrell and Hargrove - 2

Gubernatorial Appointment No. 9096, Michael Ciraulo, having received the constitutional majority was declared confirmed as a member of the Higher Education Facilities Authority.

MOTION

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

MESSAGE FROM THE HOUSE

April 14, 2007

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to HOUSE BILL NO. 1073 and asks Senate to recede therefrom. and the same is herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Fairley moved that the Senate recede from its position on House Bill No. 1073 and pass the bill without the Senate amendment(s).

Senator Fairley spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Fairley that the Senate recede from its position on House Bill No. 1073 and pass the bill without Senate amendment(s).

The motion by Senator Fairley carried and the Senate receded from its position on House Bill No. 1073.

MOTION

On motion of Senator Regala, Senator Pridemore was excused.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1073, without the Senate amendment(s), and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Excused: Senators Carrell and Hargrove - 2

HOUSE BILL NO. 1073, without the Senate amendment(s), having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 14, 2007

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 1909 and asks Senate to recede therefrom. and the same is herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

On motion of Senator Jacobsen, the Senate insists on its position regarding the Senate amendment(s) to Substitute House Bill No. 1909 and asks of the House to concur therein. Senator Jacobsen spoke in favor of the motion.

MESSAGE FROM THE HOUSE

April 14, 2007

MR. PRESIDENT:

The Speaker ruled the Senate amendment{s} to ENGROSSED HOUSE BILL NO. 2070 to be beyond scope & object of the bill. House refuses to concur in said amendment{s} and asks the Senate to recede therefrom. and the same is herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Kline moved that the Senate recede from its position in the House amendment(s) to Engrossed House Bill No. 2070. Senator Kline spoke in favor of the motion. Senator Benton spoke against the motion.

MOTION

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On motion of Senator Eide, the rules were suspended and Engrossed House Bill No. 2070 was returned to second reading for the purposes of amendment.

MOTION

On motion of Senator Eide, further consideration of Engrossed House Bill No. 2070 was deferred and the bill held its place on the dispute calendar.

The President Pro Tempore assumed the chair.

MESSAGE FROM THE HOUSE

April 13, 2007

MR. PRESIDENT:

The House has passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6099, with the following amendment: 6099-S.E AMH ENGR H3316.E

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that the replacement of the vulnerable state route number 520 corridor is a matter of urgency for the safety of Washington's traveling public and the needs of the transportation system in central Puget Sound. The state route number 520 floating bridge is susceptible to damage, closure, or even catastrophic failure from earthquakes, windstorms, and waves. Additionally, the bridge serves as a vital route for vehicles to cross Lake Washington, carrying over three times its design capacity in traffic, resulting in more than seven hours of congestion per day.

Therefore, it is the conclusion of the legislature that time is of the essence, and that Washington state cannot wait for a disaster to make it fully appreciate the urgency of the need to replace this vulnerable structure. The state must take the necessary steps to move forward with a state route number 520 bridge replacement project design that provides six total lanes, with four general purpose lanes and two lanes that are for high-occupancy vehicle travel that could also accommodate high capacity transportation, and the bridge shall also be designed to accommodate light rail in the future. High-occupancy vehicle lanes in the state route 520 corridor must also be able to support a bus rapid transit system.

**NEW SECTION. Sec. 2.** A new section is added to chapter 47.01 RCW to read as follows:

(1) As soon as practicable after the effective date of this act, and after consulting with the city of Seattle, the office of financial management shall hire a mediator, and appropriate planning staff, including urban, transportation, and neighborhood planners, to develop a state route number 520 project impact plan for addressing the impacts of the state route number 520 bridge replacement and HOV project design on Seattle city neighborhoods, parks, including the Washington park arboretum, and institutions of higher education. The mediator must have significant professional experience in working with communities that surround major transportation construction projects, and mitigating the impacts of those transportation projects on those communities. The office of financial management shall hire the mediator and the planning staff within existing appropriations allocated for the state route number 520 bridge replacement and HOV project. The position of mediator under this section is not considered a certified or legally binding position.

(2) The mediator's responsibility to develop a project impact plan is highly time sensitive. As a result, competitive bidding is not cost-effective or appropriate for personal service contracts to hire the mediator. The director of the office of financial management shall, by the director's authority under RCW 39.29.011(5), exempt any such personal service contract from the competitive bidding requirements of chapter 39.29 RCW.

(3) In evaluating the project impacts, the mediator must consider the concerns of neighborhoods and institutions of

higher education directly impacted by the proposed design, establish a process that incorporates interest-based negotiation, and work with the appropriate planning staff to develop mitigation recommendations related to the project design. The mediator shall work to ensure that the project impact plan provides a comprehensive approach to mitigating the impacts of the project, including incorporating construction mitigation plans.

(4) The ultimate goal of the mediation and planning process established in subsection (1) of this section is to develop a project impact plan agreed to by all appropriate parties including, but not limited to, those parties listed in subsection (6) of this section. The project impact plan must be consistent with RCW 47.01.380, and must support and be consistent with the approved purpose and need statement for the project, which is: "The purpose of the project is to improve mobility for people and goods across Lake Washington within the SR 520 corridor from Seattle to Redmond in a manner that is safe, reliable, and cost-effective while avoiding, minimizing, and/or mitigating impacts on the affected neighborhoods and the environment." The mediator must strive to develop a consensus-based plan. In the event that the mediation process does not result in consensus, the mediator shall submit a project impact plan to the governor and the joint transportation committee that reflects the views of the majority of the mediation participants.

(5) The process established in subsection (1) of this section shall result in a project design that provides six total lanes, with four general purpose lanes and two lanes that are for high-occupancy vehicle travel that could also accommodate high capacity transportation. The bridge shall also be designed to accommodate light rail in the future and to support a bus rapid transit system. Additionally, the mediator shall strive to develop a project impact plan within the constraints of the range of estimated project costs as of May 1, 2007.

(6)(a) In performing the duties of this section, and consistent with the governor's findings and conclusions, dated December 15, 2006, the mediator shall work with interested parties directly affected by the state route number 520 bridge replacement and HOV project including, but not limited to, at least the following:

- (i) Representation from each neighborhood directly impacted by the project;
  - (ii) Representation from local governments on both ends of the bridge directly impacted by the project;
  - (iii) Representation from King county;
  - (iv) Representation from the Washington park arboretum;
  - (v) Representation from the University of Washington; and
  - (vi) Representation from sound transit.
- (b) The mediator shall also work with the department and others as necessary.

(c) Before the mediator may submit the project impact plan, it must be reviewed by the mayor of Seattle and the Seattle city council. The project impact plan must reflect whether the mayor and council concur or do not concur with the plan and include an explanation regarding their positions.

(7) Until December 1, 2008, the mediator must provide periodic reports to the joint transportation committee and the governor regarding the status of the project impact plan development process. The mediator must submit a progress report to the joint transportation committee and the governor by August 1, 2007. The mediator must submit a final project impact plan to the governor and legislature by December 1, 2008.

**NEW SECTION. Sec. 3.** A new section is added to chapter 47.01 RCW to read as follows:

In developing the state route number 520 project impact plan provided in section 2 of this act, the mediator and associated planning staff shall review the department's project design plans in the draft environmental impact statement for conformance with the following legislative goals regarding the final design for the state route number 520 bridge replacement and HOV project:

- (1) Minimize the total footprint and width of the bridge, and seek appropriate federal design variances to safety and mobility standards, while complying with other federal laws;

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(2) Minimize the project impact on surrounding neighborhoods, including incorporation of green lids and connectors, and minimize any increases in additional traffic volumes through the Washington park arboretum and other adjacent neighborhoods;

(3) Incorporate the recommendations of a health impact assessment to calculate the project's impact on air quality, carbon emissions, and other public health issues, conducted by the Puget Sound clean air agency and King county public health;

(4) Ensure that the ultimate project configuration effectively prioritizes maintaining travel time, speed, and reliability on the two high-occupancy vehicle lanes; and

(5) Clearly articulate in required environmental documents the alignment of the selected preferred alternative for the state route number 520 bridge replacement and HOV project and the footprint of the project and the affected areas.

**NEW SECTION. Sec. 4.** A new section is added to chapter 47.01 RCW to read as follows:

In addition to the review required in section 3 of this act, the mediator may determine that additional alternative concept designs should be considered for the west end of the project to best meet the expressed legislative goals described in section 3 of this act. The mediator may contract with an engineering firm to conduct an independent feasibility analysis of the following proposals: A combination of tunnels and submerged tubes under Lake Washington; a partial tunnel from Interstate 5 to the west end of the state route number 520 bridge; and a proposal to move state route number 520 from its current alignment through the arboretum. The analyses for all alternative concept design plans must be submitted to the joint transportation committee and the governor by September 1, 2007. The mediator must hold a public hearing regarding the results of the independent review and reflect the independent review findings in the project impact plan. Up to two hundred fifty thousand dollars of the existing funding appropriation to the project shall be used for reviewing these alternative concept design plans.

**Sec. 5.** RCW 47.01.380 and 2006 c 311 s 26 are each amended to read as follows:

(1) The department shall not commence construction on any part of the state route number 520 bridge replacement and HOV project until a record of decision has been reached providing reasonable assurance that project impacts will be avoided, minimized, or mitigated as much as practicable to protect against further adverse impacts on neighborhood environmental quality as a result of repairs and improvements made to the state route number 520 bridge and its connecting roadways, and that any such impacts will be addressed through engineering design choices, mitigation measures, or a combination of both.

(2) The department shall not commence on-site construction on any part of the state route number 520 bridge replacement and HOV project until the department submits the finance plan required in section 7 of this act to the legislature.

(3) The requirements of this section shall not apply to off-site pontoon construction supporting the state route number 520 bridge replacement and HOV project.

**NEW SECTION. Sec. 6.** A new section is added to chapter 47.01 RCW to read as follows:

As part of the state route number 520 bridge replacement and HOV project, the governor's office shall work with the department, sound transit, King county metro, and the University of Washington, to plan for high capacity transportation in the state route number 520 corridor. The parties shall jointly develop a multimodal transportation plan that ensures the effective and efficient coordination of bus services and light rail services throughout the state route number 520 corridor. The plan shall include alternatives for a multimodal transit station that serves the state route number 520 - Montlake interchange vicinity, and mitigation of impacts on affected parties. The high capacity transportation planning work must be closely coordinated with the state route number 520 bridge replacement and HOV project's environmental planning process, and must be completed within the current funding for the project. A draft plan must be submitted to the governor and the joint transportation committee by October 1, 2007. A final

plan must be submitted to the governor and the joint transportation committee by December 2008.

**NEW SECTION. Sec. 7.** A new section is added to chapter 47.01 RCW to read as follows:

The state route number 520 bridge replacement and HOV project finance plan must include state funding, federal funding, at least one billion dollars in regional contributions, and revenue from tolling. The department must provide a proposed finance plan to be tied to the estimated cost of the recommended project solutions, as provided under section 3 of this act, to the governor and the joint transportation committee by January 1, 2008.

**NEW SECTION. Sec. 8.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 9.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.  
and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Murray moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6099.

Senators Murray and Swecker spoke in favor of the motion.

MOTION

On motion of Senator Brandland, Senator Hewitt was excused.

POINT OF INQUIRY

Senator Jacobsen: "Would Senator Murray yield to a question? When discussing the neighborhoods, and part of that is my district, I have like the Ravenna neighborhoods very interested in this, Laurelhurst, and for sure those two neighborhoods if not others. Is it only restricted to the University of Washington and Mountlake neighborhood?"

Senator Murray: "Thank you Senator. No, it is all the impacted and affected neighborhoods and the mediator's given some leeway to work with the Governor's office and the city to determine who should participate. So, the neighborhoods that you mentioned, which also are partly in my district or border my district, will be involved."

Senators Jacobsen, Prentice and Haugen spoke in favor of the motion.

Senator Pflug spoke against the motion.

MOTION

The President Pro Tempore declared the question before the Senate to be the motion by Senator Murray that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6099.

The motion by Senator Murray carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 6099 by voice vote.

The President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6099, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of

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Engrossed Substitute Senate Bill No. 6099, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 42; Nays, 6; Absent, 0; Excused, 1.

Voting yea: Senators Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, Murray, Oemig, Parlette, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 42

Voting nay: Senators Benton, Holmquist, Honeyford, McCaslin, Morton and Pflug - 6

Excused: Senator Hargrove - 1

ENGROSSED SUBSTITUTE SENATE BILL NO. 6099, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MESSAGE FROM THE HOUSE

April 11, 2007

MR. PRESIDENT:

The House has passed ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6117, with the following amendment: 6117-S2.E AMH ENGR H3334.E

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) Since the 1992 enactment of the reclaimed water act, the value of reclaimed water as a new source of supply has received increasing recognition across the state and across the nation. New information on the matters in this section has increased awareness of the need to better manage, protect, and conserve water resources and to use reclaimed water in that process. The legislature now finds the following:

(a) Global warming and climate change. Global warming has reduced the volume of glaciers in the North Cascade mountains to between eighteen to thirty-two percent since 1983, and up to seventy-five percent of the glaciers are at risk of disappearing under projected temperatures for this century. Mountain snow pack has declined at virtually every measurement location in the Pacific Northwest, reducing the proportion of annual river flow to Puget Sound during summer months by eighteen percent since 1948. Global warming has also shifted peak stream flows earlier in the year in watersheds covering much of Washington state, including the Columbia river basin, jeopardizing the state's salmon fisheries. The state's recent report on the economic impacts of climate change indicate that water resources will be one of the areas most affected, and that many utilities may need to invest major resources in new supply and conservation measures. Developing and implementing adaptation strategies, such as water conservation that includes the use of reclaimed water, can extend existing water supply systems to help address the global warming impacts. In particular, because reclaimed water uses existing sources of supply and fairly constant base flows of wastewater, it has year-round dependability, without regard to any given year's climate variability. This is particularly important during summer months, when outdoor demands peak and stream flows are critical for fish.

(b) Puget Sound. The governor has initiated a Puget Sound partnership, with a request for an initial strategy to address high priority problems. In December, the partnership delivered a strategy that includes expanded use of reclaimed water both in order to improve the Puget Sound's water quality by reducing wastewater discharges and by replacing current sources of supply for nonpotable uses that detrimentally affect stream flows and habitat.

(c) Salmon recovery. The federal fisheries services recently approved a salmon recovery plan for the Puget Sound, which was developed across multiple watersheds by numerous local

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governments, tribal governments, and other parties to achieve sustainable populations of salmon and other species. That plan includes an adaptive management component where continued efforts will be made to address issues, including problems with instream flows, identified as a limiting factor in virtually all the watersheds, through strategies that will be developed by regional and watershed implementation groups. A potentially significant strategy may be the substitution of reclaimed water for nonpotable uses where it will benefit streams and habitat.

(d) Water quality. Increasingly stringent federal standards for water quality are forcing a number of communities to develop strategies for wastewater treatment that, in addition to providing higher treatment levels, will reduce the quantity of discharges. For many of those communities, facilities to produce reclaimed water will be a necessary approach to achieve both water quality and water supply objectives.

(e) Watershed plans. Under the watershed planning act of 1997, approximately two-thirds of the watersheds in the state have used a bottom-up approach to developing collaborative plans for meeting future water supply needs. Many of those plans include the use of reclaimed water for meeting those needs.

(f) Columbia river water management. Pursuant to legislation and funding provided in 2006, federal, state, and local governments and agencies, along with tribal governments, user groups, environmental organizations, and others are developing a comprehensive strategy for the mainstem Columbia that will ensure supplies for future growth while protecting stream flows and fish habitat. The strategy will include multiple tools that may include the potential development of new storage, conservation measures, and water use efficiency. One pathway toward conservation and efficiency is likely to be identification and implementation of reclaimed water opportunities.

(g) Development schedule. The time frame required to plan, design, construct, and begin use of reclaimed water can be extensive due to the public information and acceptance efforts required in addition to planning, design, and environmental assessment required for infrastructure projects. This extended time frame necessitates the initiation of reclaimed water projects as soon as possible.

(2) It is therefore the intent of the legislature to:

(a) Effectuate and reinvigorate the original intent behind the reclaimed water act to expand the use of reclaimed water for nonpotable uses throughout the state;

(b) Restate and emphasize the use of reclaimed water as a matter of water resource management policy;

(c) Address current barriers to the use of reclaimed water, where changes in state law will resolve such issues;

(d) Develop information from the state agencies responsible for promoting the use of reclaimed water and address regulatory, financial, planning, and other barriers to the expanded use of reclaimed water, relying on state agency expertise and experience with reclaimed water;

(e) Facilitate achieving state, regional, and local objectives through use of reclaimed water for water supply purposes in high priority areas of the state, and in regional and local watershed and water planning;

(f) Provide planning tools to local governments to incorporate reclaimed water and related water conservation into land use plans, consistent with water planning;

(g) Expand the scope of work of the advisory committee established under chapter 279, Laws of 2006 to identify other reclaimed water issues that should be addressed; and

(h) Provide initial funding, and evaluate options for providing additional direct state funding, for reclaimed water projects.

**Sec. 2.** RCW 90.46.005 and 2001 c 69 s 1 are each amended to read as follows:

The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment, the state of Washington will continue to use water in the best interests of present and future generations.

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To facilitate the immediate use of reclaimed water ((as soon as is practicable, the legislature encourages the cooperative efforts of the public and private sectors and the use of pilot projects)) for uses approved by the departments of ecology and health, the state shall expand both direct financial support and financial incentives for capital investments in water reuse and reclaimed water to effectuate the goals of this chapter. The legislature further directs the department of health and the department of ecology to coordinate efforts towards developing an efficient and streamlined process for creating and implementing processes for the use of reclaimed water.

It is hereby declared that the people of the state of Washington have a primary interest in the development of facilities to provide reclaimed water to replace potable water in nonpotable applications, to supplement existing surface and ground water supplies, and to assist in meeting the future water requirements of the state.

The legislature further finds and declares that the utilization of reclaimed water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife habitat creation and enhancement purposes, including wetland enhancement, will contribute to the peace, health, safety, and welfare of the people of the state of Washington. To the extent reclaimed water is appropriate for beneficial uses, it should be so used to preserve potable water for drinking purposes, contribute to the restoration and protection of instream flows that are crucial to preservation of the state's salmonid fishery resources, contribute to the restoration of Puget Sound by reducing wastewater discharge, provide a drought resistant source of water supply for nonpotable needs, or be a source of supply integrated into state, regional, and local strategies to respond to population growth and global warming. Use of reclaimed water constitutes the development of new basic water supplies needed for future generations and local and regional water management planning should consider coordination of infrastructure, development, storage, water reclamation and reuse, and source exchange as strategies to meet water demands associated with population growth and impacts of global warming.

The legislature further finds and declares that the use of reclaimed water is not inconsistent with the policy of antidegradation of state waters announced in other state statutes, including the water pollution control act, chapter 90.48 RCW and the water resources act, chapter 90.54 RCW.

The legislature finds that other states, including California, Florida, and Arizona, have successfully used reclaimed water to supplement existing water supplies without threatening existing resources or public health.

It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.

The legislature further finds and declares that reclaimed water facilities are water pollution control facilities as defined in chapter 70.146 RCW and are eligible for financial assistance as provided in chapter 70.146 RCW. The legislature finds that funding demonstration projects will ensure the future use of reclaimed water. The demonstration projects in RCW 90.46.110 are varied in nature and will provide the experience necessary to test different facets of the standards and refine a variety of technologies so that water purveyors can begin to use reclaimed water technology in a more cost-effective manner. This is especially critical in smaller cities and communities where the feasibility for such projects is great, but there are scarce resources to develop the necessary facilities.

The legislature further finds that the agricultural processing industry can play a critical and beneficial role in promoting the efficient use of water by having the opportunity to develop and reuse agricultural industrial process water from food processing.

**Sec. 3.** RCW 90.46.120 and 2003 1st sp.s. c 5 s 13 are each amended to read as follows:

(1) The owner of a wastewater treatment facility that is reclaiming water with a permit issued under this chapter has the exclusive right to any reclaimed water generated by the

wastewater treatment facility. Use ((and)), distribution ((of the)), and the recovery from aquifer storage of reclaimed water by the owner of the wastewater treatment facility is exempt from the permit requirements of RCW 90.03.250 and 90.44.060, provided that a permit for recovery of reclaimed water from aquifer storage and recovery shall be reviewed under the standards established under RCW 90.03.370(2). Revenues derived from the reclaimed water facility shall be used only to offset the cost of operation of the wastewater utility fund or other applicable source of system-wide funding.

(2) If the proposed use or uses of reclaimed water are intended to augment or replace potable water supplies or create the potential for the development of additional potable water supplies, such use or uses shall be considered in the development of ((the)) any regional water supply plan or plans addressing potable water supply service by multiple water purveyors. Such water supply plans include plans developed by multiple jurisdictions under the relevant provisions of chapters 43.20, 70.116, 90.44, and 90.82 RCW, and the water supply provisions under the utility element of chapter 36.70A RCW. The method by which such plans are approved shall remain unchanged. The owner of a wastewater treatment facility that proposes to reclaim water shall be included as a participant in the development of such regional water supply plan or plans.

(3) Where opportunities for the use of reclaimed water exist within the period of time addressed by a water system plan, a water supply plan, or a coordinated water system plan developed under chapters 43.20 ((or)), 70.116, 90.44, and 90.82 RCW, and the water supply provisions under the utility element of chapter 36.70A RCW, these plans must be developed and coordinated to ensure that opportunities for reclaimed water are evaluated. The requirements of this subsection (3) do not apply to water system plans developed under chapter 43.20 RCW for utilities serving less than one thousand service connections.

(4) The provisions of any plan for reclaimed water, developed under the authorities in subsections (2) and (3) of this section, should be included by a city, town, or county in reviewing provisions for water supplies in a proposed short plat, short subdivision, or subdivision under chapter 58.17 RCW, where reclaimed water supplies may be proposed for nonpotable purposes in the short plat, short subdivision, or subdivision.

**Sec. 4.** RCW 90.46.130 and 2002 c 329 s 5 are each amended to read as follows:

(1)(a) Except as provided in subsections (2) and (5) of this section, facilities that reclaim water under this chapter shall not impair any existing water right downstream from any freshwater discharge points of such facilities unless ((compensation or mitigation for such impairment is agreed to by the holder of the affected water right)) the impairment is mitigated or the holder of the water right is provided just compensation for the impairment. For purposes of this subsection, "just compensation" has the same meaning as provided in Title 8 RCW.

(b) Any reclaimed water project that reduces the quantity of sewage treatment plant effluent discharged directly into marine waters is deemed to not impair any existing water rights.

(2) Agricultural water use of agricultural industrial process water and use of industrial reuse water under this chapter shall not impair existing water rights within the water source that is the source of supply for the agricultural processing plant or the industrial processing and, if the water source is surface water, the existing water rights are downstream from the agricultural processing plant's discharge points existing on July 22, 2001, or from the industrial processing's discharge points existing on June 13, 2002.

(3) The department of ecology shall convene and staff a task force to review potential barriers or issues related to development of reclaimed water projects pursuant to the evaluation of water rights impairment under this section and related impairment issues and shall report the findings and any recommendations of this review to the appropriate standing committees of the legislature no later than December 31, 2007. The task force shall be cochaired by a representative from the water quality and the water resources programs at the department, and shall consist of representatives of interested

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groups, including the attorney general, the department of health, local governments, tribal governments, water utilities, reclaimed water utilities, wastewater utilities, environmental organizations, agricultural organizations, and businesses including golf course owners. The task force and report shall address the following topics at a minimum: (a) Internal processing of reclaimed water permits by the department, including the ability to deliver timely decisions on potential impairment of water rights; (b) compliance with state and federal water quality standards on existing and future discharges, including potential requirements on wastewater utilities to reduce discharges to water and increase upland discharges; (c) nature of water that is imported into a watershed or potentially exported from the watershed in the form of effluent or reclaimed water; (d) inequities or different treatment of processing of reclaimed water permits and wastewater permits for similar treatment and facilities; (e) ability of existing provisions of state law, such as chapter 90.48 RCW, to address possible impacts to, and mitigation for, stream flows and fish habitat; (f) technical ability to determine impacts to water sources from reclaimed water facilities; (g) approaches to these issues in other western states with significant use of reclaimed water; (h) the ability of subsection (1)(a) of this section to adequately, efficiently, and equitably address impairment compensation and mitigation.

(4) For purposes of determining a claim of impairment under subsection (1)(a) of this section, of a downstream water right existing as of August 18, 1997, the applicant for a reclaimed water permit shall publish notice of an application for a permit for a reclaimed water facility in the same manner as provided for in RCW 90.48.170. If the department receives a claim of impairment within thirty days of the last publication of notice, the department shall investigate the claim of impairment and issue a written decision. The decision must include any conditions the department finds necessary to mitigate any impairment. The decision must be issued within one hundred eighty days and is appealable by any party under RCW 43.21B.310, regardless of whether the party submits a claim of impairment within thirty days of the last publication of notice, upon the issuance of the decision or as part of the overall reclaimed water permit upon the issuance of a reclaimed water permit. This section may not be construed as exempting a reclaimed water project from the provisions of chapter 43.21C RCW.

(5) This section may not be construed as establishing any right for a downstream water right holder to the continued discharge from an upstream wastewater treatment plant or reclaimed water facility.

Sec. 5. 2006 c 279 s 3 (uncodified) is amended to read as follows:

(1) In order to identify and pursue other measures to facilitate achieving the objectives in RCW 90.46.005 for expanded, appropriate, and safe use of reclaimed water, the department of ecology and the department of health shall provide the legislature with relevant information through periodic progress reports, as provided in this section.

(2) The department of ecology ((must present)) shall provide interim reports to the appropriate committees of the legislature by January 1, 2008, and January 1, 2009, that summarize the steps taken to that date towards the final rule making required by ((section 1 of this act)) RCW 90.46.015. The reports ((must)) shall include, at a minimum, a summary of participation in the rule advisory ((group and)) committee, the topics considered by the department, and issues identified by the rule advisory committee as barriers to expanded use of reclaimed water that may not be addressed within the rules to be adopted by the department.

(3) In addition to subsection (2) of this section, the department shall form a subtask force consisting of not more than ten members chosen from the existing rule advisory committee, and reclaimed water users, to further identify and recommend actions to increase the promotion of reclaimed water as a water supply and water resource management option. At a minimum, the subtask force shall consider (a) issues assigned by the rule advisory committee; (b) staffing levels, resources, and roles within both state agencies; (c) optimizing organizational

structure; (d) unresolved legal issues specific to reclaimed water use; and (e) a more appropriate name to describe reclaimed water. Information regarding these topics shall be appended to the required interim reports as the topics are considered by the advisory group.

Sec. 6. RCW 90.82.043 and 2003 1st sp.s. c 4 s 3 are each amended to read as follows:

(1) Within one year of accepting funding under RCW 90.82.040(2)(e), the planning unit must complete a detailed implementation plan. Submittal of a detailed implementation plan to the department is a condition of receiving grants for the second and all subsequent years of the phase four grant.

(2) Each implementation plan must contain strategies to provide sufficient water for: (a) Production agriculture; (b) commercial, industrial, and residential use; and (c) instream flows. Each implementation plan must contain timelines to achieve these strategies and interim milestones to measure progress.

(3) The implementation plan must clearly define coordination and oversight responsibilities; any needed interlocal agreements, rules, or ordinances; any needed state or local administrative approvals and permits that must be secured; and specific funding mechanisms.

(4) In developing the implementation plan, the planning unit must consult with other entities planning in the watershed management area and identify and seek to eliminate any activities or policies that are duplicative or inconsistent.

(5)(a) By December 1, 2003, and by December 1st of each subsequent year, the director of the department shall report to the appropriate legislative standing committees regarding statutory changes necessary to enable state agency approval or permit decision making needed to implement a plan approved under this chapter.

(b) Beginning with the December 1, 2007, report, and then every two years thereafter, the director shall include in each report the extent to which reclaimed water has been identified in the watershed plans as potential sources or strategies to meet future water needs, and provisions in any watershed implementation plans that discuss barriers to implementation of the water reuse elements of those plans. The department's report shall include an estimate of the potential cost of reclaimed water facilities and identification of potential sources of funding for them.

NEW SECTION. Sec. 7. (1) By January 1, 2008, the department of health shall file a brief report with the appropriate committees of the legislature on the general status of:

(a) Development of permit fees for industrial and commercial uses of reclaimed water as required by RCW 90.46.030;

(b) Development of standards and guidelines for greywater use as required by RCW 90.46.140; and

(c) Permitting of greywater use by local health officers and plumbing officials in accordance with standards and guidelines developed pursuant to RCW 90.46.140.

(2) The report shall also identify:

(a) A general description of the number, type, and location of reclaimed water opportunities included in water supply and coordinated water system plans since 2003, as required by RCW 90.46.140;

(b) The best information currently available regarding potential public health risks associated with reclaimed water, if any, any known occurrences of any public health incidents associated with reclaimed water use, the approaches to reclaimed water-related public health issues taken in other states, and resource needs of the department to evaluate any known public health risks; and

(c) A description of a basic public information and public acceptance program necessary to generate public support for the beneficial use of reclaimed water.

(3) In order to ensure brevity of the report, the department should include references to existing documents, reports, internet sites, and other sources of detailed information on the foregoing issues.

Sec. 8. RCW 90.54.020 and 1997 c 442 s 201 are each amended to read as follows:



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Utilization and management of the waters of the state shall be guided by the following general declaration of fundamentals:

(1) Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial.

(2) Allocation of waters among potential uses and users shall be based generally on the securing of the maximum net benefits for the people of the state. Maximum net benefits shall constitute total benefits less costs including opportunities lost.

(3) The quality of the natural environment shall be protected and, where possible, enhanced as follows:

(a) Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(b) Waters of the state shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served. Technology-based effluent limitations or standards for discharges for municipal water treatment plants located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted to reflect credit for substances removed from the plant intake water if:

(i) The municipality demonstrates that the intake water is drawn from the same body of water into which the discharge is made; and

(ii) The municipality demonstrates that no violation of receiving water quality standards or appreciable environmental degradation will result.

(4) The development of multipurpose water storage facilities shall be a high priority for programs of water allocation, planning, management, and efficiency. The department, other state agencies, local governments, and planning units formed under section 107 or 108 of this act shall evaluate the potential for the development of new storage projects and the benefits and effects of storage in reducing damage to stream banks and property, increasing the use of land, providing water for municipal, industrial, agricultural, power generation, and other beneficial uses, and improving stream flow regimes for fisheries and other instream uses.

(5) Adequate and safe supplies of water shall be preserved and protected in potable condition to satisfy human domestic needs.

(6) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of fishery resources in the planning for and construction of water impoundment structures and other artificial obstructions.

(7) Federal, state, and local governments, individuals, corporations, groups and other entities shall be encouraged to carry out practices of conservation as they relate to the use of the waters of the state. In addition to traditional development approaches, improved water use efficiency (~~and~~), conservation, and use of reclaimed water shall be emphasized in the management of the state's water resources and in some cases will be a potential new source of water with which to meet future needs throughout the state. Use of reclaimed water shall be encouraged through state and local planning and programs with incentives for state financial assistance recognizing programs and plans that encourage the use of conservation and reclaimed

water use, and state agencies shall continue to review and reduce regulatory barriers and streamline permitting for the use of reclaimed water where appropriate.

(8) Development of water supply systems, whether publicly or privately owned, which provide water to the public generally in regional areas within the state shall be encouraged. Development of water supply systems for multiple domestic use which will not serve the public generally shall be discouraged where water supplies are available from water systems serving the public.

(9) Full recognition shall be given in the administration of water allocation and use programs to the natural interrelationships of surface and ground waters.

(10) Expressions of the public interest will be sought at all stages of water planning and allocation discussions.

(11) Water management programs, including but not limited to, water quality, flood control, drainage, erosion control and storm runoff are deemed to be in the public interest.

Sec. 9. RCW 90.54.180 and 1989 c 348 s 5 are each amended to read as follows:

Consistent with the fundamentals of water resource policy set forth in this chapter, state and local governments, individuals, corporations, groups and other entities shall be encouraged to carry out water use efficiency and conservation programs and practices consistent with the following:

(1) Water efficiency and conservation programs should utilize an appropriate mix of economic incentives, cost share programs, regulatory programs, and technical and public information efforts. Programs which encourage voluntary participation are preferred.

(2) Increased water use efficiency and reclaimed water should receive consideration as a potential source of water in state and local water resource planning processes. In determining the cost-effectiveness of alternative water sources, consideration should be given to the benefits of conservation, waste water recycling, and impoundment of waters. Where reclaimed water is a feasible replacement source of water, it shall be used by state agencies and state facilities for nonpotable water uses in lieu of the use of potable water. For purposes of this requirement, feasible replacement source means (a) the reclaimed water is of adequate quality and quantity for the proposed use; (b) the proposed use is approved by the departments of ecology and health; (c) the reclaimed water can be reliably supplied by a local public agency or public water system; and (d) the cost of the reclaimed water is reasonable relative to the costs of conservation or other potentially available supplies of potable water, after taking into account all costs and benefits, including environmental costs and benefits.

(3) In determining the cost-effectiveness of alternative water sources, full consideration should be given to the benefits of storage which can reduce the damage to stream banks and property, increase the utilization of land, provide water for municipal, industrial, agricultural, and other beneficial uses, provide for the generation of electric power from renewable resources, and improve stream flow regimes for fishery and other instream uses.

(4) Entities receiving state financial assistance for construction of water source expansion or acquisition of new sources shall develop, and implement if cost-effective, a water use efficiency and conservation element of a water supply plan pursuant to RCW 43.20.230(1).

(5) State programs to improve water use efficiency should focus on those areas of the state in which water is overappropriated; areas that experience diminished streamflows or aquifer levels; regional areas that the governor has identified as high priority for investments in improved water quality and quantity, including the Spokane river, the Columbia river basin, and the Puget Sound; areas most likely to be affected by global warming; and areas where projected water needs, including those for instream flows, exceed available supplies.

(6) Existing and future generations of citizens of the state of Washington should be made aware of the importance of the state's water resources and the need for wise and efficient use and development of this vital resource. In order to increase this awareness, state agencies should integrate public (~~education~~)

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information programs on increasing water use efficiency into existing public information efforts. This effort shall be coordinated with other levels of government, including local governments and Indian tribes.

**NEW SECTION. Sec. 10.** A new section is added to chapter 90.46 RCW to read as follows:

(1) The department of ecology shall establish a subtask force from the existing rule advisory committee, and reclaimed water users, by July 31, 2007, composed of no more than ten members including a representative from the department of ecology, who shall serve as chair, a representative from the department of health, and representatives from city, county, and water-sewer district utilities, and the environmental and business communities. By January 1, 2008, the subtask force shall submit to the appropriate legislative committees a recommendation for a long-term dedicated funding program to construct reclaimed water facilities. To minimize the administrative burden, the subtask force shall work toward a coordinated effort with the current clean water state revolving fund and centennial clean water fund integrated program under which reclaimed water projects with a water quality benefit are currently eligible and shall review the "2006 Inventory of State Infrastructure Programs" produced by the joint legislative audit and review committee. The subtask force shall also review current existing conservation and water reuse plans or programs for cities, counties, and districts and provide a report to the appropriate legislative committees regarding the number, general nature, and extent that conservation and reclaimed water use is identified or incorporated into such plans. The subtask force also shall consider, and recommend, provisions on: (a) The inclusion of reclaimed water use criteria or requirements as an element of water use efficiency requirements required under RCW 70.119A.180 and for water system, public water system, and/or regional water plans as required under chapters 43.20 and 70.119 RCW; and (b) the current and potential use of water conservation plans or ordinances, water conservation measures in regional watershed plans, and water conservation programs adopted by cities, towns, or counties addressing the use of reclaimed water where potable water is not required by the department of health.

(2) The recommendation shall provide a comprehensive funding, loan, and grant program that includes the following:

(a) Eligibility requirements: Eligible components should include the additional water reclamation components to treat wastewater effluent to reclaimed water standards, distribution pump stations, storage, trunk lines, and distribution lines, and multiple-purpose projects in proportion to the costs allocated to reclaimed water;

(b) Competitive process for funding: The funding should be competitive and establish a maximum percentage or maximum funding amount available to any applicant;

(c) Priorities for funding that target reclaimed water projects ready to proceed, local support for the project, projects in areas that have adopted mandatory use ordinances or letters of intent to execute user contracts, projects providing broader public benefits to environmental water quality or water resource needs such as Puget Sound restoration, Columbia river water management strategies, water quality improvements, wetlands habitat, and instream flows, projects with benefits that clearly extend to citizens other than the utility ratepayers; and

(d) A proposed grant program for projects in identified high priority areas.

**NEW SECTION. Sec. 11.** A new section is added to chapter 90.46 RCW to read as follows:

(1) The legislature finds that the state should take a lead in increasing the visibility of the use of reclaimed water.

(2) The department of general administration shall develop a proposal to provide a comprehensive campus-wide plan for the use of nonpotable water in lieu of the use of potable water for irrigation and related outdoor uses, to serve as a demonstration project for the use of reclaimed water. The department of general administration shall work with the city of Olympia to provide a report to the legislature by December 1, 2007, of the needed infrastructure, cost, and potential funding sources for the project."

Correct the title.  
and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Poulsen moved that the Senate concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 6117.

Senator Poulsen spoke in favor of the motion.  
Senator Honeyford spoke against the motion.

MOTION

The President Pro Tempore declared the question before the Senate to be the motion by Senator Poulsen that the Senate concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 6117.

The motion by Senator Poulsen carried and the Senate concurred in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 6117 by voice vote.

The President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 6117, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 6117, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 32; Nays, 15; Absent, 1; Excused, 1.

Voting yea: Senators Berkey, Brandland, Brown, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, Murray, Oemig, Parlette, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Shin, Spanel, Swecker, Tom and Weinstein - 32

Voting nay: Senators Benton, Carrell, Clements, Delvin, Hewitt, Holmquist, Honeyford, McCaslin, Morton, Pflug, Roach, Schoesler, Sheldon, Stevens and Zarelli - 15

Absent: Senator McAuliffe - 1

Excused: Senator Hargrove - 1

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6117, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 4, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5074, with the following amendment: 5074-S AMH AGNR H3228.1

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 90.82.060 and 2003 c 328 s 1 are each amended to read as follows:

(1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under RCW 90.82.120.

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(2)(a) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: ~~((a))~~ (i) All counties within the WRIA; ~~((b))~~ (ii) the largest city or town within the WRIA unless the WRIA does not contain a city or town; and ~~((c))~~ (iii) the water supply utility obtaining the largest quantity of water from the WRIA or, for a WRIA with lands within the Columbia Basin project, the water supply utility obtaining from the Columbia Basin project the largest quantity of water for the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed.

(b) For purposes of this chapter, WRIA 40 shall be divided such that the portion of the WRIA located entirely within the Stemilt and Squilchuck subbasins shall be considered WRIA 40a and the remaining portion shall be considered WRIA 40b. Planning may be conducted separately for WRIA 40a and 40b. WRIA 40a shall be eligible for one-fourth of the funding available for a single WRIA, and WRIA 40b shall be eligible for three-fourths of the funding available for a single WRIA.

(c) For purposes of this chapter, WRIA 29 shall be divided such that the portion of the WRIA located entirely within the White Salmon subbasin and the subbasins east thereof shall be considered WRIA 29b and the remaining portion shall be considered WRIA 29a. Planning may be conducted separately for WRIA 29a and 29b. WRIA 29a shall be eligible for one-half of the funding available for a single WRIA and WRIA 29b shall be eligible for one-half of the funding available for a single WRIA.

(3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water in each WRIA.

(4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.

(5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in RCW 90.82.070, and may include water quality elements as contained in RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and instream flow elements as contained in RCW 90.82.080. The initiating governments shall work with state government, other local governments within the management area, and affected tribal governments, in developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall provide for representation of a wide range of water resource interests.

(7) Each state agency with regulatory or other interests in the WRIA or multi-WRIA area to be planned shall assist the local citizens in the planning effort to the greatest extent practicable, recognizing any fiscal limitations. In providing such technical assistance and to facilitate representation on the planning unit, state agencies may organize and agree upon their representation on the planning unit. Such technical assistance must only be at the request of and to the extent desired by the planning unit conducting such planning. The number of state agency representatives on the planning unit shall be determined by the initiating governments in consultation with the governor's office.

(8) As used in this section, "lead agency" means the entity that coordinates staff support of its own or of other local

governments and receives grants for developing a watershed plan."

Correct the title and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Honeyford moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5074. Senator Honeyford spoke in favor of the motion.

MOTION

On motion of Senator Regala, Senator McAuliffe was excused.

MOTION

The President Pro Tempore declared the question before the Senate to be the motion by Senator Honeyford that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5074.

The motion by Senator Honeyford carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5074 by voice vote.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5074, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5074, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Hargrove - 1

SUBSTITUTE SENATE BILL NO. 5074, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 9, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5320, with the following amendment: 5320-S AMH ENGR H3314.E

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** In establishing an office of public guardianship, the legislature intends to promote the availability of guardianship services for individuals who need them and for whom adequate services may otherwise be unavailable. The legislature reaffirms its commitment to treat liberty and autonomy as paramount values for all Washington residents and to authorize public guardianship only to the minimum extent necessary to provide for health or safety, or to manage financial affairs, when the legal conditions for

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appointment of a guardian are met. It does not intend to alter those legal conditions or to expand judicial authority to determine that any individual is incapacitated.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Office" means the office of public guardianship.

(2) "Public guardian" means an individual or entity providing public guardianship services.

(3) "Public guardianship services" means the services provided by a guardian or limited guardian appointed under chapters 11.88 and 11.92 RCW, who is compensated under a contract with the office of public guardianship.

(4) "Long-term care services" means services provided through the department of social and health services either in a hospital or skilled nursing facility, or in another setting under a home and community-based waiver authorized under 42 U.S.C. Sec. 1396n.

**NEW SECTION. Sec. 3.** (1) There is created an office of public guardianship within the administrative office of the courts.

(2) The supreme court shall appoint a public guardianship administrator to establish and administer a public guardianship program in the office of public guardianship. The public guardianship administrator serves at the pleasure of the supreme court.

**NEW SECTION. Sec. 4.** The public guardianship administrator is authorized to establish and administer a public guardianship program as follows:

(1)(a) The office shall contract with public or private entities or individuals to provide public guardianship services to persons age eighteen or older whose income does not exceed two hundred percent of the federal poverty level determined annually by the United States department of health and human services or who are receiving long-term care services through the Washington state department of social and health services. Neither the public guardianship administrator nor the office may act as public guardian or limited guardian or act in any other representative capacity for any individual.

(b) The office is exempt from RCW 39.29.008 because the primary function of the office is to contract for public guardianship services that are provided in a manner consistent with the requirements of this chapter. The office shall otherwise comply with chapter 39.29 RCW and is subject to audit by the state auditor.

(c) Public guardianship service contracts are dependent upon legislative appropriation. This chapter does not create an entitlement.

(d) The initial implementation of public guardianship services shall be on a pilot basis in a minimum of two geographical areas that include one urban area and one rural area. There may be one or several contracts in each area.

(2) The office shall, within one year of the commencement of its operation, adopt eligibility criteria to enable it to serve individuals with the greatest need when the number of cases in which courts propose to appoint a public guardian exceeds the number of cases in which public guardianship services can be provided. In adopting such criteria, the office may consider factors including, but not limited to, the following: Whether an incapacitated individual is at significant risk of harm from abuse, exploitation, abandonment, neglect, or self-neglect; and whether an incapacitated person is in imminent danger of loss or significant reduction in public services that are necessary for the individual to live successfully in the most integrated and least restrictive environment that is appropriate in light of the individual's needs and values.

(3) The office shall adopt minimum standards of practice for public guardians providing public guardianship services. Any public guardian providing such services must be certified by the certified professional guardian board established by the supreme court.

(4) The office shall require a public guardian to visit each incapacitated person for which public guardianship services are provided no less than monthly to be eligible for compensation.

(5) The office shall not petition for appointment of a public guardian for any individual. It may develop, and shall consult with the advisory committee regarding the need to develop, a proposal for the legislature to make affordable legal assistance available to petition for guardianships.

(6) The office shall not authorize payment for services for any entity that is serving more than twenty incapacitated persons per certified professional guardian.

(7) The office shall monitor and oversee the use of state funding to ensure compliance with this chapter.

(8) The office shall collect uniform and consistent basic data elements regarding service delivery. This data shall be made available to the legislature and supreme court in a format that is not identifiable by individual incapacitated person to protect confidentiality.

(9) The office shall report to the legislature on how services other than guardianship services, and in particular services that might reduce the need for guardianship services, might be provided under contract with the office by December 1, 2009. The services to be considered should include, but not be limited to, services provided under powers of attorney given by the individuals in need of the services.

(10) The office shall require public guardianship providers to seek reimbursement of fees from program clients who are receiving long-term care services through the department of social and health services to the extent, and only to the extent, that such reimbursement may be paid, consistent with an order of the superior court, from income that would otherwise be required by the department to be paid toward the cost of the client's care. Fees reimbursed shall be remitted by the provider to the office unless a different disposition is directed by the public guardianship administrator.

(11) The office shall require public guardianship providers to certify annually that for each individual served they have reviewed the need for continued public guardianship services and the appropriateness of limiting, or further limiting, the authority of the public guardian under the applicable guardianship order, and that where termination or modification of a guardianship order appears warranted, the superior court has been asked to take the corresponding action.

(12) The office shall adopt a process for receipt and consideration of and response to complaints against the office and contracted providers of public guardianship services. The process shall include investigation in cases in which investigation appears warranted in the judgment of the administrator. The office shall provide the advisory committee with a summary and analysis of the results of these complaints. When requested by the complaining party, his or her identity shall not be disclosed to the advisory committee created under section 5 of this act.

(13) The office shall contract with the Washington state institute for public policy for a study. An initial report is due two years following the effective date of this section and a second report by December 1, 2011. The study shall analyze costs and off-setting savings to the state from the delivery of public guardianship services.

(14) The office shall develop standardized forms and reporting instruments that may include, but are not limited to, intake, initial assessment, guardianship care plan, decisional accounting, staff time logs, changes in condition or abilities of an incapacitated person, and values history. The office shall collect and analyze the data gathered from these reports and submit it to the advisory committee periodically.

(15) The office shall identify training needs for guardians it contracts with, and shall make recommendations, after consultation with the advisory committee, to the supreme court, the certified professional guardian board, and the legislature for improvements in guardianship training. The office may offer training to individuals providing services pursuant to this chapter.

(16) The office shall establish a system for monitoring the performance of public guardians, and office staff shall make in-home visits to a randomly selected sample of public guardianship clients. The office may conduct further monitoring, including in-home visits, as the administrator deems

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appropriate. For monitoring purposes, office staff shall have access to any information relating to a public guardianship client that is available to the guardian. The office shall confer with the advisory committee in developing its monitoring process.

(17) During the first five years of its operations, the office shall issue annual reports of its activities, after review of and comment by the advisory committee.

**NEW SECTION. Sec. 5.** (1) There is created a public guardianship advisory committee consisting of the following members:

- (a) Two persons appointed by the supreme court;
  - (b) Two persons appointed by the board for judicial administration;
  - (c) Two senators, one from each of the two largest caucuses, appointed by the president of the senate; and two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;
  - (d) One person appointed by the governor;
  - (e) One person appointed by the secretary of the department of social and health services;
  - (f) Two persons appointed by the director of the Washington protection and advocacy system;
  - (g) One person appointed by the chairperson of the governor's committee on disability issues and employment;
  - (h) Two persons appointed by the chairperson of the developmental disabilities council;
  - (i) One person appointed by the long-term care ombudsman;
  - (j) One person appointed by the Washington state bar association; and
  - (k) One person appointed by the dean of the University of Washington school of social work.
- (2) During the term of his or her appointment, an appointee may not be employed by a provider of public guardianship services.

(3) Except as provided in subsection (4) of this section, members shall each serve a three-year term, subject to renewal for no more than one additional three-year term.

(4) The first appointments to the advisory committee shall be for terms of varying durations as follows: By the supreme court for two and four years; by the board for judicial administration for three and four years; by the president of the senate for two and three years; by the speaker of the house of representatives for two and three years; by the governor for four years; by the secretary of the department of social and health services for two years; by the director of the Washington protection and advocacy system for one and three years; by the chairperson of the governor's committee on disability issues and employment for four years; by the chairperson of the developmental disabilities council for two and four years; by the long-term care ombudsman for three years; by the Washington state bar association for three years; and by the dean of the University of Washington school of social work for four years.

(5) Members of the advisory committee receive no compensation for their services as members of the advisory committee, but may be reimbursed for travel and other expenses in accordance with rules adopted by the office of financial management.

(6) The advisory committee: Shall review the activities of the office; shall review the performance of the public guardianship administrator; and may make recommendations to the supreme court, the certified professional guardian board, and the legislature on issues relating to the provision of public guardianship services.

(7) The meetings of the advisory committee shall be open to the public, with agendas published in advance and minutes kept and made available to the public. The public notice of all meetings shall indicate that accommodations for disability will be available upon request.

**NEW SECTION. Sec. 6.** The courts shall waive court costs and filing fees in any proceeding in which an incapacitated person is receiving public guardianship services funded under this chapter.

**NEW SECTION. Sec. 7.** The public guardianship administrator may develop rules to implement this chapter. The

administrator shall request and consider recommendations from the advisory committee in the development of rules.

**NEW SECTION. Sec. 8.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 9.** Sections 1 through 8 of this act constitute a new chapter in Title 2 RCW."

Correct the title.  
and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk  
MOTION

Senator Kline moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5320.  
Senator Kline spoke in favor of the motion.

MOTION

The President Pro Tempore declared the question before the Senate to be the motion by Senator Kline that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5320.

The motion by Senator Kline carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5320 by voice vote.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5320, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5320, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE SENATE BILL NO. 5320, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 3, 2007

MR. PRESIDENT:

The House has passed SENATE BILL NO. 5572, with the following amendment: 5572 AMH FIN H3060.2

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 82.04 RCW to read as follows:

This chapter does not apply to public corporations, commissions, or authorities created under RCW 35.21.660 or 35.21.730 for amounts derived from sales of tangible personal property and services to:

- (1) A limited liability company in which the corporation, commission, or authority is the managing member;
- (2) A limited partnership in which the corporation, commission, or authority is the general partner; or

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(3) A single asset entity required under any federal, state, or local governmental housing assistance program, which is controlled directly or indirectly by the corporation, commission, or authority.

**NEW SECTION. Sec. 2.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to sales of tangible personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in section 1 of this act.

**NEW SECTION. Sec. 3.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of tangible personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in section 1 of this act." and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Murray moved that the Senate concur in the House amendment(s) to Senate Bill No. 5572.

Senator Murray spoke in favor of the motion.

MOTION

The President Pro Tempore declared the question before the Senate to be the motion by Senator Murray that the Senate concur in the House amendment(s) to Senate Bill No. 5572.

The motion by Senator Murray carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5572 by voice vote.

The President Pro Tempore declared the question before the Senate to be the final passage of Senate Bill No. 5572, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5572, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SENATE BILL NO. 5572, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 10, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5881, with the following amendment: 5881-S AMH APP H3308.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 90.16.050 and 1929 c 105 s 1 are each amended to read as follows:

(1) Every person, firm, private or municipal corporation, or association hereinafter called "claimant", claiming the right to the use of water within or bordering upon the state of Washington for power development, shall on or before the first day of (~~July, 1929, and on or before the first day of~~) January of each year (~~thereafter~~) pay to the state of Washington in advance an annual license fee, based upon the theoretical water power claimed under each and every separate claim to water according to the following schedule:

(a) For projects in operation: For each and every theoretical horsepower claimed up to and including one thousand horsepower, at the rate of (~~ten~~) eighteen cents per horsepower; for each and every theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of (~~two~~) three and six-tenths cents per horsepower; for each and every theoretical horsepower in excess of ten thousand horsepower, at the rate of one and eight-tenths cents per horsepower.

(b) For federal energy regulatory commission projects in operation, the following fee schedule applies in addition to the fees in (a) of this subsection: For each theoretical horsepower of capacity up to and including one thousand horsepower, at the rate of thirty-two cents per horsepower; for each theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of six and four-tenths cents per horsepower; for each theoretical horsepower in excess of ten thousand horsepower, at the rate of three and two-tenths cents per horsepower.

(c) To justify the appropriate use of fees collected under (b) of this subsection, the department of ecology shall submit a progress report to the appropriate committees of the legislature prior to December 31, 2009, and biennially thereafter until December 31, 2017.

(i) The progress report will: (A) Describe how license fees were expended in the federal energy regulatory commission licensing process during the current biennium, and expected workload and full-time equivalent employees for federal energy regulatory commission licensing in the next biennium; (B) include any recommendations based on consultation with the departments of ecology and fish and wildlife, hydropower project operators, and other interested parties; and (C) recognize hydropower operators that exceed their environmental regulatory requirements.

(ii) The fees required in (b) of this subsection expire June 30, 2017. The biennial progress reports submitted by the department of ecology will serve as a record for considering the extension of the fee structure in (b) of this subsection.

(2) The following are exceptions to the fee schedule in subsection (1) of this section:

(a) For undeveloped projects, the fee shall be at one-half the rates specified for projects in operation; for projects partly developed and in operation the fees paid on that portion of any project that shall have been developed and in operation shall be the full annual license fee (~~(above)~~) specified in subsection (1) of this section for projects in operation, and for the remainder of the power claimed under such project the fees shall be the same as for undeveloped projects. ((PROVIDED, That upon the filing of statement, as hereinafter required, by the United States or the state claiming the right to the use of water to any extent for the generation of power, or any other claimant to the use of water for the generation of fifty horsepower, or less, shall be exempted from the payment of all fees hereinafter required; and PROVIDED FURTHER, That)

(b) The fees required in subsection (1) of this section do not apply to any hydropower project owned by the United States.

(c) The fees required in subsection (1) of this section do not apply to the use of water for the generation of fifty horsepower or less.

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(d) The fees required in subsection (1) of this section for projects developed by an irrigation district in conjunction with the irrigation district's water conveyance system shall be reduced by fifty percent to reflect the portion of the year when the project is not operable.

(e) Any irrigation district or other municipal subdivision of the state, developing power chiefly for use in pumping of water for irrigation, ((may)) upon the filing of a statement((s)) showing the amount of power used for irrigation pumping, ((be exempted)) is exempt from the fees in subsection (1) of this section to the extent of the power ((so)) used ((from the payment of the annual license fee herein provided)) for irrigation pumping.

**Sec. 2.** RCW 90.16.090 and 1988 c 127 s 79 are each amended to read as follows:

(1) All fees paid under provisions of this chapter, shall be credited by the state treasurer to the reclamation ((revolving)) account created in RCW 89.16.020 and subject to legislative appropriation, be allocated and expended by the director of ecology for:

(a) Investigations and surveys of natural resources in cooperation with the federal government, or independently thereof, including stream gaging, hydrographic, topographic, river, underground water, mineral and geological surveys(= PROVIDED, That in any one biennium all said expenditures shall not exceed total receipts from said power license fees collected during said biennium. AND PROVIDED FURTHER, That the portion of money allocated by said director to be expended in cooperation with the federal government shall be contingent upon the federal government making available equal amounts for such investigations and surveys); and

(b) Expenses associated with staff at the departments of ecology and fish and wildlife working on federal energy regulatory commission relicensing and license implementation.

(2) Unless otherwise required by the omnibus biennial appropriations acts, the expenditures for these purposes must be proportional to the revenues collected under RCW 90.16.050(1)."

Correct the title.  
and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

#### MOTION

Senator Poulsen moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5881.

Senator Poulsen spoke in favor of the motion.

Senator Honeyford spoke against the motion.

#### MOTION

The President Pro Tempore declared the question before the Senate to be the motion by Senator Poulsen that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5881.

The motion by Senator Poulsen carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5881 by voice vote.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5881, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5881, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 37; Nays, 12; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, Murray, Oemig, Poulsen,

Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Shin, Spanel, Stevens, Tom, Weinstein and Zarelli - 37

Voting nay: Senators Clements, Delvin, Hewitt, Holmquist, Honeyford, McCaslin, Morton, Parlette, Pflug, Schoesler, Sheldon and Swecker - 12

SUBSTITUTE SENATE BILL NO. 5581, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MESSAGE FROM THE HOUSE

April 12, 2007

MR. PRESIDENT:

The House has passed ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5958, with the following amendment: 5958-S2.E AMH HINK H3512.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. It is the public policy of Washington to promote access to medical care for all citizens and to encourage innovative arrangements between patients and providers that will help provide all citizens with a medical home.

Washington needs a multipronged approach to provide adequate health care to many citizens who lack adequate access to it. Direct patient-provider practices, in which patients enter into a direct relationship with medical practitioners and pay a fixed amount directly to the health care provider for primary care services, represent an innovative, affordable option which could improve access to medical care, reduce the number of people who now lack such access, and cut down on emergency room use for primary care purposes, thereby freeing up emergency room facilities to treat true emergencies.

**Sec. 2.** RCW 48.44.010 and 1990 c 120 s 1 are each amended to read as follows:

For the purposes of this chapter:

(1) "Health care services" means and includes medical, surgical, dental, chiropractic, hospital, optometric, podiatric, pharmaceutical, ambulance, custodial, mental health, and other therapeutic services.

(2) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes health care services and is licensed to furnish such services.

(3) "Health care service contractor" means any corporation, cooperative group, or association, which is sponsored by or otherwise intimately connected with a provider or group of providers, who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any health care services. "Health care service contractor" does not include direct patient-provider primary care practices as defined in section 3 of this act.

(4) "Participating provider" means a provider, who or which has contracted in writing with a health care service contractor to accept payment from and to look solely to such contractor according to the terms of the subscriber contract for any health care services rendered to a person who has previously paid, or on whose behalf prepayment has been made, to such contractor for such services.

(5) "Enrolled participant" means a person or group of persons who have entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health care service contractor to receive health care services.

(6) "Commissioner" means the insurance commissioner.

(7) "Uncovered expenditures" means the costs to the health care service contractor for health care services that are the obligation of the health care service contractor for which an enrolled participant would also be liable in the event of the health care service contractor's insolvency and for which no

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alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health care service contractor, or for services that are guaranteed, insured or assumed by a person or organization other than the health care service contractor.

(8) "Copayment" means an amount specified in a group or individual contract which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(9) "Deductible" means the amount an enrolled participant is responsible to pay before the health care service contractor begins to pay the costs associated with treatment.

(10) "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specific group. The group contract may include coverage for dependents.

(11) "Individual contract" means a contract for health care services issued to and covering an individual. An individual contract may include dependents.

(12) "Carrier" means a health maintenance organization, an insurer, a health care service contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract.

(13) "Replacement coverage" means the benefits provided by a succeeding carrier.

(14) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

(15) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.44.037(3) and are recorded as equity.

(16) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt.

**NEW SECTION. Sec. 3.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Direct patient-provider primary care practice" and "direct practice" means a provider, group, or entity that meets the following criteria in (a), (b), (c), and (d) of this subsection:

(a)(i) A health care provider who furnishes primary care services through a direct agreement;

(ii) A group of health care providers who furnish primary care services through a direct agreement; or

(iii) An entity that sponsors, employs, or is otherwise affiliated with a group of health care providers who furnish only primary care services through a direct agreement, which entity is wholly owned by the group of health care providers or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the internal revenue code, and is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer under Title 48 RCW. Such entity is not prohibited from sponsoring, employing, or being otherwise affiliated with other types of health care providers not engaged in a direct practice;

(b) Enters into direct agreements with direct patients or parents or legal guardians of direct patients;

(c) Does not accept payment for health care services provided to direct patients from any entity subject to regulation under Title 48 RCW, plans administered under chapter 41.05, 70.47, or 70.47A RCW, or self-insured plans; and

(d) Does not provide, in consideration for the direct fee, services, procedures, or supplies such as prescription drugs, hospitalization costs, major surgery, dialysis, high level radiology (CT, MRI, PET scans or invasive radiology), rehabilitation services, procedures requiring general anesthesia, or similar advanced procedures, services, or supplies.

(2) "Direct patient" means a person who is party to a direct agreement and is entitled to receive primary care services under the direct agreement from the direct practice.

(3) "Direct fee" means a fee charged by a direct practice as consideration for being available to provide and providing primary care services as specified in a direct agreement.

(4) "Direct agreement" means a written agreement entered into between a direct practice and an individual direct patient, or the parent or legal guardian of the direct patient or a family of direct patients, whereby the direct practice charges a direct fee as consideration for being available to provide and providing primary care services to the individual direct patient. A direct agreement must (a) describe the specific health care services the direct practice will provide; and (b) be terminable at will upon written notice by the direct patient.

(5) "Health care provider" or "provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law.

(6) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(7) "Primary care" means routine health care services, including screening, assessment, diagnosis, and treatment for the purpose of promotion of health, and detection and management of disease or injury.

(8) "Network" means the group of participating providers and facilities providing health care services to a particular health carrier's health plan or to plans administered under chapter 41.05, 70.47, or 70.47A RCW.

**NEW SECTION. Sec. 4.** Except as provided in section 7 of this act, no direct practice shall decline to accept any person solely on account of race, religion, national origin, the presence of any sensory, mental, or physical disability, education, economic status, or sexual orientation.

**NEW SECTION. Sec. 5.** (1) A direct practice must charge a direct fee on a monthly basis. The fee must represent the total amount due for all primary care services specified in the direct agreement and may be paid by the direct patient or on his or her behalf by others.

(2) A direct practice must:

(a) Maintain appropriate accounts and provide data regarding payments made and services received to direct patients upon request; and

(b) Either:

(i) Bill patients at the end of each monthly period; or

(ii) If the patient pays the monthly fee in advance, promptly refund to the direct patient all unearned direct fees following receipt of written notice of termination of the direct agreement from the direct patient. The amount of the direct fee considered earned shall be a proration of the monthly fee as of the date the notice of termination is received.

(3) If the patient chooses to pay more than one monthly direct fee in advance, the funds must be held in a trust account and paid to the direct practice as earned at the end of each month. Any unearned direct fees held in trust following receipt of termination of the direct agreement shall be promptly refunded to the direct patient. The amount of the direct fee earned shall be a proration of the monthly fee for the then current month as of the date the notice of termination is received.

(4) The direct fee schedule applying to an existing direct patient may not be increased over the annual negotiated amount more frequently than annually. A direct practice shall provide advance notice to existing patients of any change within the fee schedule applying to those existing direct patients. A direct practice shall provide at least sixty days' advance notice of any change in the fee.

(5) A direct practice must designate a contact person to receive and address any patient complaints.

(6) Direct fees for comparable services within a direct practice shall not vary from patient to patient based on health status or sex.

**NEW SECTION. Sec. 6.** (1) Direct practices may not:

(a) Enter into a participating provider contract as defined in RCW 48.44.010 or 48.46.020 with any carrier or with any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, to provide health care services through a direct agreement except as set forth in subsection (2) of this section;

(b) Submit a claim for payment to any carrier or any carrier's contractor or subcontractor, or plans administered under chapter



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41.05, 70.47, or 70.47A RCW, for health care services provided to direct patients as covered by their agreement;

(c) With respect to services provided through a direct agreement, be identified by a carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, as a participant in the carrier's or any carrier's contractor or subcontractor network for purposes of determining network adequacy or being available for selection by an enrollee under a carrier's benefit plan; or

(d) Pay for health care services covered by a direct agreement rendered to direct patients by providers other than the providers in the direct practice or their employees, except as described in subsection (2)(b) of this section.

(2) Direct practices and providers may:

(a) Enter into a participating provider contract as defined by RCW 48.44.010 and 48.46.020 or plans administered under chapter 41.05, 70.47, or 70.47A RCW for purposes other than payment of claims for services provided to direct patients through a direct agreement. Such providers shall be subject to all other provisions of the participating provider contract applicable to participating providers including but not limited to the right to:

- (i) Make referrals to other participating providers;
- (ii) Admit the carrier's members to participating hospitals and other health care facilities;
- (iii) Prescribe prescription drugs; and
- (iv) Implement other customary provisions of the contract not dealing with reimbursement of services;

(b) Pay for charges associated with the provision of routine lab and imaging services provided in connection with wellness physical examinations. In aggregate such payments per year per direct patient are not to exceed fifteen percent of the total annual direct fee charged that direct patient. Exceptions to this limitation may occur in the event of short-term equipment failure if such failure prevents the provision of care that should not be delayed; and

(c) Charge an additional fee to direct patients for supplies, medications, and specific vaccines provided to direct patients that are specifically excluded under the agreement, provided the direct practice notifies the direct patient of the additional charge, prior to their administration or delivery.

**NEW SECTION. Sec. 7.** (1) Direct practices may not decline to accept new direct patients or discontinue care to existing patients solely because of the patient's health status. A direct practice may decline to accept a patient if the practice has reached its maximum capacity, or if the patient's medical condition is such that the provider is unable to provide the appropriate level and type of health care services in the direct practice. So long as the direct practice provides the patient notice and opportunity to obtain care from another physician, the direct practice may discontinue care for direct patients if: (a) The patient fails to pay the direct fee under the terms required by the direct agreement; (b) the patient has performed an act that constitutes fraud; (c) the patient repeatedly fails to comply with the recommended treatment plan; (d) the patient is abusive and presents an emotional or physical danger to the staff or other patients of the direct practice; or (e) the direct practice discontinues operation as a direct practice.

(2) Direct practices may accept payment of direct fees directly or indirectly from nonemployer third parties.

**NEW SECTION. Sec. 8.** Direct practices, as defined in section 3 of this act, who comply with this chapter are not insurers under RCW 48.01.050, health carriers under chapter 48.43 RCW, health care service contractors under chapter 48.44 RCW, or health maintenance organizations under chapter 48.46 RCW.

**NEW SECTION. Sec. 9.** A person shall not make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a direct practice, or relative to the business of a direct practice.

**NEW SECTION. Sec. 10.** A person shall not make, issue, or circulate, or cause to be made, issued, or circulated, a misrepresentation of the terms of any direct agreement, or the

benefits or advantages promised thereby, or use the name or title of any direct agreement misrepresenting the nature thereof.

**NEW SECTION. Sec. 11.** Violations of this chapter constitute unprofessional conduct enforceable under RCW 18.130.180.

**NEW SECTION. Sec. 12.** (1) Direct practices must submit annual statements, beginning on October 1, 2007, to the office of insurance commissioner specifying the number of providers in each practice, total number of patients being served, the average direct fee being charged, providers' names, and the business address for each direct practice. The form and content for the annual statement must be developed in a manner prescribed by the commissioner.

(2) A health care provider may not act as, or hold himself or herself out to be, a direct practice in this state, nor may a direct agreement be entered into with a direct patient in this state, unless the provider submits the annual statement in subsection (1) of this section to the commissioner.

(3) The commissioner shall report annually to the legislature on direct practices including, but not limited to, participation trends, complaints received, voluntary data reported by the direct practices, and any necessary modifications to this chapter. The initial report shall be due December 1, 2009.

**NEW SECTION. Sec. 13.** (1) A direct agreement must include the following disclaimer: "This agreement does not provide comprehensive health insurance coverage. It provides only the health care services specifically described." The direct agreement may not be sold to a group and may not be entered with a group of subscribers. It must be an agreement between a direct practice and an individual direct patient. Nothing prohibits the presentation of marketing materials to groups of potential subscribers or their representatives.

(2) A comprehensive disclosure statement shall be distributed to all direct patients with their participation forms. Such disclosure must inform the direct patients of their financial rights and responsibilities to the direct practice as provided for in this chapter, encourage that direct patients obtain and maintain insurance for services not provided by the direct practice, and state that the direct practice will not bill a carrier for services covered under the direct agreement. The disclosure statement shall include contact information for the office of the insurance commissioner.

**NEW SECTION. Sec. 14.** By December 1, 2012, the commissioner shall submit a study of direct care practices to the appropriate committees of the senate and house of representatives. The study shall include an analysis of the extent to which direct care practices:

(1) Improve or reduce access to primary health care services by recipients of medicare and medicaid, individuals with private health insurance, and the uninsured;

(2) Provide adequate protection for consumers from practice bankruptcy, practice decisions to drop participants, or health conditions not covered by direct care practices;

(3) Increase premium costs for individuals who have health coverage through traditional health insurance;

(4) Have an impact on a health carrier's ability to meet network adequacy standards set by the commissioner or state health purchasing agencies; and

(5) Cover a population that is different from individuals covered through traditional health insurance.

The study shall also examine the extent to which individuals and families participating in a direct care practice maintain health coverage for health conditions not covered by the direct care practice. The commissioner shall recommend to the legislature whether the statutory authority for direct care practices to operate should be continued, modified, or repealed.

**NEW SECTION. Sec. 15.** Sections 1 and 3 through 14 of this act constitute a new chapter in Title 48 RCW."

Correct the title.  
and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

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## MOTION

Senator Keiser moved that the Senate concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5958.

Senators Keiser and Pflug spoke in favor of the motion.

## MOTION

On motion of Senator Hewitt, Senator Zarelli was excused.

## MOTION

The President Pro Tempore declared the question before the Senate to be the motion by Senator Keiser that the Senate concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5958.

The motion by Senator Keiser carried and the Senate concurred in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5958 by voice vote.

The President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 5958, as amended by the House.

## ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 5958, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom and Weinstein - 48

Excused: Senator Zarelli - 1

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5958, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

The President assumed the chair.

## MOTION

On motion of Senator Regala, Senator Fairley was excused.

## MESSAGE FROM THE HOUSE

April 6, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5937, with the following amendment: 5937-S AMH CLIB H3328.1

On page 3, line 31, after "service," strike "fifty percent of"

On page 3, beginning on line 32, strike "and fifty percent of which must be deposited according to section 4 of this act" and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

## MOTION

Senator Murray moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5937.  
Senator Murray spoke in favor of the motion.

## ROLL CALL

The President declared the question before the Senate to be the motion by Senator Murray that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5937.

The motion by Senator Murray carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5937 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5937, as amended by the House.

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5937, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Voting nay: Senator Holmquist - 1

Excused: Senator Fairley - 1

SUBSTITUTE SENATE BILL NO. 5937, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## MOTION

On motion of Senator Schoesler, Senator Zarelli was excused.

## MESSAGE FROM THE HOUSE

April 3, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5987, with the following amendment: 5987-S AMH PSEP H3209.1

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that the people of Washington state face a crisis brought upon by increased gang crime and violence, which is threatening public safety in communities across the state. Those who live in communities where gang membership is on the rise find themselves living with the daily threat of intimidation and harassment. Ordinary citizens are increasingly vulnerable to gang-related crimes such as drug dealing, damage to real property, theft of personal property and automobiles, or even assault, rape, and murder. Even those not directly affected by gang-related crime, share in the indirect costs such as lower property values, higher insurance premiums, and the endangerment of our youth. Moreover, our first responders find themselves increasingly vulnerable to personal injury or death when responding to gang-related crimes such as drug dealing, assault, driving without a license, or attempting to elude a police vehicle.

It is the intent of the legislature to establish a work group to evaluate and make legislative recommendations regarding the problem of gang-related crime in Washington state.

**NEW SECTION. Sec. 2.** The Washington association of sheriffs and police chiefs is directed to convene a work group to evaluate the problem of gang-related crime in Washington state.

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Members shall include one member from each of the two largest caucuses in the house of representatives, appointed by the speaker of the house of representatives, one member from each of the two largest caucuses in the senate, appointed by the president of the senate, and representatives of the following, appointed jointly by the president of the senate and the speaker of the house of representatives: The office of the attorney general, local law enforcement, prosecutors and municipal attorneys, criminal defense attorneys, court administrators, prison or detention administrators and probation officers, and experts in gang or delinquency prevention including the governor's juvenile justice advisory committee. The work group shall evaluate and make recommendations regarding additional legislative measures to combat gang-related crime, the creation of a statewide gang information database, possible reforms to the juvenile justice system for gang-related juvenile offenses, best practices for prevention and intervention of youth gang membership, and the adoption of legislation authorizing a civil antigang injunction. The Washington association of sheriffs and police chiefs shall report back to the legislature on its findings and the recommendations of the work group or groups on or before January 1, 2008." and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Clements moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5987. Senator Clements spoke in favor of the motion.

MOTION

The President declared the question before the Senate to be the motion by Senator Clements that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5987.

The motion by Senator Clements carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5987 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5987, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5987, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 1; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom and Weinstein - 46

Absent: Senator Hargrove - 1

Excused: Senators Fairley and Zarelli - 2

SUBSTITUTE SENATE BILL NO. 5987, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 12, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5647, with the following amendment: 5647-S AMH ENGR H3208.E

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 67.28.080 and 1997 c 452 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.

(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor(±) that is: (a)(i) Owned by a public entity; (ii) owned by a nonprofit organization described under section 501(c)(3) of the federal internal revenue code of 1986, as amended; or (iii) owned by a nonprofit organization described under section 501(c)(6) of the federal internal revenue code of 1986, as amended, a business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce and (b) used to support tourism, performing arts, or to accommodate tourist activities.

(8) "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.

(9) Amendments made in section 1 of this act (chapter . . . , Laws of 2007) expire June 30, 2013.

NEW SECTION. Sec. 2. A new section is added to chapter 67.28 RCW to read as follows:

(1) Lodging tax revenues under this chapter may be used, directly by local jurisdictions or indirectly through a convention and visitors bureau or destination marketing organization, for the marketing and operations of special events and festivals and to support the operations and capital expenditures of tourism-related facilities owned by nonprofit organizations described under 501(c)(3) and 501(c)(6) of the internal revenue code of 1986, as amended.

(2) Local jurisdictions that use the lodging tax revenues under this section must submit an annual economic impact report for these expenditures to the department of community, trade, and economic development beginning January 1, 2008. This economic impact report, at a minimum, must include: (a) The total revenue received under this chapter for each year; (b) The list of festivals, special events, or nonprofit 501(c)(3) or 501(c)(6) organizations that received funds under this chapter; (c) the amount of revenue expended on each festival, special event, or tourism-related facility owned by a nonprofit 501(c)(3) or 501(c)(6) organization; (d) the estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event, or tourism-related facility

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owned by a nonprofit 501(c)(3) or 501(c)(6) organization; (e) an estimated increase in sales and use tax revenues attributable to the special event, festival, or tourism-related facility owned by a nonprofit 501(c)(3) or 501(c)(6) organization; and (f) any other measurements the local government finds that demonstrate the impact of the increased tourism attributable to the festival, special event, or tourism-related facility owned by a nonprofit 501(c)(3) or 501(c)(6) organization.

(3) The joint legislative audit and review committee must report to the legislature and the governor on the use and economic impact of lodging tax revenues by local jurisdictions since the effective date of this act to support festivals, special events, and tourism-related facilities owned by a nonprofit organization under section 501(c)(3) or 501(c)(6) of the internal revenue code of 1986, as amended, and the economic impact generated by these festivals, events, and facilities. This report shall be due September 1, 2012.

(4) This section expires June 30, 2013."

Correct the title.  
and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Kastama moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5647.

Senator Kastama spoke in favor of the motion.

MOTION

The President declared the question before the Senate to be the motion by Senator Kastama that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5647.

The motion by Senator Kastama carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5647 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5647, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5647, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 41; Nays, 8; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Murray, Oemig, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Swecker, Tom, Weinstein and Zarelli - 41

Voting nay: Senators Delvin, Hewitt, Honeyford, Marr, Parlette, Pflug, Schoesler and Stevens - 8

SUBSTITUTE SENATE BILL NO. 5647, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 4, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5202, with the following amendment: 5202-S AMH JUDI PERR 066

On page 2, beginning on line 1, strike all of subsection (2) and insert the following:

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"(2) Subsection (1)(a) of this section does not apply to:

(a) The possession of a spring blade knife by a law enforcement officer while the officer:

(i) Is on official duty; or

(ii) Is transporting the knife to or from the place where the knife is stored when the officer is not on official duty; or

(b) The storage of a spring blade knife by a law enforcement officer."

and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Kline moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5202.

Senator Kline spoke in favor of the motion.

MOTION

The President declared the question before the Senate to be the motion by Senator Kline that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5202.

The motion by Senator Kline carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5202 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5202, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5202, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE SENATE BILL NO. 5202, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 9, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5227, with the following amendment: 5227-S AMH JUDI ADAM 060

Beginning on page 1, line 4, strike all of section 1 and insert the following:

"Sec. 1. RCW 16.52.207 and 2005 c 481 s 2 are each amended to read as follows:

(1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

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(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure; ~~(or)~~

(b) Under circumstances not amounting to animal cruelty in the second degree under (c) of this subsection, abandons the animal; or

(c) Abandons the animal and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm.

(3)(a) Animal cruelty in the second degree under subsection (1), (2)(a), or (2)(b) of this section is a misdemeanor.

(b) Animal cruelty in the second degree under subsection (2)(c) of this section is a gross misdemeanor.

(4) In any prosecution of animal cruelty in the second degree under subsection (1) or (2)(a) of this section, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control." and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Tom moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5227.

Senator Tom spoke in favor of the motion.

MOTION

On motion of Senator Hatfield, Senator Poulsen was excused.

MOTION

The President declared the question before the Senate to be the motion by Senator Tom that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5227.

The motion by Senator Tom carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5227 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5227, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5227, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Tom, Weinstein and Zarelli - 47

Voting nay: Senator Swecker - 1

Excused: Senator Poulsen - 1

SUBSTITUTE SENATE BILL NO. 5227, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 5, 2007

MR. PRESIDENT:

The House has passed ENGROSSED SENATE BILL NO. 5063, with the following amendment: 5063.E AMH ENGR H3086.E

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. It is the intent of the legislature to make technical changes throughout chapters 41.08, 41.12, 41.16, and 41.18 RCW with regard to gender-specific terminology. The legislature finds that gender-neutral terms must be used in accordance with RCW 44.04.210. This act is technical in nature and no substantive legal changes are intended or implied.

Sec. 2. RCW 41.08.020 and 1935 c 31 s 2 are each amended to read as follows:

If any of the cities or towns referred to in RCW 41.08.010 shall at any time repeal the charter provisions or other local acts of said cities or towns providing for civil service for ~~((firemen))~~ firefighters as referred to in RCW 41.08.010, in that event this chapter shall apply to all of such cities and towns which have at any time abolished civil service for members of the fire department.

Sec. 3. RCW 41.08.030 and 1935 c 31 s 3 are each amended to read as follows:

There is hereby created in every city, town or municipality except those referred to in RCW 41.08.010, having a full paid fire department a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with power and authority to select, appoint, or employ the chief of a fire department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party.

Sec. 4. RCW 41.08.075 and 1972 ex.s. c 37 s 4 are each amended to read as follows:

No city, town, or municipality shall require any person applying for or holding an office, place, position, or employment under the provisions of this chapter or under any local charter or other regulations described in RCW 41.08.010 to reside within the limits of such municipal corporation as a condition of employment, or to discriminate in any manner against any such person because of his or her residence outside of the limits of such city, town, or municipality.

Sec. 5. RCW 41.08.080 and 1935 c 31 s 8 are each amended to read as follows:

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The tenure of every one holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency or inattention to or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulations to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, immoral or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the functions and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

**Sec. 6.** RCW 41.08.090 and 1935 c 31 s 9 are each amended to read as follows:

No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon the written accusation of the appointing power, or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his or her removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith (~~(for)~~) for cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or

she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

**Sec. 7.** RCW 41.08.100 and 1935 c 31 s 11 are each amended to read as follows:

Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the name and address of a person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list for the class to which the vacant position has been allocated, who is willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the name of the person standing highest on said list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint such person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the name of the person eligible for appointment to the appointing power, and said appointing power shall forthwith appoint the person so certified to said position. No person so certified shall be laid off, suspended, or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity to be heard by the commission and then only with its consent and approval.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of three to six months' probationary service, as may be provided in the rules of the civil service commission during which the appointing power may terminate the employment of the person certified to him or her, or it, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems him or her unfit or unsatisfactory for service in the department. Whereupon the appointing power shall designate the person certified as standing next highest on any such list and such person shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete.

**Sec. 8.** RCW 41.08.150 and 1935 c 31 s 16 are each amended to read as follows:

No commissioner or any other person(;) shall, by himself or herself, or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his or her right of examination or registration according to the rules and regulations of this chapter, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified or persuade any other person, or permit or aid in any manner any other person to personate him or her, in

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connection with any examination or registration or application or request to be examined or registered.

**Sec. 9.** RCW 41.08.220 and 1935 c 31 s 24 are each amended to read as follows:

As used in this chapter, the following mentioned terms shall have the following described meanings:

The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three commissioners of that commission.

The term "appointing power" includes every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are, vested by law with power and authority to select, appoint, or employ any person to hold any office, place, position or employment subject to civil service.

The term "appointment" includes all means of selection, appointing or employing any person to hold any office, place, position or employment subject to civil service.

The term "city" includes all cities, towns and municipalities having a full paid fire department.

The term "full paid fire department" means that the officers and ~~((firemen))~~ firefighters employed in such are paid regularly by the city and devote their whole time to firefighting.

**Sec. 10.** RCW 41.12.020 and 1937 c 13 s 2 are each amended to read as follows:

If any of the cities or towns referred to in RCW 41.12.010 shall at any time repeal the charter provisions or other local acts of said cities or towns providing for civil service for ~~((policemen))~~ police officers as referred to in RCW 41.12.010, in that event this chapter shall apply to all of such cities and towns which have at any time abolished civil service for members of the police department.

**Sec. 11.** RCW 41.12.030 and 1937 c 13 s 3 are each amended to read as follows:

There is hereby created in every city, town or municipality except those referred to in RCW 41.12.010, having fully paid ~~((policemen))~~ police officers a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with the power and authority to select, appoint, or employ the chief of a police department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party.

**Sec. 12.** RCW 41.12.075 and 1972 ex.s. c 37 s 5 are each amended to read as follows:

No city, town, or municipality shall require any person applying for or holding an office, place, position, or

employment under the provisions of this chapter or under any local charter or other regulations described in RCW 41.12.010 to reside within the limits of such municipal corporation as a condition of employment or to discriminate in any manner against any such person because of his or her residence outside of the limits of such city, town, or municipality.

**Sec. 13.** RCW 41.12.080 and 1937 c 13 s 8 are each amended to read as follows:

The tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency or inattention to or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulation to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, immoral or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

**Sec. 14.** RCW 41.12.090 and 1937 c 13 s 9 are each amended to read as follows:

No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his or her removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith ~~((for))~~ for cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement ~~((of for))~~ or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, ~~((find))~~ in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

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All investigations made by the commission pursuant to the provisions of this section shall be had by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

**Sec. 15.** RCW 41.12.100 and 1937 c 13 s 11 are each amended to read as follows:

Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the name and address of a person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list for the class to which the vacant position has been allocated, who is willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the name of the person standing highest on said list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint such person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the name of the person eligible for appointment to the appointing power, and said appointing power shall forthwith appoint the person so certified to said position. No person so certified shall be laid off, suspended, or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity to be heard by the commission and then only with its consent and approval.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of three to six months' probationary service, as may be provided in the rules of the civil service commission during which the appointing power may terminate the employment of the person certified to him or her, or it, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems him or her unfit or unsatisfactory for service in the department, whereupon the appointing power shall designate the person certified as standing next highest on any such list and such person shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete.

**Sec. 16.** RCW 41.12.150 and 1937 c 13 s 16 are each amended to read as follows:

No commissioner or any other person(;) shall, by himself or herself, or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his or her right of examination or registration according to the rules and regulations of this chapter, or falsely mark, grade, estimate or

report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified or persuade any other person, or permit or aid in any manner any other person to personate him or her, in connection with any examination or registration of application or request to be examined or registered.

**Sec. 17.** RCW 41.12.220 and 1937 c 13 s 24 are each amended to read as follows:

As used in this chapter, the following mentioned terms shall have the following described meanings:

The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three commissioners of that commission.

The term "appointing power" includes every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are, invested by law with power and authority to select, appoint, or employ any person to hold any office, place, position or employment subject to civil service.

The term "appointment" includes all means of selection, appointing or employing any person to hold any office, place, position or employment subject to civil service.

The term "city" includes all cities, towns and municipalities having a full paid police department.

The term "full paid police department" means that the officers and (~~police men~~) police officers employed in such are paid regularly by the city and devote their whole time to police duty: PROVIDED, "full paid police department" whenever used in this chapter shall also mean "full paid (~~police men~~) police officers."

**Sec. 18.** RCW 41.16.010 and 2003 c 30 s 1 are each amended to read as follows:

For the purpose of this chapter, unless clearly indicated by the context, words and phrases shall have the following meaning:

(1) "Beneficiary" shall mean any person or persons designated by a (~~fireman~~) firefighter in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased (~~fireman~~) firefighter under this chapter.

(2) "Board" shall mean the municipal (~~firemen's~~) firefighters' pension board.

(3) "Child or children" shall mean a child or children unmarried and under eighteen years of age.

(4) "Contributions" shall mean and include all sums deducted from the salary of (~~firemen~~) firefighters and paid into the fund as hereinafter provided.

(5) "Disability" shall mean and include injuries or sickness sustained as a result of the performance of duty.

(6) (~~"Fireman" or~~) "Firefighter" shall mean any person regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, who has passed a civil service examination for (~~fireman~~) firefighter and who is actively employed as a (~~fireman~~) firefighter; and shall include any "prior (~~fireman~~) firefighter."

(7) "Fire department" shall mean the regularly organized, full time, paid, and employed force of (~~firemen~~) firefighters of the municipality.

(8) "Fund" shall mean the (~~firemen's~~) firefighters' pension fund created herein.

(9) "Municipality" shall mean every city and town having a regularly organized full time, paid, fire department employing (~~firemen~~) firefighters.

(10) "Performance of duty" shall mean the performance of work and labor regularly required of (~~firemen~~) firefighters and shall include services of an emergency nature rendered while off regular duty, but shall not include time spent in traveling to work before answering roll call or traveling from work after dismissal at roll call.

(11) "Prior (~~fireman~~) firefighter" shall mean a (~~fireman~~) firefighter who was actively employed as a (~~fireman~~)



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firefighter of a fire department prior to the first day of January, 1947, and who continues such employment thereafter.

(12) "Retired (~~(fireman)~~ firefighter" shall mean and include a person employed as a (~~(fireman)~~ firefighter and retired under the provisions of chapter 50, Laws of 1909, as amended.

(13) "Widow or widower" means the surviving wife or husband of a retired (~~(fireman)~~ firefighter who was retired on account of length of service and who was lawfully married to such (~~(fireman)~~ firefighter; and whenever that term is used with reference to the wife or former wife or husband or former husband of a retired (~~(fireman)~~ firefighter who was retired because of disability, it shall mean his or her lawfully married wife or husband on the date he or she sustained the injury or contracted the illness that resulted in his or her disability. Said term shall not mean or include a surviving wife or husband who by process of law within one year prior to the retired (~~(fireman's)~~ firefighter's death, collected or attempted to collect from him or her funds for the support of herself or himself or for his or her children.

**Sec. 19.** RCW 41.16.020 and 2003 c 30 s 2 are each amended to read as follows:

There is hereby created in each city and town a municipal (~~(firemen's)~~ firefighters' pension board to consist of the following five members, ex officio, the mayor, or in a city of the first class, the mayor or a designated representative who shall be an elected official of the city, who shall be (~~(chairman)~~ chairperson of the board, the city comptroller or clerk, the (~~(chairman)~~ chairperson of finance of the city council, or if there is no (~~(chairman)~~ chairperson of finance, the city treasurer, and in addition, two regularly employed or retired firefighters elected by secret ballot of those employed and retired firefighters who are subject to the jurisdiction of the board. The members to be elected by the firefighters shall be elected annually for a two year term. The two firefighters elected as members shall, in turn, select a third eligible member who shall serve as an alternate in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the firefighters or retired members, the members shall in the same manner elect a successor to serve the unexpired term. The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the (~~(chairman)~~ chairperson to act, the board may select a (~~(chairman)~~ chairperson pro tempore who shall during such absence or inability perform the duties and exercise the powers of the (~~(chairman)~~ chairperson. A majority of the members of the board shall constitute a quorum and have power to transact business.

**Sec. 20.** RCW 41.16.030 and 2002 c 15 s 1 are each amended to read as follows:

The board shall meet at least once quarterly, the date to be fixed by regulation of the board, at such other regular times as may be fixed by a regulation of the board; and at any time upon call of the (~~(chairman)~~ chairperson, of which due advance notice shall be given the other members of the board.

**Sec. 21.** RCW 41.16.040 and 1992 c 89 s 1 are each amended to read as follows:

The board shall have such general powers as are vested in it by the provisions of this chapter, and in addition thereto, the power to:

(1) Generally supervise and control the administration of this chapter and the (~~(firemen's)~~ firefighters' pension fund created hereby.

(2) Pass upon and allow or disallow all applications for pensions or other benefits provided by this chapter.

(3) Provide for payment from said fund of necessary expenses of maintenance and administration of said pension system and fund.

(4) Invest the moneys of the fund in a manner consistent with the investment policies outlined in RCW 35.39.060. Authorized investments shall include investment grade securities issued by the United States, state, municipal corporations, other public bodies, corporate bonds, and other investments authorized by RCW 35.39.030, 35.58.510, 35.81.070, 35.82.070, 36.29.020, 39.58.020, 39.58.080, 39.58.130, 39.60.010, 39.60.020, 68.52.060, 68.52.065, and 72.19.120.

(5) Employ such agents, employees and other personnel as the board may deem necessary for the proper administration of this chapter.

(6) Compel witnesses to appear and testify before it, in the same manner as is or may be provided by law for the taking of depositions in the superior court. Any member of the board may administer oaths to witnesses who testify before the board of a nature and in a similar manner to oaths administered by superior courts of the state of Washington.

(7) Issue vouchers approved by the (~~(chairman)~~ chairperson and secretary and to cause warrants therefor to be issued and paid from said fund for the payment of claims allowed by it.

(8) Keep a record of all its proceedings, which record shall be public; and prepare and file with the city treasurer and city clerk or comptroller prior to the date when any payments are to be made from the fund, a list of all persons entitled to payment from the fund, stating the amount and purpose of such payment, said list to be certified to and signed by the (~~(chairman)~~ chairperson and secretary of the board and attested under oath.

(9) Make rules and regulations not inconsistent with this chapter for the purpose of carrying out and effecting the same.

(10) Appoint one or more duly licensed and practicing physicians who shall examine and report to the board upon all applications for relief and pension under this chapter. Such physicians shall visit and examine all sick firefighters and (~~(disabled firemen)~~ firefighters who are disabled when, in their judgment, the best interests of the relief and pension fund require it or when ordered by the board. They shall perform all operations on such sick and injured (~~(firemen)~~ firefighters and render all medical aid and care necessary for the recovery of such (~~(firemen)~~ firefighters on account of sickness or disability received while in the performance of duty as defined in this chapter. Such physicians shall be paid from said fund, the amount of said fees or salary to be set and agreed upon by the board and the physicians. No physician not regularly appointed or specially appointed and employed, as hereinafter provided, shall receive or be entitled to any fees or compensation from said fund as attending physician to a sick or injured (~~(fireman)~~ firefighter. If any sick or injured (~~(fireman)~~ firefighter refuses the services of the appointed physicians, or the specially appointed and employed physician, he or she shall be personally liable for the fees of any other physician employed by him or her. No person shall have a right of action against the board or the municipality for negligence of any physician employed by it. The board shall have the power and authority to select and employ, besides the regularly appointed physician, such other physician, surgeon or specialist for consultation with, or assistance to the regularly appointed physician, or for the purpose of performing operations or rendering services and treatment in particular cases, as it shall deem advisable, and to pay fees for such services from said fund. Said board shall hear and decide all applications for such relief or pensions under this chapter, and its decisions on such applications shall be final and conclusive and not subject to revision or reversal except by the board.

**Sec. 22.** RCW 41.16.050 and 1999 c 117 s 3 are each amended to read as follows:

There is hereby created and established in the treasury of each municipality a fund which shall be known and designated as the (~~(firemen's)~~ firefighters' pension fund, which shall consist of: (1) All bequests, fees, gifts, emoluments, or donations given or paid thereto; (2) twenty-five percent of all moneys received by the state from taxes on fire insurance premiums; (3) taxes paid pursuant to the provisions of RCW 41.16.060; (4) interest on the investments of the fund; and (5) contributions by firefighters as provided for herein. The moneys received from the tax on fire insurance premiums under the provisions of this chapter shall be distributed in the proportion that the number of paid firefighters in the city, town, or fire protection district bears to the total number of paid firefighters throughout the state to be ascertained in the following manner: The secretary of the (~~(firemen's)~~ firefighters' pension board of each city, town, and fire protection district now or hereafter coming under the provisions of this chapter shall within thirty days after June 7, 1961, and on or before the fifteenth day of January thereafter,

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certify to the state treasurer the number of paid firefighters in the fire department in such city, town, or fire protection district. For any city or town annexed by a fire protection district at any time before, on, or after June 9, 1994, the city or town shall continue to certify to the state treasurer the number of paid firefighters in the city or town fire department immediately before annexation until all obligations against the ((firemen's)) firefighters' pension fund in the city or town have been satisfied. For the purposes of the calculation in this section, the state treasurer shall subtract the number certified by the annexed city or town from the number of paid firefighters certified by an annexing fire protection district. The state treasurer shall on or before the first day of June of each year deliver to the treasurer of each city, town, and fire protection district coming under the provisions of this chapter his or her warrant, payable to each city, town, or fire protection district for the amount due such city, town or fire protection district ascertained as herein provided and the treasurer of each such city, town, or fire protection district shall place the amount thereof to the credit of the ((firemen's)) firefighters' pension fund of such city, town, or fire protection district.

Sec. 23. RCW 41.16.070 and 1947 c 91 s 7 are each amended to read as follows:

(1) Every ((fireman)) firefighter employed on and after January 1, 1947, shall contribute to the fund and there shall be deducted from his or her pay and placed in the fund an amount in accordance with the following table:

((Fireman)) Firefighter whose		
age at last birthday		Contributions and
at time of entry		deductions from
of service was:		salary
21 and under .....		5.00%
22 .....		5.24%
23 .....		5.50%
24 .....		5.77%
25 .....		6.07%
26 .....		6.38%
27 .....		6.72%
28 .....		7.09%
29 .....		7.49%
30 and over .....		7.92%

(2) Every ((fireman)) firefighter employed prior to January 1, 1947, and continuing active employment shall contribute to the fund and there shall be deducted from his or her salary and placed in the fund, five percent of his or her salary.

(3) Every ((fireman)) firefighter actively employed and eligible for retirement and not retired shall contribute to the fund and there shall be deducted from his or her salary and placed in the fund, four percent of his or her salary.

Sec. 24. RCW 41.16.080 and 1959 c 5 s 2 are each amended to read as follows:

Any ((fireman)) firefighter employed in a fire department on and before the first day of January, 1947, hereinafter in this section and RCW 41.16.090 to 41.16.190 inclusive, referred to as ((fireman";)) "firefighter," and who shall have served twenty-five or more years and having attained the age of fifty-five years, as a member of the fire department, shall be eligible for retirement and shall be retired by the board upon his or her written request. Upon his or her retirement any ((fireman)) firefighter shall be paid a pension based upon the average monthly salary drawn for the five calendar years before retirement, the number of years of his or her service and a

percentage factor based upon his or her age on entering service, as follows:

Entrance age at	Salary
last birthday	percentage factor
20 and under .....	1.50%
21 .....	1.55%
22 .....	1.60%
23 .....	1.65%
24 .....	1.70%
25 .....	1.75%
26 .....	1.80%
27 .....	1.85%
28 .....	1.90%
29 .....	1.95%
30 and over .....	2.00%

Said monthly pension shall be in the amount of his or her average monthly salary for the five calendar years before retirement, times the number of years of service, times the applicable percentage factor.

Sec. 25. RCW 41.16.100 and 1973 1st ex.s. c 154 s 62 are each amended to read as follows:

The widow or widower, child, children or beneficiary of any ((fireman)) firefighter retired under this chapter shall receive an amount equal to his or her accumulated contributions to the fund, plus earned interest thereon compounded semiannually; PROVIDED, That there shall be deducted from said sum the amount paid to decedent in pensions and the remainder shall be paid to his or her widow or widower, child, children or beneficiary: PROVIDED FURTHER, That the amount paid shall not be less than one thousand dollars.

Sec. 26. RCW 41.16.110 and 1959 c 5 s 5 are each amended to read as follows:

Whenever any ((fireman)) firefighter shall die while eligible to retirement on account of years of service, and shall not have been retired, benefits shall be paid in accordance with RCW 41.16.100.

Sec. 27. RCW 41.16.120 and 1973 1st ex.s. c 154 s 63 are each amended to read as follows:

Whenever any active ((fireman)) firefighter or ((fireman)) firefighter retired for disability shall die as the result of an accident or other fortuitous event occurring while in the performance of his or her duty, his widow or her widower may elect to accept a monthly pension equal to one-half the deceased ((fireman's)) firefighter's salary but in no case in excess of one hundred fifty dollars per month, or the sum of five thousand dollars cash. The right of election must be exercised within sixty days of the ((fireman's)) firefighter's death. If not so exercised, the pension benefits shall become fixed and shall be paid from the date of death. Such pension shall cease if, and when, he or she remarries. If there is no widow or widower, then such pension benefits shall be paid to his or her child or children.

Sec. 28. RCW 41.16.130 and 1959 c 5 s 7 are each amended to read as follows:

(1) Any ((fireman)) firefighter who shall become disabled as a result of the performance of his or her duty or duties as defined in this chapter, may be retired at the expiration of six months from the date of his or her disability, upon his or her written request filed with his or her retirement board. The board may upon such request being filed, consult such medical advice as it sees fit, and may have the applicant examined by such physicians as it deems desirable. If from the reports of such physicians the board finds the applicant capable of performing his or her duties in the fire department, the board may refuse to recommend his or her retirement.

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(2) If the board deems it for the good of the fire department or the pension fund, it may recommend the applicant's retirement without any request therefor by him or her, after giving him or her a thirty days' notice. Upon his or her retirement he or she shall be paid a monthly disability pension in amount equal to one-half of his or her monthly salary at date of retirement, but which shall not exceed one hundred fifty dollars a month. If he or she recovers from his or her disability he or she shall thereupon be restored to active service, with the same rank he or she held when he or she retired.

(3) If the ~~((fireman))~~ firefighter dies during disability and not as a result thereof, RCW 41.16.160 shall apply.

**Sec. 29.** RCW 41.16.140 and 1973 1st ex.s. c 154 s 64 are each amended to read as follows:

Any ~~((fireman))~~ firefighter who has served more than fifteen years and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, shall within sixty days exercise his or her choice either to receive his or her contribution to the fund, plus earned interest compounded semiannually, or be retired and paid a monthly pension based on the factor of his or her age shown in RCW 41.16.080, times his or her average monthly salary as a member of the fire department of his or her municipality at the date of his or her retirement, times the number of years of service rendered at the time he or she sustained such disability. If such ~~((fireman))~~ firefighter shall die leaving surviving him a wife or surviving her a husband, or child or children, then such wife or husband, or if he leaves no wife or she leaves no husband, then his or her child or children shall receive the sum of his or her contributions, plus accumulated compound interest, and such payment shall be reduced in the amount of the payments made to deceased.

**Sec. 30.** RCW 41.16.145 and 1975-'76 2nd ex.s. c 44 s 1 are each amended to read as follows:

The amount of all benefits payable under the provisions of RCW 41.16.080, 41.16.120, 41.16.130, 41.16.140 and 41.16.230 ~~((as now or hereafter amended.))~~ shall be increased annually as hereafter in this section provided. The local pension board shall meet subsequent to March 31st but prior to June 30th of each year for the purposes of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative. The increased benefits authorized by this section shall not affect any benefit payable under the provisions of chapter 41.16 RCW in which the benefit payment is attached to a current salary of the rank held at time of retirement. A beneficiary of benefit increases provided for pursuant to this section is hereby authorized to appeal a decision on such increases or the failure of the local pension board to order such increased benefits or the amount of such benefits to the Washington law enforcement officers' and firefighters' system retirement board provided for in RCW 41.26.050.

For the purpose of this section the term

"Consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor.

**Sec. 31.** RCW 41.16.150 and 1973 1st ex.s. c 154 s 65 are each amended to read as follows:

(1) Any ~~((fireman))~~ firefighter who has served twenty years or more and who shall resign or be dismissed, shall have the option of receiving all his or her contributions plus earned interest compounded semiannually, or a monthly pension in the amount of his or her average monthly salary times the number of

years of service rendered, times one and one-half percent. Payment of such pension shall commence at the time of severance from the fire department, or at the age of fifty-five years, whichever shall be later. The ~~((fireman))~~ firefighter shall have sixty days from the severance date to elect which option he or she will take. In the event he or she fails to exercise his or her right of election then he or she shall receive the amount of his or her contributions plus accrued compounded interest. In the event he or she elects such pension, but dies before attaining the age of fifty-five, his widow or her widower, or if he leaves no widow or she leaves no widower, then his or her child or children shall receive only his or her contribution, plus accrued compounded interest. In the event he or she elects to take a pension and dies after attaining the age of fifty-five, his widow or her widower, or if he leaves no widow or she leaves no widower, then child or children shall receive his or her contributions, plus accrued compounded interest, less the amount of pension payments made to such ~~((fireman))~~ firefighter during his or her lifetime.

(2) Any ~~((fireman))~~ firefighter who shall have served for a period of less than twenty years, and shall resign or be dismissed, shall be paid the amount of his or her contributions, plus accrued compounded interest.

**Sec. 32.** RCW 41.16.160 and 1973 1st ex.s. c 154 s 66 are each amended to read as follows:

Whenever any ~~((fireman))~~ firefighter, after four years of service, shall die from natural causes, or from an injury not sustained in the performance of his or her duty and for which no pension is provided in this chapter, and who has not been retired on account of disability, his widow or her widower, if he or she was his wife or her husband at the time he or she was stricken with his or her last illness, or at the time he or she received the injuries from which he or she died; or if there is no such widow, then his or her child or children shall be entitled to the amount of his or her contributions, plus accrued compounded interest, or the sum of one thousand dollars, whichever sum shall be the greater. In case of death as above stated, before the end of four years of service, an amount based on the proportion of the time of service to four years shall be paid such beneficiaries.

**Sec. 33.** RCW 41.16.170 and 1973 1st ex.s. c 154 s 67 are each amended to read as follows:

Whenever a ~~((fireman))~~ firefighter dies leaving no widow or widower or children, the amount of his or her accumulated contributions, plus accrued compounded interest only, shall be paid his or her beneficiary.

**Sec. 34.** RCW 41.16.180 and 1959 c 5 s 12 are each amended to read as follows:

Upon the death of any active firefighter, ~~((disabled))~~ firefighter who is disabled, or retired ~~((fireman))~~ firefighter, the board shall pay from the fund the sum of two hundred dollars to assist in defraying the funeral expenses of such ~~((fireman))~~ firefighter.

**Sec. 35.** RCW 41.16.190 and 1959 c 5 s 13 are each amended to read as follows:

No ~~((fireman))~~ firefighter disabled in the performance of duty shall receive a pension until six months has elapsed after such disability was sustained. Therefore, whenever the retirement board, pursuant to examination by the board's physician and such other evidence as it may require, shall find a ~~((fireman))~~ firefighter has been disabled while in the performance of his or her duties, it shall declare him or her inactive. For a period of six months from the time he or she became disabled, he or she shall continue to draw full pay from his or her municipality and in addition thereto he or she shall, at the expense of the municipality, be provided with such medical, hospital and nursing care as the retirement board deems proper. If the board finds at the expiration of six months that the ~~((fireman))~~ firefighter is unable to return to and perform his or her duties, then he or she shall be retired as herein provided.

**Sec. 36.** RCW 41.16.200 and 1947 c 91 s 9 are each amended to read as follows:

The board shall require all ~~((firemen))~~ firefighters receiving disability pensions to be examined every six months. All such examinations shall be made by physicians duly appointed by the board. If a ~~((fireman))~~ firefighter shall fail to submit to such

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examination within ten days of having been so ordered in writing by said retirement board all pensions or benefits paid to said ~~((fireman))~~ firefighter under this chapter, shall immediately cease and the disbursing officer in charge of such payments shall issue no further payments to such ~~((fireman))~~ firefighter. If such ~~((fireman))~~ firefighter fails to present himself or herself for examination within thirty days after being ordered so to do, he or she shall forfeit all rights under this chapter. If such ~~((fireman))~~ firefighter, upon examination as aforesaid, shall be found fit for service, he or she shall be restored to duty in the same rank held at the time of his or her retirement, or if unable to perform the duties of said rank, then, at his or her request, in such other rank, the duties of which he or she is then able to perform. The board shall thereupon so notify the ~~((fireman))~~ firefighter and shall require him or her to resume his or her duties as a member of the fire department. If, upon being so notified, such member shall fail to report for employment within ten days, he or she shall forfeit all rights to any benefits under this chapter.

**Sec. 37.** RCW 41.16.210 and 1947 c 91 s 10 are each amended to read as follows:

(1) Funds or assets on hand in the ~~((firemen's))~~ firefighters' relief and pension fund of any municipality established under the provisions of chapter 50, Laws of 1909, as amended, after payment of warrants drawn upon and payable therefrom, shall, by the city treasurer, be transferred to and placed in the ~~((firemen's))~~ firefighters' pension fund created by this chapter; and the ~~((firemen's))~~ firefighters' pension fund created by this chapter shall be liable for and there shall be paid therefrom in the order of their issuance any and all unpaid warrants drawn upon said ~~((firemen's))~~ firefighters' relief and pension fund.

(2) Any moneys loaned or advanced by a municipality from the general or any other fund of such municipality to the ~~((firemen's))~~ firefighters' relief and pension fund created under the provisions of chapter 50, Laws of 1909, as amended, and not repaid shall be an obligation of the ~~((firemen's))~~ firefighters' pension fund created under this chapter, and shall at such times and in such amounts as is directed by the board be repaid.

**Sec. 38.** RCW 41.16.220 and 1969 ex.s. c 269 s 7 are each amended to read as follows:

Any person who was a member of the fire department and within the provisions of chapter 50, Laws of 1909, as amended, at the time he or she entered, and who is a veteran, as defined in RCW 41.04.005, shall have added and accredited to his or her period of employment as a ~~((fireman))~~ firefighter as computed under this chapter his or her period of war service in such armed forces upon payment by him or her of his or her contribution for the period of his or her absence, at the rate provided by chapter 50, Laws of 1909, as amended, for other members: PROVIDED, HOWEVER, Such accredited service shall not in any case exceed five years.

**Sec. 39.** RCW 41.16.230 and 1973 1st ex.s. c 154 s 68 are each amended to read as follows:

Chapter 50, Laws of 1909; chapter 196, Laws of 1919; chapter 86, Laws of 1929, and chapter 39, Laws of 1935 (secs. 9559 to 9578, incl., Rem. Rev. Stat.; secs. 396-1 to 396-43, incl., PPC) and all other acts or parts of acts in conflict herewith are hereby repealed: PROVIDED, That the repeal of said laws shall not affect any ~~((prior fireman,))~~ "prior firefighter," his widow, her widower, child or children, any ~~((fireman))~~ firefighter eligible for retirement but not retired, his widow, her widower, child or children, or the rights of any retired ~~((fireman))~~ firefighter, his widow, her widower, child or children, to receive payments and benefits from the ~~((firemen's))~~ firefighters' pension fund created under this chapter, in the amount, and in the manner provided by said laws which are hereby repealed and as if said laws had not been repealed.

**Sec. 40.** RCW 41.16.250 and 1963 c 63 s 1 are each amended to read as follows:

If all or any portion of a fire protection district is annexed to or incorporated into a city or town, or is succeeded by a metropolitan municipal corporation or county fire department, no full time paid ~~((fireman))~~ firefighter affected by such annexation, incorporation or succession shall receive a reduction in his or her retirement and job security rights: PROVIDED,

That this section shall not apply to any retirement and job security rights authorized under chapter 41.24 RCW.

**Sec. 41.** RCW 41.18.010 and 1973 1st ex.s. c 154 s 69 are each amended to read as follows:

For the purpose of this chapter, unless clearly indicated otherwise by the context, words and phrases shall have the meaning hereinafter ascribed.

(1) "Beneficiary" shall mean any person or persons designated by a ~~((fireman))~~ firefighter in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased ~~((fireman))~~ firefighter under this chapter.

(2) ~~(("Fireman"))~~ "Firefighter" means any person hereafter regularly or temporarily, or as a substitute newly employed and paid as a member of a fire department, who has passed a civil service examination for ~~((fireman))~~ firefighters and who is actively employed as a ~~((fireman))~~ firefighter or, if provided by the municipality by appropriate local legislation, as a fire dispatcher: PROVIDED, Nothing in this 1969 amendatory act shall impair or permit the impairment of any vested pension rights of persons who are employed as fire dispatchers at the time this 1969 amendatory act takes effect; and any person heretofore regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, and who has contributed under and been covered by the provisions of chapter 41.16 RCW as now or hereafter amended and who has come under the provisions of this chapter in accordance with RCW 41.18.170 and who is actively engaged as a ~~((fireman))~~ firefighter or as a member of the fire department as a ~~((fireman))~~ firefighter or fire dispatcher.

(3) "Retired ~~((fireman))~~ firefighter" means and includes a person employed as a ~~((fireman))~~ firefighter and retired under the provisions of this chapter.

(4) "Basic salary" means the basic monthly salary, including longevity pay, attached to the rank held by the retired ~~((fireman))~~ firefighter at the date of his or her retirement, without regard to extra compensation which such ~~((fireman))~~ firefighter may have received for special duties assignments not acquired through civil service examination: PROVIDED, That such basic salary shall not be deemed to exceed the salary of a battalion chief.

(5) "Widow or widower" means the surviving spouse of a ~~((fireman))~~ firefighter and shall include the surviving wife or husband of a ~~((fireman))~~ firefighter, retired on account of length of service, who was lawfully married to him or to her for a period of five years prior to the time of his or her retirement; and the surviving wife or husband of a ~~((fireman))~~ firefighter, retired on account of disability, who was lawfully married to him or her at and prior to the time he or she sustained the injury or contracted the illness resulting in his or her disability. The word shall not mean the divorced wife or husband of an active or retired ~~((fireman))~~ firefighter.

(6) "Child" or "children" means a ~~((fireman's))~~ firefighter's child or children under the age of eighteen years, unmarried, and in the legal custody of such ~~((fireman))~~ firefighter at the time of his death or her death.

(7) "Earned interest" means and includes all annual increments to the ~~((firemen's))~~ firefighters' pension fund from income earned by investment of the fund. The earned interest payable to any ~~((fireman))~~ firefighter when he or she leaves the service and accepts his or her contributions, shall be that portion of the total earned income of the fund which is directly attributable to each individual ~~((fireman's))~~ firefighter's contributions. Earnings of the fund for the preceding year attributable to individual contributions shall be allocated to individual ~~((firemen's))~~ firefighters' accounts as of January 1st of each year.

(8) "Board" shall mean the municipal ~~((firemen's))~~ firefighters' pension board.

(9) "Contributions" shall mean and include all sums deducted from the salary of ~~((fireman))~~ firefighters and paid into the fund as hereinafter provided.

(10) "Disability" shall mean and include injuries or sickness sustained by a ~~((fireman))~~ firefighter.

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(11) "Fire department" shall mean the regularly organized, full time, paid, and employed force of ~~((firemen))~~ firefighters of the municipality.

(12) "Fund" shall have the same meaning as in RCW 41.16.010 as now or hereafter amended. Such fund shall be created in the manner and be subject to the provisions specified in chapter 41.16 RCW as now or hereafter amended.

(13) "Municipality" shall mean every city, town and fire protection district having a regularly organized full time, paid, fire department employing ~~((firemen))~~ firefighters.

(14) "Performance of duty" shall mean the performance of work or labor regularly required of ~~((firemen))~~ firefighters and shall include services of an emergency nature normally rendered while off regular duty.

**Sec. 42.** RCW 41.18.015 and 1992 c 6 s 1 are each amended to read as follows:

There is hereby created in each fire protection district which qualifies under this chapter, a ~~((firemen's))~~ firefighters' pension board to consist of the following five members, the ~~((chairman))~~ chairperson of the fire commissioners for said district who shall be ~~((chairman))~~ chairperson of the board, the county auditor, county treasurer, and in addition, two regularly employed or retired firefighters elected by secret ballot of the employed and retired firefighters. Retired members who are subject to the jurisdiction of the pension board have both the right to elect and the right to be elected under this section. The first members to be elected by the firefighters shall be elected annually for a two-year term. The two firefighter elected members shall, in turn, select a third eligible member who shall serve in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the firefighter or retired members, the members shall in the same manner elect a successor to serve the unexpired term. The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the ~~((chairman))~~ chairperson to act, the board may select a ~~((chairman))~~ chairperson pro tempore who shall during such absence or inability perform the duties and exercise the powers of the ~~((chairman))~~ chairperson. A majority of the members of said board shall constitute a quorum and have power to transact business.

**Sec. 43.** RCW 41.18.020 and 1955 c 382 s 2 are each amended to read as follows:

The board, in addition to such general and special powers as are vested in it by the provisions of chapter 41.16 RCW, which powers the board shall have with respect to this chapter shall have power to:

(1) Generally supervise and control the administration of this chapter;

(2) Pass upon and allow or disallow applications for pensions or other benefits provided by this chapter;

(3) Provide for payment from the ~~((firemen's))~~ firefighters' pension fund of necessary expenses of maintenance and administration required by the provisions of this chapter;

(4) Make rules and regulations not inconsistent with this chapter for the purpose of carrying out and effecting the same;

(5) Require the physicians appointed under the provisions of chapter 41.16 RCW, to examine and report to the board upon all applications for relief and pensions under this chapter; and

(6) Perform such acts, receive such compensation and enjoy such immunity as provided in RCW 41.16.040.

**Sec. 44.** RCW 41.18.030 and 1961 c 255 s 2 are each amended to read as follows:

Every ~~((fireman))~~ firefighter to whom this chapter applies shall contribute to the ~~((firemen's))~~ firefighters' pension fund a sum equal to six percent of his or her basic salary which shall be deducted therefrom and placed in the fund.

**Sec. 45.** RCW 41.18.040 and 1973 1st ex.s. c 154 s 70 are each amended to read as follows:

Whenever any ~~((fireman))~~ firefighter, at the time of taking effect of this act or thereafter, shall have been appointed under civil service rules and have served for a period of twenty-five years or more as a member in any capacity of the regularly constituted fire department of any city, town or fire protection district which may be subject to the provisions of this chapter,

and shall have attained the age of fifty years, he or she shall be eligible for retirement and shall be retired by the board upon his or her written request. Upon his or her retirement such ~~((fireman))~~ firefighter shall be paid a monthly pension which shall be equal to fifty percent of the basic salary now or hereafter attached to the same rank and status held by the said ~~((fireman))~~ firefighter at the date of his or her retirement: PROVIDED, That a ~~((fireman))~~ firefighter hereafter retiring who has served as a member for more than twenty-five years, shall have his or her pension payable under this section increased by two percent of the basic salary per year for each full year of such additional service to a maximum of five additional years.

Upon the death of any such retired ~~((fireman))~~ firefighter, his or her pension shall be paid to his widow or her widower, at the same monthly rate that the retired ~~((fireman))~~ firefighter would have received had he or she lived, if such widow or widower was his wife or her husband for a period of five years prior to the time of his or her retirement. If there be no widow or widower, then such monthly payments shall be distributed to and divided among his or her children, share and share alike, until they reach the age of eighteen or are married, whichever occurs first.

**Sec. 46.** RCW 41.18.045 and 1973 1st ex.s. c 154 s 71 are each amended to read as follows:

Upon the death of a ~~((fireman))~~ firefighter who is eligible to retire under RCW 41.18.040 as now or hereafter amended, but who has not retired, a pension shall be paid to his widow or her widower at the same monthly rate that he or she was eligible to receive at the time of his or her death, if such widow or widower was his wife or her husband for a period of five years prior to his or her death. If there be no widow or widower, then such monthly payments shall be distributed to and divided among his or her children, share and share alike, until they reach the age of eighteen or are married, whichever comes first.

This section shall apply retroactively for the benefit of all widows or widowers and survivors of ~~((firemen))~~ firefighters who died after January 1, 1967, if such ~~((firemen))~~ firefighters were otherwise eligible to retire on the date of death.

**Sec. 47.** RCW 41.18.050 and 1955 c 382 s 5 are each amended to read as follows:

Every ~~((fireman))~~ firefighter who shall become disabled as a result of the performance of duty may be retired at the expiration of six months from the date of his or her disability, upon his or her written request filed with his or her retirement board. The board may, upon such request being filed, consult such medical advice as it sees fit, and may have the applicant examined by such physicians as it deems desirable. If from the reports of such physicians the board finds the applicant capable of performing his or her duties in the fire department, the board may refuse to recommend his or her retirement. If, after the expiration of six months from the date of his or her disability, the board deems it for the good of the fire department or the pension fund it may recommend the retirement of a ~~((fireman))~~ firefighter disabled as a result of the performance of duty without any request for the same by him or her, and after having been given by the board a thirty days' written notice of such recommendation he or she shall be retired.

**Sec. 48.** RCW 41.18.060 and 1992 c 22 s 1 are each amended to read as follows:

Whenever the retirement board, pursuant to examination by the board's physician and such other evidence as it may require, shall find a firefighter has been disabled while in the performance of his or her duties it shall declare the firefighter inactive. For a period of six months from the time of the disability the firefighter shall draw from the pension fund a disability allowance equal to his or her basic monthly salary and, in addition, shall be provided with medical, hospital and nursing care as long as the disability exists. The board may, at its discretion, elect to reimburse the ~~((disabled))~~ firefighter who is disabled for premiums the firefighter has paid for medical insurance that supplements medicare, including premiums the firefighter has paid for medicare part B coverage. If the board finds at the expiration of six months that the firefighter is unable to return to and perform his or her duties, the firefighter shall be

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retired at a monthly sum equal to fifty percent of the amount of his or her basic salary at any time thereafter attached to the rank which he or she held at the date of retirement: PROVIDED, That where, at the time of retirement hereafter for disability under this section, the firefighter has served honorably for a period of more than twenty-five years as a member, in any capacity of the regularly constituted fire department of a municipality, the firefighter shall have his or her pension payable under this section increased by two percent of his or her basic salary per year for each full year of additional service to a maximum of five additional years.

**Sec. 49.** RCW 41.18.080 and 1973 1st ex.s. c 154 s 72 are each amended to read as follows:

Any ~~((fireman))~~ firefighter who has completed his or her probationary period and has been permanently appointed, and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, may request to be retired by filing a written request with his or her retirement board within sixty days from the date of his or her disability. The board may, upon such request being filed, consult such medical advice as it deems fit and proper. If the board finds the ~~((fireman))~~ firefighter capable of performing his or her duties, it may refuse to recommend retirement and order the ~~((fireman))~~ firefighter back to duty. If no request for retirement has been received after the expiration of sixty days from the date of his or her disability, the board may recommend retirement of the ~~((fireman))~~ firefighter. The board shall give the ~~((fireman))~~ firefighter a thirty-day written notice of its recommendation, and he or she shall be retired upon expiration of said notice. Upon retirement he or she shall receive a pension equal to fifty percent of his or her basic salary. For a period of ninety days following such disability the ~~((fireman))~~ firefighter shall receive an allowance from the fund equal to his or her basic salary. He or she shall during said ninety days be provided with such medical, hospital, and nursing care as the board deems proper. No funds shall be expended for such disability if the board determines that the ~~((fireman))~~ firefighter was gainfully employed or engaged for compensation in other than fire department duty when the disability occurred, or if such disability was the result of dissipation or abuse. Whenever any ~~((fireman))~~ firefighter shall die as a result of a disability sustained not in the line of duty, his widow or her widower shall receive a monthly pension equal to one-third of his or her basic salary until remarried; if such widow or widower has dependent upon her or him for support a child or children of such deceased ~~((fireman))~~ firefighter, he or she shall receive an additional pension as follows: One child, one-eighth of the deceased's basic salary; two children, one-seventh; three or more children, one-sixth. If there be no widow or widower, monthly payments equal to one-third of the deceased ~~((fireman's))~~ firefighter's basic salary shall be made to his or her child or children. The widow or widower may elect at any time in writing to receive a cash settlement, and if the board after hearing finds it financially beneficial to the pension fund, he or she may receive the sum of five thousand dollars cash in lieu of all future monthly pension payments, and other benefits, including benefits to any child and/or children.

**Sec. 50.** RCW 41.18.090 and 1955 c 382 s 15 are each amended to read as follows:

The board shall require all ~~((firemen))~~ firefighters receiving disability pensions to be examined every six months: PROVIDED, That no such examinations shall be required if upon certification by physicians the board shall formally enter upon its records a finding of fact that the disability is and will continue to be of such a nature that return to active duty can never reasonably be expected. All examinations shall be made by physicians duly appointed by the board. If a ~~((fireman))~~ firefighter shall willfully fail to present himself or herself for examination, within thirty days after being ordered so to do, he or she shall forfeit all rights under this chapter. If such ~~((fireman))~~ firefighter, upon examination as aforesaid, shall be found fit for service, he or she shall be restored to duty in the same rank held at the time of his or her retirement, or if unable to perform the duties of said rank then, at his or her request, in such other like or lesser rank as may be or become open and

available, the duties of which he or she is then able to perform. The board shall thereupon so notify the ~~((fireman))~~ firefighter and shall require him or her to resume his or her duties as a member of the fire department. If, upon being so notified, such member shall willfully fail to report for employment within ten days, he or she shall forfeit all rights to any benefit under this chapter.

**Sec. 51.** RCW 41.18.100 and 1975 1st ex.s. c 178 s 4 are each amended to read as follows:

In the event a ~~((fireman))~~ firefighter is killed in the performance of duty, or in the event a ~~((fireman))~~ firefighter retired on account of service connected disability shall die from any cause, his widow or her widower shall receive a monthly pension under one of the following applicable provisions: (1) If a ~~((fireman))~~ firefighter is killed in the line of duty his widow or her widower shall receive a monthly pension equal to fifty percent of his or her basic salary at the time of his or her death; (2) if a ~~((fireman))~~ firefighter who has retired on account of a service connected disability dies, his widow or her widower shall receive a monthly pension equal to the amount of the monthly pension such retired ~~((fireman))~~ firefighter was receiving at the time of his or her death. If she or he at any time so elects in writing and the board after hearing finds it to be financially beneficial to the pension fund, he or she may receive in lieu of all future monthly pension and other benefits, including benefits to child or children, the sum of five thousand dollars in cash. If there be no widow or widower at the time of such ~~((fireman's))~~ firefighter's death or upon the widow's or widower's death the monthly pension benefits hereinabove provided for shall be paid to and divided among his or her child or children share and share alike, until they reach the age of eighteen or are married, whichever occurs first. The widow's or widower's monthly pension benefit, including increased benefits to his or her children shall cease if and when he or she remarries: PROVIDED, That no pension payable under the provisions of this section shall be less than that specified under RCW 41.18.200.

**Sec. 52.** RCW 41.18.102 and 1969 ex.s. c 209 s 32 are each amended to read as follows:

The provisions of RCW 41.18.040 and 41.18.100 shall be applicable to all ~~((firemen))~~ firefighters employed prior to March 1, 1970, but shall not apply to any former ~~((fireman))~~ firefighter who has terminated his or her employment prior to July 1, 1969.

**Sec. 53.** RCW 41.18.130 and 1969 ex.s. c 209 s 31 are each amended to read as follows:

Any ~~((fireman))~~ firefighter who shall have served for a period of less than twenty-five years, or who shall be less than fifty years of age, and shall resign, or be dismissed from the fire department for a reason other than conviction for a felony, shall be paid the amount of his or her contributions to the fund plus earned interest: PROVIDED, That in the case of any ~~((fireman))~~ firefighter who has completed twenty years of service, such ~~((fireman))~~ firefighter, upon termination for any cause except for a conviction of a felony, shall have the option of electing, in lieu of recovery of his or her contributions as herein provided, to be classified as a vested ~~((fireman))~~ firefighter in accordance with the following provisions:

(1) Written notice of such election shall be filed with the board within thirty days after the effective date of such ~~((fireman's))~~ firefighter's termination;

(2) During the period between the date of his or her termination and the date upon which he or she becomes a retired ~~((fireman))~~ firefighter as hereinafter provided, such vested ~~((fireman))~~ firefighter and his or her spouse or dependent children shall be entitled to all benefits available under chapter 41.18 RCW to a retired ~~((fireman))~~ firefighter and his or her spouse or dependent children with the exception of the service retirement allowance as herein provided for: PROVIDED, That any claim for medical coverage under RCW 41.18.060 shall be attributable to service connected illness or injury;

(3) Any ~~((fireman))~~ firefighter electing to become a vested ~~((fireman))~~ firefighter shall be entitled at such time as he or she otherwise would have completed twenty-five years of service had he or she not terminated, to receive a service retirement

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allowance computed on the following basis: Two percent of the amount of salary attached to the position held by the vested ~~((fireman))~~ firefighter for the year preceding the date of his or her termination, for each year of service rendered prior to the date of his or her termination.

**Sec. 54.** RCW 41.18.140 and 1961 c 255 s 7 are each amended to read as follows:

The board shall pay from the ~~((firemen's))~~ firefighters' pension fund upon the death of any active or retired ~~((fireman))~~ firefighter the sum of five hundred dollars, to assist in defraying the funeral expenses of such ~~((fireman))~~ firefighter.

**Sec. 55.** RCW 41.18.150 and 1955 c 382 s 14 are each amended to read as follows:

Every person who was a member of the fire department at the time he or she entered and served in the armed forces of the United States in time of war, whether as a draftee, or inductee, and who shall have been discharged from such armed forces under conditions other than dishonorable, shall have added and accredited to his or her period of employment as a ~~((fireman))~~ firefighter his or her period of war or peacetime service in the armed forces: PROVIDED, That such added and accredited service shall not as to any individual exceed five years.

**Sec. 56.** RCW 41.18.160 and 1955 c 382 s 17 are each amended to read as follows:

Every ~~((fireman))~~ firefighter as defined in this chapter heretofore employed as a member of a fire department, whether or not as a prior ~~((fireman))~~ firefighter as defined in chapter 41.16 RCW, who desires to make the contributions and avail himself or herself of the pension and other benefits of said chapter 41.16 RCW, can do so by handing to and leaving with the ~~((firemen's))~~ firefighters' pension board of his or her municipality a written notice of such intention within sixty days of the effective date of this chapter, or if he or she was on disability retirement under chapter 41.16 RCW, at the effective date of this chapter and has been recalled to active duty by the retirement board, shall give such notice within sixty days of his or her return to active duty, and not otherwise.

**Sec. 57.** RCW 41.18.165 and 1959 c 69 s 1 are each amended to read as follows:

Every person who was a member of a fire-fighting organization operated by a private enterprise, which fire-fighting organization shall be hereafter acquired before September 1, 1959, by a municipality as its fire department as a matter of public convenience or necessity, where it is in the public interest to retain the trained personnel of such fire-fighting organization, shall have added and accredited to his or her period of employment as a ~~((fireman))~~ firefighter his or her period of service with said private enterprise, except that this shall apply only to those persons who are in the service of such fire-fighting organization at the time of its acquisition by the municipality and who remain in the service of that municipality until this chapter shall become applicable to such persons.

No such person shall have added and accredited to his or her period of employment as a ~~((fireman))~~ firefighter his or her period of service with said private enterprise unless he, she, or a third party shall pay to the municipality his or her contribution for the period of such service with the private enterprise at the rate provided in RCW 41.18.030, or, if he or she shall be entitled to any private pension or retirement benefits as a result of such service with the private enterprise, unless he or she agrees at the time of his or her employment by the municipality to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added and accredited service by the amount of those private pension or retirement benefits received. For the purposes of RCW 41.18.030, the date of entry of service shall be deemed the date of entry into service with the private enterprise, which service is accredited by this section, and the amount of contributions for the period of accredited service shall be based on the wages or salary of such person during that added and accredited period of service with the private enterprise.

The city may receive payments for these purposes from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable the fund to assume its obligations.

**Sec. 58.** RCW 41.18.170 and 1955 c 382 s 16 are each amended to read as follows:

The provisions of this chapter governing contributions, pensions, and benefits shall have exclusive application (1) to ~~((firemen))~~ firefighters as defined in this chapter hereafter becoming members of a fire department, (2) to ~~((firemen))~~ firefighters as defined in this chapter heretofore employed in a department who have not otherwise elected as provided for in RCW 41.18.160, and (3) to ~~((firemen))~~ firefighters on disability retirement under chapter 41.16 RCW, at the effective date of this chapter, who thereafter shall have been returned to active duty by the retirement board, and who have not otherwise elected as provided for in RCW 41.18.160 within sixty days after return to active duty.

**Sec. 59.** RCW 41.18.180 and 1961 c 255 s 12 are each amended to read as follows:

Any ~~((fireman))~~ firefighter who has made contributions under any prior act may elect to avail himself or herself of the benefits provided by this chapter or under such prior act by filing written notice with the board within sixty days from the effective date of this 1961 amendatory act: PROVIDED, That any ~~((fireman))~~ firefighter who has received refunds by reason of selecting the benefits of prior acts shall return the amount of such refunds as a condition to coverage under this 1961 amendatory act.

**Sec. 60.** RCW 41.18.190 and 1969 ex.s. c 209 s 41 are each amended to read as follows:

Any ~~((fireman))~~ firefighter as defined in RCW 41.18.010 who has prior to July 1, 1969 been employed as a member of a fire department and who desires to make contributions and avail himself or herself of the pension and other benefits of chapter 41.18 RCW as now law or hereafter amended, may transfer his or her membership from any other pension fund, except the Washington law enforcement officers' and firefighters' retirement system, to the pension fund provided in chapter 41.18 RCW: PROVIDED, That such ~~((fireman))~~ firefighter transmits written notice of his or her intent to transfer to the pension board of his or her municipality prior to September 1, 1969.

**Sec. 61.** RCW 41.18.210 and 1974 ex.s. c 148 s 1 are each amended to read as follows:

Any former employee of a department of a city of the first class, who (1) was a member of the employees' retirement system of such city, and (2) is now employed within the fire department of such city, may transfer his or her former membership credit from the city employees' retirement system to the ~~((fireman's))~~ firefighter's pension system created by chapters 41.16 and 41.18 RCW by filing a written request with the board of administration and the municipal ~~((fireman's))~~ firefighters' pension board, respectively.

Upon the receipt of such request, the transfer of membership to the city's ~~((fireman's))~~ firefighter's pension system shall be made, together with a transfer of all accumulated contributions credited to such member. The board of administration shall transmit to the municipal ~~((fireman's))~~ firefighters' pension board a record of service credited to such member which shall be computed and credited to such member as a part of his or her period of employment in the city's ~~((fireman's))~~ firefighter's pension system. For the purpose of the transfer contemplated by this section, those affected individuals who have formerly withdrawn funds from the city employees' retirement system shall be allowed to restore contributions withdrawn from that retirement system directly to the ~~((fireman's))~~ firefighter's pension system and receive credit in the ~~((fireman's))~~ firefighter's pension system for their former membership service in the prior system.

Any employee so transferring shall have all the rights, benefits, and privileges that he or she would have been entitled to had he or she been a member of the city's ~~((fireman's))~~ firefighter's pension system from the beginning of his or her employment with the city.

No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon such service with the city.

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The right of any employee to file a written request for transfer of membership as set forth in this section shall expire December 31, 1974.

**Sec. 62.** RCW 9.40.130 and 1971 ex.s. c 302 s 5 are each amended to read as follows:

RCW 9.40.120, as now or hereafter amended, shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the armed forces of the United States or by (~~firemen~~) firefighters, or peace officers, nor shall these sections prohibit the use or possession of any material, substance, or device described therein when used solely for scientific research or educational purposes or for any lawful purpose. RCW 9.40.120, as now or hereafter amended, shall not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this section.

**Sec. 63.** RCW 9A.48.020 and 1981 c 203 s 2 are each amended to read as follows:

(1) A person is guilty of arson in the first degree if he or she knowingly and maliciously:

(a) Causes a fire or explosion which is manifestly dangerous to any human life, including (~~firemen~~) firefighters; or

(b) Causes a fire or explosion which damages a dwelling; or

(c) Causes a fire or explosion in any building in which there shall be at the time a human being who is not a participant in the crime; or

(d) Causes a fire or explosion on property valued at ten thousand dollars or more with intent to collect insurance proceeds.

(2) Arson in the first degree is a class A felony.

**Sec. 64.** RCW 19.09.100 and 1994 c 287 s 2 are each amended to read as follows:

The following conditions apply to solicitations as defined by RCW 19.09.020:

(1) A charitable organization, whether or not required to register pursuant to this chapter, that directly solicits contributions from the public in this state shall make the following clear and conspicuous disclosures at the point of solicitation:

(a) The name of the individual making the solicitation;

(b) The identity of the charitable organization and the city of the principal place of business of the charitable organization;

(c) If requested by the solicitee, the published number in the office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary.

(2) A commercial fund raiser shall clearly and conspicuously disclose at the point of solicitation:

(a) The name of the individual making the solicitation;

(b) The name of the entity for which the fund raiser is an agent or employee and the name and city of the charitable organization for which the solicitation is being conducted; and

(c) If requested by the solicitee, the published number in the office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made.

(3) A person or organization soliciting charitable contributions by telephone shall make the disclosures required under subsection (1) or (2) of this section in the course of the solicitation but prior to asking for a commitment for a contribution from the solicitee, and in writing to any solicitee that makes a pledge within five working days of making the pledge. If the person or organization sends any materials to the person or organization solicited before the receipt of any contribution, those materials shall include the disclosures required in subsection (1) or (2) of this section, whichever is applicable.

(4) In the case of a solicitation by advertisement or mass distribution, including posters, leaflets, automatic dialing machines, publication, and audio or video broadcasts, it shall be clearly and conspicuously disclosed in the body of the solicitation material that:

(a) The solicitation is conducted by a named commercial fund raiser, if it is;

(b) The notice of solicitation required by the charitable solicitation act is on file with the secretary's office; and

(c) The potential donor can obtain additional financial disclosure information at a published number in the office of the secretary.

(5) A container or vending machine displaying a solicitation must also display in a clear and conspicuous manner the name of the charitable organization for which funds are solicited, the name, business address, and telephone number of the individual and any commercial fund raiser responsible for collecting funds placed in the containers or vending machines, and the following statement: "This charity is currently registered with the secretary's office under the charitable solicitation act, registration number . . ."

(6) A commercial fund raiser shall not represent that tickets to any fund raising event will be donated for use by another person unless all the following requirements are met:

(a) The commercial fund raiser prior to conducting a solicitation has written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they will accept;

(b) The written commitments are kept on file by the commercial fund raiser for three years and are made available to the secretary, attorney general, or county prosecutor on demand;

(c) The contributions solicited for donated tickets may not be more than the amount representing the number of ticket commitments received from persons and kept on file under (a) of this subsection; and

(d) Not later than seven calendar days prior to the date of the event for which ticket donations are solicited, the commercial fund raiser shall give all donated tickets to the persons who made the written commitments to accept them.

(7) Each person or organization soliciting charitable contributions shall not represent orally or in writing that:

(a) The charitable contribution is tax deductible unless the charitable organization for which charitable contributions are being solicited or to which tickets for fund raising events or other services or goods will be donated, has applied for and received from the internal revenue service a letter of determination granting tax deductible status to the charitable organization;

(b) The person soliciting the charitable contribution is a volunteer or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor unless such person is unpaid for his or her services;

(c) The person soliciting the charitable contribution is a member, staffer, helper, or employee of the charitable organization or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor if the person soliciting is employed, contracted, or paid by a commercial fund raiser.

(8) If the charitable organization is associated with, or has a name that is similar to, any unit of government each person or organization soliciting contributions shall disclose to each person solicited whether the charitable organization is or is not part of any unit of government and the true nature of its relationship to the unit of government. This subsection does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name.

(9) No person may, in conducting any solicitation, use the name "police," "sheriff," "fire fighter," (~~"firemen,"~~) "firefighters," or a similar name unless properly authorized by a bona fide police, sheriff, or fire fighter organization or police, sheriff, or fire department. A proper authorization shall be in writing and signed by two authorized officials of the organization or department and shall be filed with the secretary.

(10) A person may not, in conducting any solicitation, use the name of a federally chartered or nationally recognized military veterans' service organization as determined by the United States veterans' administration unless authorized in



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writing by the highest ranking official of that organization in this state.

(11) A charitable organization shall comply with all local governmental regulations that apply to soliciting for or on behalf of charitable organizations.

(12) The advertising material and the general promotional plan for a solicitation shall not be false, misleading, or deceptive, and shall afford full and fair disclosure.

(13) Solicitations shall not be conducted by a charitable organization or commercial fund raiser that has, or if a corporation, its officers, directors, or principals have, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this state, the United States, or any other state or foreign country within the past ten years or has been subject to any permanent injunction or administrative order or judgment under RCW 19.86.080 or 19.86.090, involving a violation or violations of RCW 19.86.020, within the past ten years, or of restraining a false or misleading promotional plan involving solicitations for charitable organizations.

(14) No charitable organization or commercial fund raiser subject to this chapter may use or exploit the fact of registration under this chapter so as to lead the public to believe that registration constitutes an endorsement or approval by the state, but the use of the following is not deemed prohibited: "Currently registered with the Washington state secretary of state as required by law. Registration number . . ."

(15) No entity may engage in any solicitation for contributions for or on behalf of any charitable organization or commercial fund raiser unless the charitable organization or commercial fund raiser is currently registered with the secretary.

(16) No entity may engage in any solicitation for contributions unless it complies with all provisions of this chapter.

(17)(a) No entity may place a telephone call for the purpose of charitable solicitation that will be received by the solicitee before eight o'clock a.m. or after nine o'clock p.m.

(b) No entity may, while placing a telephone call for the purpose of charitable solicitation, engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call.

(18) Failure to comply with subsections (1) through (17) of this section is a violation of this chapter.

**Sec. 65.** RCW 35.17.100 and 1965 c 7 s 35.17.100 are each amended to read as follows:

Every member of the city commission, before qualifying, shall give a good and sufficient bond to the city in a sum equivalent to five times the amount of his or her annual salary, conditioned for the faithful performance of the duties of his or her office. The bonds must be approved by a judge of the superior court for the county in which the city is located and filed with the clerk thereof. The commission, by resolution, may require any of its appointees to give bond to be fixed and approved by the commission and filed with the mayor.

**Sec. 66.** RCW 35A.11.020 and 1993 c 83 s 8 are each amended to read as follows:

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for ~~((firemen))~~ firefighters and ~~((policemen))~~ police officers which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for ~~((firemen))~~ firefighters and chapter 41.12 RCW for ~~((policemen))~~ police officers now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for ~~((firemen))~~ firefighters or ~~((policemen))~~ police officers which provides different pensions

or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080.

**Sec. 67.** RCW 35.27.240 and 1987 c 3 s 13 are each amended to read as follows:

The department of police in a town shall be under the direction and control of the marshal subject to the direction of the mayor. He or she may pursue and arrest violators of town ordinances beyond the town limits.

~~((His))~~ The marshal's lawful orders shall be promptly executed by deputies, police officers and ~~((watchmen))~~ watchpersons. Every citizen shall lend him or her aid, when required, for the arrest of offenders and maintenance of public order. He or she may appoint, subject to the approval of the mayor, one or more deputies, for whose acts he and his ~~((bondsmen))~~ or her bondspersons shall be responsible, whose compensation shall be fixed by the council. With the concurrence of the mayor, ~~((he))~~ the marshal may appoint additional ~~((policemen))~~ police officers for one day only when necessary for the preservation of public order.

~~((He))~~ The marshal shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

~~((He))~~ The marshal shall execute and return all process issued and directed to him or her by any legal authority and for his or her services shall receive the same fees as are paid to constables. ~~((He))~~ The marshal shall perform such other services as the council by ordinance may require.

**Sec. 68.** RCW 35.66.040 and 1965 c 7 s 35.66.040 are each amended to read as follows:

A police matron must be paid such compensation for her services as shall be fixed by the city council and at such time as may be appointed for the payment of ~~((policemen))~~ police officers.

**Sec. 69.** RCW 35.75.050 and 1965 c 7 s 35.75.050 are each amended to read as follows:

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The city or town council shall by ordinance provide that the whole amount or any amount not less than seventy-five percent of all license fees, penalties or other moneys collected under the authority of this chapter shall be paid into and placed to the credit of a special fund to be known as the "bicycle road fund." The moneys in the bicycle road fund shall not be transferred to any other fund and shall be paid out for the sole purpose of building and maintaining bicycle paths and roadways authorized to be constructed and maintained by this chapter or for special ~~((policemen))~~ police officers, bicycle tags, stationery and other expenses growing out of the regulating and licensing of the riding of bicycles and other vehicles and the construction, maintenance and regulation of the use of bicycle paths and roadways.

**Sec. 70.** RCW 35.88.020 and 1965 c 7 s 35.88.020 are each amended to read as follows:

Every city and town may by ordinance prescribe what acts shall constitute offenses against the purity of its water supply and the punishment or penalties therefor and enforce them. The mayor of each city and town may appoint special ~~((policemen))~~ police officers, with such compensation as the city or town may fix, who shall, after taking oath, have the powers of constables, and who may arrest with or without warrant any person committing, within the territory over which any city or town is given jurisdiction by this chapter, any offense declared by law or by ordinance, against the purity of the water supply, or which violate any rule or regulation lawfully promulgated by the state board of health for the protection of the purity of such water supply. Every special ~~((policeman))~~ police officer whose appointment is authorized herein may take any person arrested for any such offense or violation before any court having jurisdiction thereof to be proceeded with according to law. Every such special ~~((policeman))~~ police officer shall, when on duty wear in plain view a badge or shield bearing the words "special police" and the name of the city or town by which he or she has been appointed.

**Sec. 71.** RCW 41.44.060 and 1951 c 275 s 3 are each amended to read as follows:

~~((Policemen))~~ Police officers in first class cities and all city ~~((firemen))~~ firefighters shall be excluded from the provisions of this chapter, except those employees of the fire department who are not eligible to the benefits of any ~~((firemen's))~~ firefighters' pension system established by or pursuant to state law, and who shall be included in the miscellaneous personnel.

**Sec. 72.** RCW 41.48.030 and 1971 ex.s. c 257 s 19 are each amended to read as follows:

(1) The governor is hereby authorized to enter on behalf of the state into an agreement with the secretary of health, education, and welfare consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision not members of an existing retirement system, or to members of a retirement system established by the state or by a political subdivision thereof or by an institution of higher learning with respect to services specified in such agreement which constitute "employment" as defined in RCW 41.48.020. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the governor and secretary of health, education, and welfare shall agree upon, but, except as may be otherwise required by or under the social security act as to the services to be covered, such agreement shall provide in effect that--

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of title II of the social security act;

(b) The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the social security act, contributions with respect to wages (as defined in RCW 41.48.020), equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services

covered by the agreement constituted employment within the meaning of that act;

(c) Such agreement shall be effective with respect to services in employment covered by the agreement or modification thereof performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year immediately preceding the calendar year in which such agreement or modification of the agreement is accepted by the secretary of health, education and welfare.

(d) All services which constitute employment as defined in RCW 41.48.020 and are performed in the employ of the state by employees of the state, shall be covered by the agreement;

(e) All services which (i) constitute employment as defined in RCW 41.48.020, (ii) are performed in the employ of a political subdivision of the state, and (iii) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the governor under RCW 41.48.050, shall be covered by the agreement; and

(f) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals to whom section 218(c)(3)(C) of the social security act is applicable, and shall provide that the service of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of a retirement system; and

(g) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the secretary of health, education, and welfare pursuant to subsection (5) of this section.

(h) Law enforcement officers and ~~((firemen))~~ firefighters of each political subdivision of this state who are covered by the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act (chapter 209, Laws of 1969 ex. sess.) as now in existence or hereafter amended shall constitute a separate "coverage group" for purposes of the agreement entered into under this section and for purposes of section 218 of the social security act. To the extent that the agreement between this state and the federal secretary of health, education, and welfare in existence on the date of adoption of this subsection is inconsistent with this subsection, the governor shall seek to modify the inconsistency.

(2) Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (a) to enter into an agreement with the secretary of health, education, and welfare whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such instrumentality, (b) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under RCW 41.48.040(1) if they were covered by an agreement made pursuant to subsection (1) of this section, and (c) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) and other provisions of this chapter.

(3) The governor is empowered to authorize a referendum, and to designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the social security act, and subsection (4) of this section on the question of whether service in all positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. If a retirement system covers positions of employees of the state of Washington, of the institutions of higher learning, and positions of employees of one or more of the political subdivisions of the state, then for the purpose of the referendum as provided herein, there may be deemed to be a separate retirement system with respect to employees of the state, or any one or more of the political subdivisions, or institutions of higher learning and the

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governor shall authorize a referendum upon request of the subdivisions' or institutions' of higher learning governing body: PROVIDED HOWEVER, That if a referendum of state employees generally fails to produce a favorable majority vote then the governor may authorize a referendum covering positions of employees in any state department who are compensated in whole or in part from grants made to this state under title III of the federal social security act: PROVIDED, That any city or town affiliated with the statewide city employees retirement system organized under chapter 41.44 RCW may at its option agree to a plan submitted by the board of trustees of said statewide city employees retirement system for inclusion under an agreement under this chapter if the referendum to be held as provided herein indicates a favorable result: PROVIDED FURTHER, That the teachers' retirement system be considered one system for the purpose of the referendum except as applied to the several colleges of education. The notice of referendum required by section 218(d)(3)(C) of the social security act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(4) The governor, before authorizing a referendum, shall require the following conditions to be met:

(a) The referendum shall be by secret written ballot on the question of whether service in positions covered by such retirement system shall be excluded from or included under the agreement between the governor and the secretary of health, education, and welfare provided for in RCW 41.48.030(1);

(b) An opportunity to vote in such referendum shall be given and shall be limited to eligible employees;

(c) Not less than ninety days' notice of such referendum shall be given to all such employees;

(d) Such referendum shall be conducted under the supervision (of the governor or) of an agency or individual designated by the governor;

(e) The proposal for coverage shall be approved only if a majority of the eligible employees vote in favor of including services in such positions under the agreement;

(f) The state legislature, in the case of a referendum affecting the rights and liabilities of state employees covered under the state employees' retirement system and employees under the teachers' retirement system, and in all other cases the local legislative authority or governing body, shall have specifically approved the proposed plan and approved any necessary structural adjustment to the existing system to conform with the proposed plan.

(5) Upon receiving satisfactory evidence that with respect to any such referendum the conditions specified in subsection (4) of this section and section 218(d)(3) of the social security act have been met, the governor shall so certify to the secretary of health, education, and welfare.

(6) If the legislative body of any political subdivision of this state certifies to the governor that a referendum has been held under the terms of RCW 41.48.050(1)(i) and gives notice to the governor of termination of social security for any coverage group of the political subdivision, the governor shall give two years advance notice in writing to the federal department of health, education, and welfare of such termination of the agreement entered into under this section with respect to said coverage group.

**Sec. 73.** RCW 46.37.185 and 1987 c 330 s 709 are each amended to read as follows:

~~(Firemen)~~ **Firefighters**, when approved by the chief of their respective service, shall be authorized to use a green light on the front of their private cars when on emergency duty only. Such green light shall be visible for a distance of two hundred feet under normal atmospheric conditions and shall be of a type and mounting approved by the Washington state patrol. The use of the green light shall only be for the purpose of identification and the operator of a vehicle so equipped shall not be entitled to

any of the privileges provided in RCW 46.61.035 for the operators of authorized emergency vehicles.

**Sec. 74.** RCW 81.28.080 and 1973 1st ex.s. c 154 s 117 are each amended to read as follows:

No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances. No common carrier shall, directly or indirectly, issue or give any free ticket, free pass or free or reduced transportation for passengers between points within this state, except its employees and their families, surgeons and physicians and their families, its officers, agents and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals, charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk and fruit; to employees of sleeping car companies, express companies, and to ~~(firemen)~~ lineworkers of telegraph and telephone companies; to railway mail service employees, post office inspectors, customs inspectors and immigration inspectors; to ~~(newsboys)~~ newspaper delivery persons on trains; baggage agents, witnesses attending any legal investigation in which the common carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons; to the National Guard of Washington when on official duty, and students going to and returning from state institutions of learning: PROVIDED, That this provision shall not be construed to prohibit the interchange of passes for the officers, attorneys, agents and employees and their families, of railroad companies, steamboat companies, express companies and sleeping car companies with other railroad companies, steamboat companies, express companies and sleeping car companies, nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: AND PROVIDED, FURTHER, That this provision shall not be construed to prohibit the exchange of passes or franks for the officers, attorneys, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, attorneys, agents, employees, and their families of other telegraph, telephone or cable lines, or with railroad companies, express companies or sleeping car companies: PROVIDED, FURTHER, That the term "employee" as used in this section shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed or dying in the employment of a carrier, those entering or leaving its service and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this section shall include the families of those persons named in this proviso, also the families of persons killed and the surviving spouses prior to remarriage and minor children during minority, of persons who died while in the service of any such common carrier: AND PROVIDED, FURTHER, That nothing herein contained shall prevent the issuance of mileage, commutation tickets or excursion passenger tickets: AND PROVIDED, FURTHER, That nothing in this section shall be construed to prevent the issuance of free or reduced transportation by any street railroad company for mail carriers, or ~~(policemen)~~ police officers or members of fire

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departments, city officers, and employees when engaged in the performance of their duties as such city employees.

Common carriers subject to the provisions of this title may carry, store or handle, free or at reduced rates, property for the United States, state, county or municipal governments, or for charitable purposes, or to or from fairs and exhibitions for exhibition thereat, and may carry, store or handle, free or at reduced rates, the household goods and personal effects of its employees and those entering or leaving its service and those killed or dying while in its service.

Nothing in this title shall be construed to prohibit the making of a special contract providing for the mutual exchange of service between any railroad company and any telegraph or telephone company, where the line of such telegraph or telephone company is situated upon or along the railroad right of way and used by both of such companies.

**Sec. 75.** RCW 35.23.121 and 1995 c 301 s 36 are each amended to read as follows:

The city clerk shall keep a full and true record of every act and proceeding of the city council and keep such books, accounts and make such reports as may be required by the state auditor. The city clerk shall record all ordinances, annexing thereto his or her certificate giving the number and title of the ordinance, stating that the ordinance was published and posted according to law and that the record is a true and correct copy thereof. The record copy with the clerk's certificate shall be prima facie evidence of the contents of the ordinance and of its passage and publication and shall be admissible as such evidence in any court or proceeding.

The city clerk shall be custodian of the seal of the city and shall have authority to acknowledge the execution of all instruments by the city which require acknowledgment.

The city clerk may appoint a deputy for whose acts he or she and his or her ~~((bondsmen))~~ bondspersons shall be responsible, and he or she and his or her deputy shall have authority to take all necessary affidavits to claims against the city and certify them without charge.

The city clerk shall perform such other duties as may be required by statute or ordinance.

**Sec. 76.** RCW 35.27.220 and 1965 c 7 s 35.27.220 are each amended to read as follows:

The town clerk shall be custodian of the seal of the town. ~~((He))~~ The town clerk may appoint a deputy for whose acts he or she and his ~~((bondsmen))~~ bondspersons shall be responsible~~((-he))~~. The town clerk and his or her deputy may administer oaths or affirmations and certify to them, and may take affidavits and depositions to be used in any court or proceeding in the state.

~~((He))~~ The town clerk shall make a quarterly statement in writing showing the receipts and expenditures of the town for the preceding quarter and the amount remaining in the treasury.

At the end of every fiscal year ~~((he))~~ the town clerk shall make a full and detailed statement of receipts and expenditures of the preceding year and a full statement of the financial condition of the town which shall be published.

~~((He))~~ The town clerk shall perform such other services as may be required by statute or by ordinances of the town council.

~~((He))~~ The town clerk shall keep a full and true account of all the proceedings of the council.

**Sec. 77.** RCW 59.12.110 and 1905 c 86 s 4 are each amended to read as follows:

The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the court or any judge thereof for an order raising or lowering the amount of any bond in this chapter provided for. Either party may, upon like notice, apply to the court or any judge thereof for an order requiring additional or other surety or sureties upon any such bond. Upon the hearing or any application made under the provisions of this section evidence may be given. The judge after hearing any such application shall make such an order as shall be just in the premises. The ~~((bondsmen))~~ bondspersons may be required to be present at such hearing if so required in the notice thereof, and shall answer under oath all questions that may be asked them touching their qualifications as ~~((bondsmen))~~ bondspersons, and in the event the ~~((bondsmen))~~ bondspersons

shall fail or refuse to appear at such hearing and so answer such questions the bond shall be stricken. In the event the court shall order a new or additional bond to be furnished by defendant, and the same shall not be given within twenty-four hours, the court shall order the sheriff to forthwith execute the writ. In the event the defendant shall file a second or additional bond and it shall also be found insufficient after hearing, as above provided, the right to retain the premises by bond shall be lost and the sheriff shall forthwith put the plaintiff in possession of the premises.

**Sec. 78.** RCW 82.38.230 and 1998 c 176 s 77 are each amended to read as follows:

Whenever any licensee is delinquent in the payment of any obligation imposed hereunder, and such delinquency continues after notice and demand for payment by the department, the department shall proceed to collect the amount due from the licensee in the following manner: The department shall seize any property subject to the lien of said excise tax, penalty, and interest and thereafter sell it at public auction to pay said obligation and any and all costs that may have been incurred on account of the seizure and sale. Notice of such intended sale and the time and place thereof shall be given to such delinquent licensee and to all persons appearing of record to have an interest in such property. The notice shall be given in writing at least ten days before the date set for the sale by enclosing it in an envelope addressed to the licensee at the licensee's address as the same appears in the records of the department and, in the case of any person appearing of record to have an interest in such property, addressed to such person at his or her last known residence or place of business, and depositing such envelope in the United States mail, postage prepaid. In addition, the notice shall be published for at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the property to be sold, together with a statement of the amount due under this chapter, the name of the licensee and the further statement that unless such amount is paid on or before the time fixed in the notice the property will be sold in accordance with law.

The department shall then proceed to sell the property in accordance with the law and the notice, and shall deliver to the purchaser a bill of sale or deed which shall vest title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state under this chapter from the delinquent licensee, the excess shall be returned to the licensee and the licensee's receipt obtained for the excess. If any person having an interest in or lien upon the property has filed with the department prior to such sale, notice of such interest or lien, the department shall withhold payment of any such excess to the licensee pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the licensee is not available, the department shall deposit such excess with the state treasurer as trustee for the licensee or the licensee's heirs, successors, or assigns: PROVIDED, That prior to making any seizure of property as provided for in this section, the department may first serve upon the licensee's ~~((bondsmen))~~ bondsperson a notice of the delinquency, with a demand for the payment of the amount due.

**Sec. 79.** RCW 87.03.020 and 1988 c 127 s 40 are each amended to read as follows:

For the purpose of organizing an irrigation district, a petition, signed by the required number of holders of title or evidence of title to land within the proposed district, shall be presented to the board of county commissioners of the county in which the lands, or the greater portion thereof, are situated, which petition shall contain the following:

(1) A description of the lands to be included in the operation of the district, in legal subdivisions or fractions thereof, and the name of the county or counties in which said lands are situated.

(2) The signature and post office address of each petitioner, together with the legal description of the particular lands within the proposed district owned by said respective petitioners.

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(3) A general statement of the probable source or sources of water supply and a brief outline of the plan of improvement, which may be in the alternative, contemplated by the organization of the district.

(4) A statement of the number of directors, either three or five, desired for the administration of the district and of the name by which the petitioners desire the district to be designated.

(5) Any other matter deemed material.

(6) A prayer requesting the board to take the steps necessary to organize the district.

The petition must be accompanied by a good and sufficient bond, to be approved by the board of county commissioners, in double the amount of the probable cost of organizing the district, and conditioned that the ~~((bondsmen))~~ bondspersons will pay all of the cost in case such organization shall not be effected. Said petition shall be presented at a regular meeting of the said board, or at any special meeting ordered to consider and act upon said petition, and shall be published once a week, for at least two weeks (three issues) before the time at which the same is to be presented, in some newspaper of general circulation printed and published in the county where said petition is to be presented, together with a notice signed by the clerk of the board of county commissioners stating the time of the meeting at which the same will be presented. There shall also be published a notice of the hearing on said petition in a newspaper published at Olympia, Washington, to be designated by the director of ecology from year to year, which said notice shall be published for at least two weeks (three issues) prior to the date of said meeting and shall contain the name of the county or counties and the number of each township and range in which the lands embraced within the boundaries of the proposed district are situated, also the time, place and purpose for said meeting, which said notice shall be signed by the petitioner whose name first appears upon the said petition. If any portion of the lands within said proposed district lie within another county or counties, then the said petition and notice shall be published for the time above provided in one newspaper printed and published in each of said counties. The said notice, together with a map of the district, shall also be served by registered mail at least thirty days before the said hearing upon the state director of ecology at Olympia, Washington, who shall, at the expense of the district in case it is later organized, otherwise at the expense of the petitioners' ~~((bondsmen))~~ bondspersons, make such investigation of the sufficiency of the source and supply of water for the purposes of the proposed district, as he or she may deem necessary, and file a report of his or her findings, together with a statement of his or her costs, with the board of county commissioners at or prior to the time set for said hearing. When the petition is presented, the board of county commissioners shall hear the same, shall receive such evidence as it may deem material, and may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing shall establish and define the boundaries of the district along such lines as in the judgment of the board will best reclaim the lands involved and enter an order to that effect: PROVIDED, That said board shall not modify the boundaries so as to except from the operation of the district any territory within the boundaries outlined in the petition, which is susceptible of irrigation by the same system of works applicable to other lands in such proposed district and for which a water supply is available; nor shall any lands which, in the judgment of said board, will not be benefited, be included within such district; any lands included within any district, which have a partial or full water right shall be given equitable credit therefor in the apportionment of the assessments in this act provided for: AND PROVIDED FURTHER, That any owner, whose lands are susceptible of irrigation from the same source, and in the judgment of the board it is practicable to irrigate the same by the proposed district system, shall, upon application to the board at the time of the hearing, be entitled to have such lands included in the district.

At said hearing the board shall also give the district a name and shall order that an election be held therein for the purpose of determining whether or not the district shall be organized under

the provisions of this act and for the purpose of electing directors.

The clerk of the board of county commissioners shall then give notice of the election ordered to be held as aforesaid, which notice shall describe the district boundaries as established, and shall give the name by which said proposed district has been designated, and shall state the purposes and objects of said election, and shall be published once a week, for at least two weeks (three issues) prior to said election, in a newspaper of general circulation published in the county where the petition aforesaid was presented; and if any portion of said proposed district lies within another county or counties, then said notice shall be published in like manner in a newspaper within each of said counties. Said election notice shall also require the electors to cast ballots which shall contain the words "Irrigation District--Yes," and "Irrigation District--No," and also the names of persons to be voted for as directors of the district: PROVIDED, That where in this act publication is required to be made in a newspaper of any county, the same may be made in a newspaper of general circulation in such county, selected by the person or body charged with making the publication and such newspaper shall be the official paper for such purpose.

**Sec. 80.** RCW 87.84.020 and 1961 c 226 s 3 are each amended to read as follows:

A petition to convert an existing irrigation district to an irrigation and rehabilitation district shall be signed by at least fifty holders of title or evidence of title to land within the district. The petition shall contain the following:

- (1) The legal description of the property to be served.
- (2) The signature and address of each petitioner, together with the legal description of the lands within the district owned by each.
- (3) Any other matter deemed material.

The petition shall be accompanied by a bond, to be approved by the board, in double the amount of the probable cost of organizing the district, and conditioned that the ~~((bondsmen))~~ bondsperson will pay all the costs if the organization is not effected.

**Sec. 81.** RCW 19.29.010 and 1989 c 12 s 3 are each amended to read as follows:

It shall be unlawful from and after the passage of this chapter for any officer, agent, or employee of the state of Washington, or of any county, city or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run, place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this chapter.

Rule 1. No wire or cable, except the neutral, carrying a current of less than seven hundred fifty volts of electricity within the corporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is less than thirteen inches from the center line of any pole. And no such wire, except the neutral, shall be run past any pole to which it is not attached at a distance of less than thirteen inches from the center line thereof. This rule shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure and the point of attachment to such building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole; nor to bridle or jumper wires on any pole which are attached to or connected with signal wires on the same pole; nor to any aerial cable as between such cable and any pole upon which it originates or terminates; nor to exclusive telephone or telegraph toll lines; nor to aerial cables containing telephone, telegraph, or signal wires, or wires continuing from same, where the cable is attached to poles on which no wires or cables other than the wires continuing from said cable are maintained, provided, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said aerial cable is placed.

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Rule 2. No wire or cable used to carry a current of over seven hundred fifty volts of electricity within the incorporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is nearer than twenty-four inches to the center line of any pole. And no such wire or cable shall be run past any pole to which it is not attached at a distance of less than twenty-four inches from the center line thereof: PROVIDED, That this shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture, as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with transformers or other appliances on the same pole: PROVIDED FURTHER, That where said wire or cable is run vertically, it shall be rigidly supported and where possible run on the ends of the cross-arms.

Rule 3. No wire or cable carrying a current of more than seven hundred fifty volts, and less than seventy-five hundred volts of electricity, shall be run, placed, erected, maintained or used within three feet of any wire or cable carrying a current of seven hundred fifty volts or less of electricity; and no wire or cable carrying a current of more than seventy-five hundred volts of electricity shall be run, placed, erected, maintained, or used within seven feet of any wire or cable carrying less than seventy-five hundred volts: PROVIDED, That the foregoing provisions of this paragraph shall not apply to any wire or cable within buildings or other structures; nor where the same are run from under ground and placed vertically upon the pole; nor to any service wire or cable where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole: PROVIDED, That where run vertically, wires or cables shall be rigidly supported, and where possible run on the ends of the cross-arms: PROVIDED FURTHER, That as between any two wires or cables mentioned in Rules 1, 2 and 3 of this section, only the wires or cables last in point of time so run, placed, erected or maintained, shall be held to be in violation of the provisions thereof.

Rule 4. No wire or cable used for telephone, telegraph, district messenger, or call bell circuit, fire or burglar alarm, or any other similar system, shall be run, placed, erected, maintained or used on any pole at a distance of less than three feet from any wire or cable carrying a current of over three hundred volts of electricity; and in all cases (except those mentioned in exceptions to Rules 1, 2 and 3) where such wires or cables are run, above or below, or cross over or under electric light or power wires, or a trolley wire, a suitable method of construction, or insulation or protection to prevent contact shall be maintained as between such wire or cable and such electric light, power or trolley wire; and said methods of construction, insulation or protection shall be installed by, or at the expense of the person owning the wire last placed in point of time: PROVIDED, That telephone, telegraph or signal wires or cables operated for private use and not furnishing service to the public, may be placed less than three feet from any line carrying a voltage of less than seven hundred and fifty volts.

Rule 5. Transformers, either single or in bank, that exceed a total capacity of over ten K.W. shall be supported by a double cross-arm, or some fixture equally as strong. No transformer shall be placed, erected, maintained or used on any cross-arm or other appliance on a pole upon which is placed a series electric arc lamp or arc light: PROVIDED, This shall not apply to a span wire supporting a lamp only. All aerial and underground transformers used for low potential distribution shall be subjected to an insulation test in accordance with the standardized rules of the American Institute of Electrical Engineers. In addition to this each transformer shall be tested at rated line voltage prior to each installation and shall have

attached to it a tag showing the date on which the test was made, and the name of the person making the test.

Rule 6. No wire or cable, other than ground wires, used to conduct or carry electricity, shall be placed, run, erected, maintained or used vertically on any pole without causing such wire or cable to be at all times sufficiently insulated the full length thereof to insure the protection of anyone coming in contact with said wire or cable.

Rule 7. The neutral point or wire of all transformer secondaries strung or erected for use in low potential distributing systems shall be grounded in all cases where the normal maximum difference of potential between the ground and any point in the secondary circuit will not exceed one hundred and fifty volts. When no neutral point or wire is accessible one side of the secondary circuit shall be grounded in the case of single phase transformers, and any one common point in the case of interconnected polyphase bank or banks of transformers. Where the maximum difference of potential between the ground and any point in the secondary circuit will, when grounded, exceed one hundred fifty volts, grounding shall be permitted. Such grounding shall be done in the manner provided in Rule 30.

Rule 8. In all cases where a wire or cable larger than No. 14 B.W.G. originates or terminates on insulators attached to any pin or other appliance, said wire or cable shall be attached to at least two insulators: PROVIDED HOWEVER, That this section shall not apply to service wires to buildings; nor to wires run vertically on a pole; nor to wires originating or terminating on strain insulators or circuit breakers; nor to telephone, telegraph or signal wires outside the limits of any incorporated city or town.

Rule 9. Fixtures placed or erected for the support of wires on the roofs of buildings shall be of sufficient strength to withstand all strains to which they may be subjected, due to the breaking of all wires on one side thereof, and except where insulated wires or cables are held close to fire walls by straps or rings, shall be of such height and so placed that all of the wires supported by such fixtures shall be at least seven feet above any point of roofs less than one-quarter pitch over which they pass or may be attached, and no roof fixtures or wire shall be so placed that they will interfere with the free passage of persons upon, over, to or from the roofs.

Rule 10. No guy wire or cable shall be placed, run, erected, maintained or used within the incorporate limits of any city or town on any pole or appliance to which is attached any wire or cable used to conduct electricity without causing said guy wire or cable to be efficiently insulated with circuit breakers at all times at a distance of not less than eight feet nor more than ten feet measured along the line of said guy wire or cable from each end thereof: PROVIDED, No circuit breaker shall be required at the lower end of the guy wire or cable where the same is attached to a ground anchor, nor shall any circuit breaker be required where said guy wire or cable runs direct from a grounded messenger wire to a grounded anchor rod.

Rule 11. In all span wires used for the purpose of supporting trolley wires or series arc lamps there shall be at least two circuit breakers, one of which shall at all times be maintained no less than four feet nor more than six feet distant from the trolley wire or series arc lamp, and in cases where the same is supported by a building or metallic pole, the other circuit breaker shall be maintained at the building or at the pole: PROVIDED, That in span wires which support two or more trolley wires no circuit breaker shall be required in the span wire between any two of the trolley wires: PROVIDED FURTHER, That in span wires supporting trolley wires attached to wooden poles only the circuit breaker adjacent to the trolley wire shall be required.

Rule 12. At all points where in case of a breakdown of trolley span wires, the trolley wire would be liable to drop within seven feet of the ground, there shall be double span wires and hangers placed at such points.

Rule 13. All energized wires or appliances installed inside of any building or vault, for the distribution of electrical energy, shall be sufficiently insulated, or so guarded, located, or arranged as to protect any person from injury.

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Rule 14. The secondary circuit of current transformers, the casings of all potential regulators and arc light transformers, all metal frames of all switch boards, metal oil tanks used on oil switches except where the tank is part of the conducting system, all motor and generator frames, the entire frame of the crane and the tracks of all traveling cranes and hoisting devices, shall be thoroughly grounded, as provided in Rule 30.

Rule 15. All generators and motors having a potential of more than three hundred volts shall be provided with a suitable insulated platform or mat so arranged as to permit the attendant to stand upon such platform or mat when working upon the live parts of such generators or motors.

Rule 16. Suitable insulated platforms or mats shall be provided for the use of all persons while working on any live part of switchboards on which any wire or appliance carries a potential in excess of three hundred volts.

Rule 17. Every generator, motor, transformer, switch or other similar piece of apparatus and device used in the generation, transmission or distribution of electrical energy in stations or substations, shall be either provided with a name plate giving the capacity in volts and amperes, or have this information stamped thereon in such a manner as to be clearly legible.

Rule 18. When lines of seven hundred fifty volts or over are cut out at the station or substation to allow employees to work upon them, they shall be short-circuited and grounded at the station, and shall in addition, if the line wires are bare, be short-circuited, and where possible grounded at the place where the work is being done.

Rule 19. All switches installed with overload protection devices, and all automatic overload circuit breakers must have the trip coils so adjusted as to afford complete protection against overloads and short circuits, and the same must be so arranged that no pole can be opened manually without opening all the poles, and the trip coils shall be instantly operative upon closing.

Rule 20. All feeders for electric railways must, before leaving the plant or substation, be protected by an approved circuit breaker which will cut off the circuit in case of an accidental ground or short circuit.

Rule 21. There shall be provided in all distributing stations a ground detecting device.

Rule 22. There shall be provided in all stations, plants, and buildings herein specified warning cards printed on red cardboard not less than two and one-quarter by four and one-half inches in size, which shall be attached to all switches opened for the purpose of ~~((linemen))~~ lineworkers or other employees working on the wires. The person opening any line switch shall enter upon said card the name of the person ordering the switch opened, the time opened, the time line was reported clear and by whom, and shall sign his own name.

Rule 23. No manhole containing any wire carrying a current of over three hundred volts shall be less than six feet from floor to inside of roof; if circular in shape it shall not be less than six feet in diameter; if square it shall be six feet from wall to wall: PROVIDED HOWEVER, That this paragraph shall not apply to any manhole in which it shall not be required that any person enter to perform work: PROVIDED FURTHER, That the foregoing provisions of this paragraph shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with this law within the space or location designated by the proper authorities.

Rule 24. All manholes containing any wires or appliances carrying electrical current shall be kept in a sanitary condition, free from stagnant water or seepage or other drainage which is offensive or dangerous to health, either by sewer connection or otherwise, while any person is working in the same.

Rule 25. No manhole shall have an opening to the outer air of less than twenty-six inches in diameter, and the cover of same shall be provided with vent hole or holes equivalent to three square inches in area.

Rule 26. No manhole shall have an opening which is, at the surface of the ground, within a distance of three feet at any point from any rail of any railway or street car track:

PROVIDED, That this shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with the provisions of this paragraph: PROVIDED, That in complying with the provisions of this rule only the construction last in point of time performed, placed or erected shall be held to be in violation thereof.

Rule 27. Whenever persons are working in any manhole whose opening to the outer air is less than three feet from the rail of any railway or street car track, a ~~((watchman))~~ watchperson or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

Rule 28. All persons employed in manholes shall be furnished with insulated platforms so as to protect the workers while at work in the manholes: PROVIDED, That this paragraph shall not apply to manholes containing only telephone, telegraph or signal wires or cables.

Rule 29. No work shall be permitted to be done on any live wire, cable or appliance carrying more than seven hundred fifty volts of electricity by less than two competent and experienced persons, who, at all times while performing such work shall be in the same room, chamber, manhole or other place in which, or on the same pole on which, such work is being done: PROVIDED, That in districts where only one competent and experienced person is regularly employed, and a second competent and experienced person cannot be obtained without delay at prevailing rate of pay in said district, such work shall be permitted to be done by one competent and experienced person and a helper who need not be on the same pole on which said work is being done.

No work shall be permitted to be done in any manhole or subway on any live wire, cable or appliance carrying more than three hundred volts of electricity by less than two competent and experienced persons, who at all times while performing such work shall be in the same manhole or subway in which such work is being done.

Rule 30. The grounding provided for in these rules shall be done in the following manner: By connecting a wire or wires not less than No. 6 B.&S. gauge to a water pipe of a metallic system outside of the meter, if there is one, or to a copper plate one-sixteenth inch thick and not less than three feet by six feet area buried in coke below the permanent moisture level, or to other device equally as efficient. The ground wire or wires of a direct current system of three or more wires shall not be smaller than the neutral wire at the central station, and not smaller than a No. 6 B.&S. gauge elsewhere: PROVIDED, That the maximum cross section area of any ground wire or wires at the central station need not exceed one million circular mils. The ground wires shall be carried in as nearly a straight line as possible, and kinks, coils and short bends shall be avoided: PROVIDED, That the provisions of this rule shall not apply as to size to ground wires run from instrument transformers or meters.

**Sec. 82.** RCW 81.40.095 and 1961 c 14 s 81.40.095 are each amended to read as follows:

The utilities and transportation commission shall adopt and enforce rules and regulations relating to sanitation and adequate shelter as it affects the health of all railroad employees, including but not limited to railroad ~~((trainmen, enginemen, yardmen))~~ workers, maintenance of way employees, highway crossing ~~((watchmen))~~ watchpersons, clerical, platform, freight house and express employees.

**Sec. 83.** RCW 19.28.261 and 2003 c 399 s 302 are each amended to read as follows:

(1) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work

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and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as his or her principal residence for twenty-four months after completion of the units.

(2) Nothing in RCW 19.28.161 through 19.28.271 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(3), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade.

(3) RCW 19.28.161 through 19.28.271 shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees.

(4) Nothing in RCW 19.28.161 through 19.28.271 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines or systems.

(5) The licensing provisions of RCW 19.28.161 through 19.28.271 shall not apply to:

(a) Persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease;

(b) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.091 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside (~~lineman~~) lineworker apprenticeship course that is recognized by the department and that qualifies a person to perform such work;

(c) Any work exempted under RCW 19.28.091(6); and

(d) Certified plumbers, certified residential plumbers, or plumber trainees meeting the requirements of chapter 18.106 RCW and performing exempt work under RCW 19.28.091(8).

(6) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations.

(7) Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journeyman or specialty certificate of competency if they otherwise meet the requirements of this chapter.

**Sec. 84.** RCW 19.28.321 and 2001 c 211 s 21 are each amended to read as follows:

The director of labor and industries of the state of Washington and the officials of all incorporated cities and towns where electrical inspections are required by local ordinances shall have power and it shall be their duty to enforce the provisions of this chapter in their respective jurisdictions. The director of labor and industries shall appoint a chief electrical inspector and may appoint other electrical inspectors as the director deems necessary to assist the director in the performance of the director's duties. The chief electrical inspector, subject to the review of the director, shall be responsible for providing the final interpretation of adopted state electrical standards, rules, and policies for the department and its inspectors, assistant inspectors, electrical plan examiners, and other individuals supervising electrical program personnel. If a dispute arises within the department regarding the interpretation of adopted state electrical standards, rules, or policies, the chief electrical inspector, subject to the review of the director, shall provide the final interpretation of the disputed standard, rule, or policy. All electrical inspectors appointed by the director of labor and industries shall have not less than: Four years experience as (~~journeyman~~) journeyperson electricians in the electrical construction trade installing and maintaining electrical wiring and equipment, or two years electrical training in a college of electrical engineering of recognized standing and four

years continuous practical electrical experience in installation work, or four years of electrical training in a college of electrical engineering of recognized standing and two years continuous practical electrical experience in electrical installation work; or four years experience as a (~~journeyman~~) journeyperson electrician performing the duties of an electrical inspector employed by the department or a city or town with an approved inspection program under RCW 19.28.141, except that for work performed in accordance with the national electrical safety code and covered by this chapter, such inspections may be performed by a person certified as an outside (~~journeyman—lineman~~) journeyperson lineworker, under RCW 19.28.261(~~(2)~~) (5)(b), with four years experience or a person with four years experience as a certified outside (~~journeyman—lineman~~) journeyperson lineworker performing the duties of an electrical inspector employed by an electrical utility. Such state inspectors shall be paid such salary as the director of labor and industries shall determine, together with their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. As a condition of employment, inspectors hired exclusively to perform inspections in accordance with the national electrical safety code must possess and maintain certification as an outside (~~journeyman—lineman~~) journeyperson lineworker. The expenses of the director of labor and industries and the salaries and expenses of state inspectors incurred in carrying out the provisions of this chapter shall be paid entirely out of the electrical license fund, upon vouchers approved by the director of labor and industries.

**Sec. 85.** RCW 50.04.240 and 1945 c 35 s 25 are each amended to read as follows:

The term "employment" shall not include service as a (~~newsboy~~) newspaper delivery person selling or distributing newspapers on the street or from house to house.

**Sec. 86.** RCW 28B.07.020 and 1985 c 370 s 47 are each amended to read as follows:

As used in this chapter, the following words and terms shall have the following meanings, unless the context otherwise requires:

(1) "Authority" means the Washington higher education facilities authority created under RCW 28B.07.030 or any board, body, commission, department or officer succeeding to the principal functions of the authority or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" means bonds, notes, commercial paper, certificates of indebtedness, or other evidences of indebtedness of the authority issued under this chapter.

(3) "Bond resolution" means any resolution of the authority, adopted under this chapter, authorizing the issuance and sale of bonds.

(4) "Higher education institution" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, which is open to residents of the state, which neither restricts entry on racial or religious grounds, which provides programs of education beyond high school leading at least to the baccalaureate degree, and which is accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education coordinating board.

(5) "Participant" means a higher education institution which, under this chapter, undertakes the financing of a project or projects or undertakes the refunding or refinancing of obligations, mortgages, or advances previously incurred for a project or projects.

(6) "Project" means any land or any improvement, including, but not limited to, buildings, structures, fixtures, utilities, machinery, excavations, paving, and landscaping, and any interest in such land or improvements, and any personal property pertaining or useful to such land and improvements, which are necessary, useful, or convenient for the operation of a higher education institution, including but not limited to, the following: Dormitories or other multi-unit housing facilities for students, faculty, officers, or employees; dining halls; student unions; administration buildings; academic buildings; libraries; laboratories; research facilities; computer facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or



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utility facilities; parking facilities; or any combination thereof, or any other structures, facilities, or equipment so related.

(7) "Project cost" means any cost related to the acquisition, construction, improvement, alteration, or rehabilitation by a participant or the authority of any project and the financing of the project through the authority, including, but not limited to, the following costs paid or incurred: Costs of acquisition of land or interests in land and any improvement; costs of contractors, builders, laborers, ~~((materialmen))~~ material suppliers, and suppliers of tools and equipment; costs of surety and performance bonds; fees and disbursements of architects, surveyors, engineers, feasibility consultants, accountants, attorneys, financial consultants, and other professionals; interest on bonds issued by the authority during any period of construction; principal of and interest on interim financing of any project; debt service reserve funds; depreciation funds, costs of the initial start-up operation of any project; fees for title insurance, document recording, or filing; fees of trustees and the authority; taxes and other governmental charges levied or assessed on any project; and any other similar costs. Except as specifically set forth in this definition, the term "project cost" does not include books, fuel, supplies, and similar items which are required to be treated as a current expense under generally accepted accounting principles.

(8) "Trust indenture" means any agreement, trust indenture, or other similar instrument by and between the authority and one or more corporate trustees.

**Sec. 87.** RCW 39.04.155 and 2001 c 284 s 1 are each amended to read as follows:

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been

delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government, other than a port district, that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement ~~((project projects))~~ projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 43.19.1911. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited

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public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, ~~((materialmen))~~ material suppliers, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

**Sec. 88.** RCW 39.08.010 and 1989 c 145 s 1 are each amended to read as follows:

Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body shall contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond, with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, and subcontractors and ~~((materialmen))~~ material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, which bond in cases of cities and towns shall be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original contractor: PROVIDED, HOWEVER, That the provisions of RCW 39.08.010 through 39.08.030 shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work: PROVIDED FURTHER, That on contracts of twenty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later: PROVIDED FURTHER, That for contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties: AND PROVIDED FURTHER, That the surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington.

**Sec. 89.** RCW 39.08.030 and 2003 c 301 s 4 are each amended to read as follows:

(1) The bond mentioned in RCW 39.08.010 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsection (2) of this section, and shall be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run: PROVIDED, The same shall not be for a less amount than twenty-five percent of the contract

price of any such improvement, and may designate that the same shall be payable to such city, and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or ~~((materialman))~~ material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or ~~((materialman))~~ material supplier, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of . . . . . dollars (here insert the amount) against the bond taken from . . . . . (here insert the name of the principal and surety or sureties upon such bond) for the work of . . . . . (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed) . . . . .

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict herewith: AND PROVIDED FURTHER, That any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith.

(2) Under the job order contracting procedure described in RCW 39.10.130, bonds will be in an amount not less than the dollar value of all open work orders.

**Sec. 90.** RCW 47.28.030 and 1999 c 15 s 1 are each amended to read as follows:

A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right of way purposes may be repaired or renovated pending the use of such right of way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof ~~((is less))~~ are less than fifty thousand dollars and effective July 1, 2005, sixty thousand dollars: PROVIDED, That when delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. When the department of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor. To enable a larger number of small businesses, and minority, and women contractors to

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effectively compete for department of transportation contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. The rules adopted under this section:

(1) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

(2) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, ~~((materialmen))~~ material suppliers, mechanics, and subcontractors from the previous partial payment; and

(3) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39.19 RCW.

**Sec. 91.** RCW 60.28.010 and 1986 c 181 s 6 are each amended to read as follows:

(1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum not to exceed five percent, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or ~~((materialman))~~ material supplier who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: PROVIDED, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any amendments that may hereafter be made thereto: PROVIDED FURTHER, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor: PROVIDED, That the contractor may request that retainage be reduced to one hundred percent of the value of the work remaining on the project; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: PROVIDED, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed. When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(4) With the consent of the public body the contractor may submit a bond for all or any portion of the amount of funds retained by the public body in a form acceptable to the public body. Such bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(5) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

(6) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, thirty days after completion and final acceptance of each ferry vessel, the department may release and pay in full the amounts retained in connection with the construction of such vessel subject to the provisions of RCW 60.28.020: PROVIDED, That the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on such ferry after a period of thirty days following final acceptance of such ferry; and if such taxes are certified or claims

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filed, recovery may be had on such bond by the department of revenue and the ((materialmen)) material suppliers and laborers filing claims.

(7) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations shall not be subject to subsections (1) through (6) of this section.

**Sec. 92.** RCW 60.28.011 and 2003 c 301 s 7 are each amended to read as follows:

(1) Public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the

retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.020 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue and the ((materialmen)) material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.061. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or materialperson who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

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(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.020.

**Sec. 93.** RCW 60.28.020 and 1975 1st ex.s. c 104 s 2 are each amended to read as follows:

After the expiration of the thirty day period, and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of ~~((materialmen))~~ material suppliers and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body shall pay to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor.

**Sec. 94.** RCW 60.28.021 and 1992 c 223 s 3 are each amended to read as follows:

After the expiration of the forty-five day period for giving notice of lien provided in RCW 60.28.011(2), and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of ~~((materialmen))~~ material suppliers and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body may withhold from the remaining retained amounts for claims the public body may have against the contractor and shall pay the balance, if any, to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor.

**Sec. 95.** RCW 85.28.130 and Code 1881 s 2517 are each amended to read as follows:

Persons owning or desiring to improve contiguous tracts of tide marsh or swampy lands exposed to the overflow of the tide and capable of being made dry, may separate their respective tracts by a dike or ditch, which shall make and designate their common boundary. In all such cases said dike or ditch shall be constructed at the equal cost and expense of the respective parties, and either party failing to pay his or her contributive share of such expense shall be liable to the party constructing the dike or ditch for such contributive share, or so much thereof as may remain due and unpaid, to be recovered in a civil action in a court of competent jurisdiction and the party constructing such dike shall also be entitled to a lien upon the tract of the party failing to pay his or her contributive share for the construction of said dike, or so much thereof as shall be due, which lien shall be secured and enforced as liens of ~~((materialmen))~~ material suppliers and mechanics are now by law enforced.

**Sec. 96.** RCW 85.28.140 and Code 1881 s 2518 are each amended to read as follows:

Any person or persons who may hereafter take a tract of tide land or marsh and shall desire to adopt as his or her boundary line any dike or ditch heretofore constructed upon and entirely within the boundary line of a neighboring contiguous tract he or she may join on to said tract and adopt said dike as his or her boundary by paying to the owner of the tract upon

which said dike is constructed one-half of the cost and expense of the construction thereof, and any person so adopting the dike or ditch of another without contributing his or her half share of the cost or expense thereof shall be liable for his or her said half share, which may be recovered in a civil action in any court of competent jurisdiction, or the owner of the dike or ditch so used may secure a lien upon the tract of land bounded by said dike for the amount due for the use of said dike in accordance with the provisions of the law securing a lien to ~~((materialmen))~~ material suppliers and mechanics: PROVIDED ALWAYS, That when such dike has become the common boundary ~~((of two adjacent tracts, it shall be and remain the common boundary))~~ of two adjacent tracts, it shall be and remain the common boundary and the persons owning the said tracts shall be mutually liable for the expense of keeping it in repair, share and share alike.

**NEW SECTION. Sec. 97.** The office of the code reviser, in consultation with the statute law committee, shall develop and implement a plan to correct gender-specific references throughout the Revised Code of Washington, submitting recommendations to the legislature annually pursuant to RCW 1.08.025. The revision shall be complete by June 30, 2015."

Correct the title.

and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Kohl-Welles moved that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 5063.

Senator Kohl-Welles spoke in favor of the motion.

Senator Clements spoke against the motion.

MOTION

On motion of Senator Jacobsen, Senator Kline was excused.

MOTION

The President declared the question before the Senate to be the motion by Senator Kohl-Welles that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 5063.

The motion by Senator Kohl-Welles carried and the Senate concurred in the House amendment(s) to Engrossed Senate Bill No. 5063 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5063, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5063, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 45; Nays, 1; Absent, 1; Excused, 2.

Voting yea: Senators Benton, Berkey, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 45

Voting nay: Senator Clements - 1

Absent: Senator Brandland - 1

Excused: Senators Kline and Poulsen - 2

ENGROSSED SENATE BILL NO. 5063, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

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MESSAGE FROM THE HOUSE

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April 12, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5435, with the following amendment: 5435-S AMH KESS H3470.1

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature recognizes that public disclosure exemptions are enacted to meet objectives that are determined to be in the public interest. Given the changing nature of information technology and management, recordkeeping, and the increasing number of public disclosure exemptions, the legislature finds that periodic reviews of public disclosure exemptions are needed to determine if each exemption serves the public interest.

**NEW SECTION. Sec. 2.** A new section is added to chapter 42.56 RCW to read as follows:

(1)(a) The public records exemptions accountability committee is created to review exemptions from public disclosure, with thirteen members as provided in this subsection.

(i) The governor shall appoint two members, one of whom represents the governor and one of whom represents local government.

(ii) The attorney general shall appoint two members, one of whom represents the attorney general and one of whom represents a statewide media association.

(iii) The state auditor shall appoint one member.

(iv) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(v) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(vi) The governor shall appoint four members of the public, with consideration given to diversity of viewpoint and geography.

(b) The governor shall select the chair of the committee from among its membership.

(c) Terms of the members shall be four years and shall be staggered, beginning August 1, 2007.

(2) The purpose of the public records exemptions accountability committee is to review public disclosure exemptions and provide recommendations pursuant to subsection (7)(d) of this section. The committee shall develop and publish criteria for review of public exemptions.

(3) All meetings of the committee shall be open to the public.

(4) The committee must consider input from interested parties.

(5) The office of the attorney general and the office of financial management shall provide staff support to the committee.

(6) Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7)(a) Beginning August 1, 2007, the code reviser shall provide the committee by August 1st of each year with a list of all public disclosure exemptions in the Revised Code of Washington.

(b) The committee shall develop a schedule to accomplish a review of each public disclosure exemption. The committee shall publish the schedule and publish any revisions made to the schedule.

(c) The chair shall convene an initial meeting of the committee by September 1, 2007. The committee shall meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the committee.

(d) For each public disclosure exemption, the committee shall provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15th of each year, the committee shall transmit its recommendations to the governor, the attorney general, and the appropriate committees of the house of representatives and the senate."

Correct the title.  
and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk  
MOTION

Senator Fairley moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5435.

Senator Fairley spoke in favor of the motion.

MOTION

The President declared the question before the Senate to be the motion by Senator Fairley that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5435.

The motion by Senator Fairley carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5435 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5435, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5435, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Excused: Senators Kline and Poulsen - 2

SUBSTITUTE SENATE BILL NO. 5435, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 12, 2007

MR. PRESIDENT:

The House has passed ENGROSSED SENATE BILL NO. 6128, with the following amendment: 6128.E AMH HUNS REIL 069

On page 5, beginning on line 1, strike all of subsection (ix) and insert the following:

"(ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in subsection (15)(b)(vi) of this section or for payment by the candidate or political committee for whom the services are performed as long as:

(A) The person performs solely ministerial functions;

(B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of

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their respective statements of organization under RCW 42.17.040; and

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

(C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under subsection (15)(a)(ii) of this section.

MESSAGE FROM THE HOUSE

April 5, 2007

A person who performs ministerial functions under this subsection (ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee."

MR. PRESIDENT:

The House has passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5788, with the following amendment: 5788-S.E AMH ENGR H3484.E

Strike everything after the enacting clause and insert the following:

On page 9, beginning on line 9, after "(34)" insert the following:

"Ministerial functions" means an act or duty carried out as part of the duties of an administrative office without exercise of personal judgment or discretion.

"NEW SECTION. Sec. 1. (1) The department of licensing shall conduct a study of the home inspector profession and make recommendations to the legislature as to whether the home inspector profession should be regulated for the purpose of protecting the public interest under the criteria set forth in RCW 18.118.010.

(35)"

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

(2) In conducting the study, the department shall consider the factors, to the extent appropriate, in RCW 18.118.030.

On page 12, beginning on line 32, strike all material through "committee" on line 34 and insert the following:

(3) The department must hold public hearings as part of its study. The department must file notice of the hearings with the code reviser for publication in the Washington State Register. The notice must state that information is sought regarding possible regulation of the home inspector profession; and when, where, and how public members may present information about the home inspector profession and possible regulation. The department must request names of interested individuals and organizations from legislators and other identified interested parties and send these individuals and organizations copies of the notice filed with the code reviser.

"(k) The name, address, and title of any person who authorizes expenditures or makes decisions on behalf of the candidate or committee; and

(4) The department shall submit a report detailing its findings and recommendations under this section to the appropriate legislative committees by December 1, 2007."

(l) The name, address, and title of any person who is paid by or is a volunteer for a candidate or political committee to perform ministerial functions and who performs ministerial functions on behalf of two or more candidates or committees" and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Fairley moved that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 6128.

Senator Fairley spoke in favor of the motion.

RICHARD NAFZIGER, Chief Clerk

MOTION

MOTION

The President declared the question before the Senate to be the motion by Senator Fairley that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 6128.

Senator Spanel moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5788.

Senator Spanel spoke in favor of the motion.

Senator Clements spoke against the motion.

The motion by Senator Fairley carried and the Senate concurred in the House amendment(s) to Engrossed Senate Bill No. 6128 by voice vote.

MOTION

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 6128, as amended by the House.

The President declared the question before the Senate to be the motion by Senator Spanel that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5788.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 6128, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 38; Nays, 10; Absent, 0; Excused, 1.

The motion by Senator Spanel carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5788 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5788, as amended by the House.

ROLL CALL

Voting yea: Senators Benton, Berkey, Brown, Carrell, Clements, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Stevens, Tom and Weinstein - 38

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5788, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 41; Nays, 7; Absent, 0; Excused, 1.

Voting nay: Senators Brandland, Delvin, Hewitt, Holmquist, Honeyford, Parlette, Pflug, Schoesler, Swecker and Zarelli - 10

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel,

Excused: Senator Poulsen - 1

ENGROSSED SENATE BILL NO. 6128, as amended by the House, having received the constitutional majority, was

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Swecker, Tom, Weinstein and Zarelli - 41

and the same are herewith transmitted.

Voting nay: Senators Clements, Hatfield, Hewitt, Holmquist, Morton, Schoesler and Stevens - 7

RICHARD NAFZIGER, Chief Clerk

Excused: Senator Poulsen - 1

MOTION

ENGROSSED SUBSTITUTE SENATE BILL NO. 5788, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

Senator Kline moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6100.  
Senator Kline spoke in favor of the motion.

## MESSAGE FROM THE HOUSE

MOTION

April 4, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 6100, with the following amendment: 6100-S AMH JUDI PERR 064

On page 2, after line 11, add the following:

"Sec. 3. RCW 10.01.160 and 2005 c 263 s 2 are each amended to read as follows:

(1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution or pretrial supervision may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not ((sentence)) order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been ((sentenced)) ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170."

Correct the title.

The President declared the question before the Senate to be the motion by Senator Kline that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6100.

The motion by Senator Kline carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6100 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6100, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6100, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Poulsen - 1

SUBSTITUTE SENATE BILL NO. 6100, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## MESSAGE FROM THE HOUSE

April 9, 2007

MR. PRESIDENT:

The House has passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5317, with the following amendment: 5317-S.E AMH ELCS H3217.1

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 43.215.005 and 2006 c 265 s 101 are each amended to read as follows:

(1) The legislature recognizes that:

(a) Parents are their children's first and most important teachers and decision makers;

(b) Research across disciplines now demonstrates that what happens in the earliest years makes a critical difference in children's readiness to succeed in school and life;

(c) Washington's competitiveness in the global economy requires a world-class education system that starts early and supports life-long learning;

(d) Washington state currently makes substantial investments in voluntary child care and early learning services and supports, but because services are fragmented across multiple state agencies, and early learning providers lack the supports and incentives needed to improve the quality of services they provide, many parents have difficulty accessing high quality early learning services;



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(e) A more cohesive and integrated voluntary early learning system would result in greater efficiencies for the state, increased partnership between the state and the private sector, improved access to high quality early learning services, and better employment and early learning outcomes for families and all children.

(2) The legislature finds that the early years of a child's life are critical to the child's healthy brain development and that the quality of caregiving during the early years can significantly impact the child's intellectual, social, and emotional development.

(3) The purpose of this chapter is:

(a) To establish the department of early learning;

(b) To coordinate and consolidate state activities relating to child care and early learning programs;

(c) To safeguard and promote the health, safety, and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide care;

(d) To provide tools to promote the hiring of suitable providers of child care by:

(i) Providing parents with access to information regarding child care providers;

(ii) Providing parents with child care licensing action histories regarding child care providers; and

(iii) Requiring background checks of applicants for employment in any child care facility licensed or regulated under current law;

(e) To promote linkages and alignment between early learning programs and elementary schools and support the transition of children and families from prekindergarten environments to kindergarten;

~~((+))~~ (f) To promote the development of a sufficient number and variety of adequate child care and early learning facilities, both public and private; and

~~((+))~~ (g) To license agencies and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all child care and early learning facilities.

(4) This chapter does not expand the state's authority to license or regulate activities or programs beyond those licensed or regulated under existing law.

**Sec. 2.** RCW 43.215.010 and 2006 c 265 s 102 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child day care provider who regularly provides child day care and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such

persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools or kindergartens that are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children, and do not accept custody of children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(i) Any agency having been in operation in this state ten years before June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(j) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(k) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(l) An agency that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

~~((+))~~ (4) "Department" means the department of early learning.

~~((+))~~ (5) "Director" means the director of the department.

~~((+))~~ (6) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

~~((+))~~ (7) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW 43.215.300(3).

~~((+))~~ (8) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

~~((+))~~ (9) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

**Sec. 3.** RCW 43.215.200 and 2006 c 265 s 301 are each amended to read as follows:

It shall be the director's duty with regard to licensing:

(1) In consultation and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of child care facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages and other characteristics of the children served, variations in the purposes and services offered or size or structure of the agencies to be licensed, or because of any other factor relevant thereto;

(2) In consultation and with the advice and assistance of parents or guardians, and persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed under this chapter(~~t~~);

~~—The minimum requirements shall be limited to:~~

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~~— (a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;~~

~~— (b) The character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care of children. In consultation with law enforcement personnel, the director shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter. In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children shall be fingerprinted. The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history records check. The fingerprint criminal history records checks will be at the expense of the licensee. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record. The director shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children. Criminal justice agencies shall provide the director such information as they may have and that the director may require for such purpose;~~

~~— (c) The number of qualified persons required to render the type of care for which an agency seeks a license;~~

~~— (d) The health, safety, cleanliness, and general adequacy of the premises to provide for the comfort, care, and well-being of children;~~

~~— (e) The provision of necessary care and early learning, including food, supervision, and discipline; physical, mental, and social well-being; and educational and recreational opportunities for those served;~~

~~— (f) The financial ability of an agency to comply with minimum requirements established under this chapter; and~~

~~— (g) The maintenance of records pertaining to the care of children);~~

~~(3) In consultation with law enforcement personnel, the director shall investigate the conviction record or pending charges of each agency and its staff seeking licensure or relicensure, and other persons having unsupervised access to children in care;~~

~~(4) To issue, revoke, or deny licenses to agencies pursuant to this chapter. Licenses shall specify the category of care that an agency is authorized to render and the ages and number of children to be served;~~

~~((4)) (5) To prescribe the procedures and the form and contents of reports necessary for the administration of this chapter and to require regular reports from each licensee;~~

~~((5)) (6) To inspect agencies periodically to determine whether or not there is compliance with this chapter and the requirements adopted under this chapter;~~

~~((6)) (7) To review requirements adopted under this chapter at least every two years and to adopt appropriate changes after consultation with affected groups for child day care requirements; and~~

~~((7)) (8) To consult with public and private agencies in order to help them improve their methods and facilities for the care and early learning of children.~~

**NEW SECTION. Sec. 4. MINIMUM REQUIREMENTS FOR LICENSING.** Applications for licensure shall require, at a minimum, the following information:

(1) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(2) The character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care of children;

(3) The number of qualified persons required to render the type of care for which an agency seeks a license;

(4) The health, safety, cleanliness, and general adequacy of the premises to provide for the comfort, care, and well-being of children;

(5) The provision of necessary care and early learning, including food, supervision, and discipline; physical, mental, and social well-being; and educational and recreational opportunities for those served;

(6) The financial ability of an agency to comply with minimum requirements established under this chapter; and

(7) The maintenance of records pertaining to the care of children.

**NEW SECTION. Sec. 5. CHARACTER, SUITABILITY, AND COMPETENCE.** (1) In determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services to children, the department may consider all child abuse and neglect history information regarding a prospective child care provider. No unfounded or inconclusive allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter.

(2) In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children, shall be fingerprinted.

(a) The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history record check.

(b) The fingerprint criminal history record checks shall be at the expense of the licensee. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record.

(c) The director shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children.

(d) Criminal justice agencies shall provide the director such information as they may have and that the director may require for such purpose.

**Sec. 6.** RCW 43.215.525 and 2006 c 209 s 11 are each amended to read as follows:

(1) Every child day-care center and family day-care provider shall prominently post the following items, clearly visible to parents and staff:

(a) The license issued under this chapter;

(b) The department's toll-free telephone number established by RCW ((74.15.310) 43.215.520;

(c) The notice of any pending enforcement action. The notice must be posted immediately upon receipt. The notice must be posted for at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer;

(d) A notice that inspection reports and any notices of enforcement actions for the previous three years are available from the licensee and the department; and

(e) Any other information required by the department.

(2) The department shall disclose((upon request)) the receipt, general nature, and resolution or current status of all complaints on record with the department after July 24, 2005, against a child day-care center or family day-care provider that result in an enforcement action. Information may be posted:

(a) On a web site; or

(b) In a physical location that is easily accessed by parents and potential employers.

(3) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW.

**Sec. 7.** RCW 43.215.530 and 2006 c 209 s 12 are each amended to read as follows:

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(1) Every child day-care center and family day-care provider shall have readily available for review by the department, parents, and the public a copy of each inspection report and notice of enforcement action received by the center or provider from the department for the past three years. This subsection only applies to reports and notices received on or after July 24, 2005.

(2) The department shall make available to the public during business hours all inspection reports and notices of enforcement actions involving child day-care centers and family day-care providers ~~((consistent with chapter 42.56 RCW))~~. The department shall include in the inspection report a statement of the corrective measures taken by the center or provider.

(3) ~~The department may make available on a publicly accessible web site all inspection reports and notices of licensing actions, including the corrective measures required or taken, involving child day-care centers and family day-care providers.~~

~~(4) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW.~~

NEW SECTION. Sec. 8. PARENTAL NOTIFICATION. The department and an agency must, at the first opportunity but in all cases within forty-eight hours of receiving a report alleging sexual misconduct or abuse by an agency employee, notify the parents or guardian of a child alleged to be the victim, target, or recipient of the misconduct or abuse. The department and an agency shall provide parents annually with information regarding their rights under the public records act, chapter 42.56 RCW, to request the public records regarding the employee.

NEW SECTION. Sec. 9. REPORTING ACTIONS--POSTING ON WEB SITE. For the purposes of reporting actions taken against agency licensees, upon the development of an early learning information system, the following actions shall be posted to the department's web site accessible by the public: Suspension, surrender, revocation, denial, stayed suspension, or reinstatement of a license.

**Sec. 10.** RCW 43.215.535 and 2005 c 473 s 7 are each amended to read as follows:

(1) Every licensed child day-care center shall, at the time of licensure or renewal and at any inspection, provide to the department proof that the licensee has day-care insurance as defined in RCW 48.88.020, or is self-insured pursuant to chapter 48.90 RCW.

(a) Every licensed child day-care center shall comply with the following requirements:

(i) Notify the department when coverage has been terminated;

(ii) Post at the day-care center, in a manner likely to be observed by patrons, notice that coverage has lapsed or been terminated;

(iii) Provide written notice to parents that coverage has lapsed or terminated within thirty days of lapse or termination.

(b) Liability limits under this subsection shall be the same as set forth in RCW 48.88.050.

(c) The department may take action as provided in RCW ~~((74.15.130))~~ 43.215.300 if the licensee fails to maintain in full force and effect the insurance required by this subsection.

(d) This subsection applies to child day-care centers holding licenses, initial licenses, and probationary licenses under this chapter.

(e) A child day-care center holding a license under this chapter on July 24, 2005, is not required to be in compliance with this subsection until the time of renewal of the license or until January 1, 2006, whichever is sooner.

(2)(a) Every licensed family day-care provider shall, at the time of licensure or renewal either:

(i) Provide to the department proof that the licensee has day-care insurance as defined in RCW 48.88.020, or other applicable insurance; or

(ii) Provide written notice of their insurance status on a standard form developed by the department to parents with a child enrolled in family day care and keep a copy of the notice to each parent on file. Family day-care providers may choose to opt out of the requirement to have day care or other applicable insurance but must provide written notice of their insurance

status to parents with a child enrolled and shall not be subject to the requirements of (b)(c) or (c) ~~((or (d)))~~ of this subsection.

(b) Any licensed family day-care provider that provides to the department proof that the licensee has insurance as provided under (a)(i) of this subsection shall comply with the following requirements:

(i) Notify the department when coverage has been terminated;

(ii) Post at the day-care home, in a manner likely to be observed by patrons, notice that coverage has lapsed or been terminated;

(iii) Provide written notice to parents that coverage has lapsed or terminated within thirty days of lapse or termination.

(c) Liability limits under (a)(i) of this subsection shall be the same as set forth in RCW 48.88.050.

(d) The department may take action as provided in RCW ~~((74.15.130))~~ 43.215.300 if the licensee fails to ~~((notify the department when coverage has been terminated as required under (b)))~~ comply with the requirements of this subsection.

(e) A family day-care provider holding a license under this chapter on July 24, 2005, is not required to be in compliance with this subsection until the time of renewal of the license or until January 1, 2006, whichever is sooner.

(3) Noncompliance or compliance with the provisions of this section shall not constitute evidence of liability or nonliability in any injury litigation.

NEW SECTION. Sec. 11. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 12. Sections 4, 5, 8, and 9 of this act are each added to chapter 43.215 RCW." and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Regala moved that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5317 and ask the House to recede therefrom.

The President declared the question before the Senate to be motion by Senator Regala that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5317 and ask the House to recede therefrom.

The motion by Senator Regala carried and the Senate refused to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5317 and asked the House to recede therefrom.

MESSAGE FROM THE HOUSE

April 9, 2007

MR. PRESIDENT:

The House has passed SECOND SUBSTITUTE SENATE BILL NO. 5470, with the following amendment: 5470-S2 AMH ENGR H3506.E

Strike everything after the enacting clause and insert the following:

**"PART I - Intent**

**Sec. 101.** RCW 26.09.002 and 1987 c 460 s 2 are each amended to read as follows:

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The

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best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

**NEW SECTION. Sec. 102.** A new section is added to chapter 26.09 RCW to read as follows:

The legislature reaffirms the intent of the current law as expressed in RCW 26.09.002. However, after review, the legislature finds that there are certain components of the existing law which do not support the original legislative intent. In order to better implement the existing legislative intent the legislature finds that incentives for parties to reduce family conflict and additional alternative dispute resolution options can assist in reducing the number of contested trials. Furthermore, the legislature finds that the identification of domestic violence as defined in RCW 26.50.010 and the treatment needs of the parties to dissolutions are necessary to improve outcomes for children. When judicial officers have the discretion to tailor individualized resolutions, the legislative intent expressed in RCW 26.09.002 can more readily be achieved. Judicial officers should have the discretion and flexibility to assess each case based on the merits of the individual cases before them.

## PART II - Family Court Provisions

**Sec. 201.** RCW 2.56.180 and 2005 c 282 s 10 are each amended to read as follows:

(1) The administrative office of the courts shall create a handbook explaining the sections of Washington law pertaining to the rights and responsibilities of marital partners to each other and to any children during a marriage and a dissolution of marriage. The handbook may also be provided in videotape or other electronic form.

(2) The handbook created under subsection (1) of this section shall be provided by the county auditor when an individual applies for a marriage license under RCW 26.04.140.

(3) The handbook created under subsection (1) of this section shall also be provided to the petitioner when he or she files a petition for dissolution, and to the respondent, unless the respondent did not file a response, notice of appearance, or any other paper in the case or did not appear in court. The administrative office of the courts shall on an annual basis reimburse the counties for each copy of the handbook that is distributed directly to family law parties under this section, provided that the county submits documentation of the number of handbooks distributed on an annual basis.

(4) The information contained in the handbook created under subsection (1) of this section shall be reviewed and updated annually. The handbook must contain the following information:

(a) Information on prenuptial agreements as contracts and as a means of structuring financial arrangements and other aspects of the marital relationship;

(b) Information on shared parental responsibility for children, including establishing a residential schedule for the child in the event of the dissolution of the marriage;

(c) Information on notice requirements and standards for parental relocation;

(d) Information on child support for minor children;

(e) Information on property rights, including equitable distribution of assets and premarital and postmarital property rights;

(f) Information on spousal maintenance;

(g) Information on domestic violence, child abuse, and neglect, including penalties;

(h) Information on the court process for dissolution;

(i) Information on the effects of dissolution on children;

(j) Information on community resources that are available to separating or divorcing persons and their children.

## PART III - Domestic Violence and Child Abuse

**NEW SECTION. Sec. 301.** A new section is added to chapter 26.09 RCW to read as follows:

Mediation is generally inappropriate in cases involving domestic violence and child abuse. In order to effectively identify cases where issues of domestic violence and child abuse are present and reduce conflict in dissolution matters: (1) Where appropriate parties shall be provided access to trained domestic violence advocates; and (2) in cases where a victim requests mediation the court may make exceptions and permit mediation, so long as the court makes a finding that mediation is appropriate under the circumstances and the victim is permitted to have a supporting person present during the mediation proceedings.

**Sec. 302.** RCW 2.56.030 and 2005 c 457 s 7 and 2005 c 282 s 7 are each reenacted and amended to read as follows:

The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;

(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Submit annually, as of February 1st, to the chief justice, a report of the activities of the administrator's office for the preceding calendar year including activities related to courthouse security;

(10) Administer programs and standards for the training and education of judicial personnel;

(11) Examine the need for new superior court and district court judge positions under an objective workload analysis. The results of the objective workload analysis shall be reviewed by the board for judicial administration which shall make recommendations to the legislature. It is the intent of the legislature that an objective workload analysis become the basis for creating additional district and superior court positions, and recommendations should address that objective;

(12) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;

(13) Attend to such other matters as may be assigned by the supreme court of this state;

(14) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers and be

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updated yearly to reflect changes in statutes, court rules, or case law;

(15) Develop, in consultation with the entities set forth in RCW 2.56.150(3), a comprehensive statewide curriculum for persons who act as guardians ad litem under Title 13 or 26 RCW. The curriculum shall be made available July 1, ((1997)) 2008, and include specialty sections on child development, child sexual abuse, child physical abuse, child neglect, domestic violence, clinical and forensic investigative and interviewing techniques, family reconciliation and mediation services, and relevant statutory and legal requirements. The curriculum shall be made available to all superior court judges, court personnel, and all persons who act as guardians ad litem;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be made available to all superior court and court of appeals judges and to all justices of the supreme court;

(17) Develop, in consultation with the criminal justice training commission and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be available to all superior court judges and court commissioners assigned to juvenile court, and other court personnel. Ethnic and cultural diversity training shall be provided annually so as to incorporate cultural sensitivity and awareness into the daily operation of juvenile courts statewide;

(18) Authorize the use of closed circuit television and other electronic equipment in judicial proceedings. The administrator shall promulgate necessary standards and procedures and shall provide technical assistance to courts as required;

(19) Develop a Washington family law handbook in accordance with RCW 2.56.180;

(20) Administer state funds for improving the operation of the courts and provide support for court coordinating councils, under the direction of the board for judicial administration;

(21)(a) Administer and distribute amounts appropriated from the equal justice subaccount under RCW 43.08.250(2) for district court judges' and qualifying elected municipal court judges' salary contributions. The administrator for the courts shall develop a distribution formula for these amounts that does not differentiate between district and elected municipal court judges.

(b) A city qualifies for state contribution of elected municipal court judges' salaries under (a) of this subsection if:

(i) The judge is serving in an elected position;

(ii) The city has established by ordinance that a full-time judge is compensated at a rate equivalent to at least ninety-five percent, but not more than one hundred percent, of a district court judge salary or for a part-time judge on a pro rata basis the same equivalent; and

(iii) The city has certified to the office of the administrator for the courts that the conditions in (b)(i) and (ii) of this subsection have been met.

**Sec. 303.** RCW 26.09.191 and 2004 c 38 s 12 are each amended to read as follows:

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual

assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

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- (ii) RCW 9A.44.073;
  - (iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;
  - (iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;
  - (v) RCW 9A.44.083;
  - (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
  - (vii) RCW 9A.44.100;
  - (viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;
  - (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.
- (e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:
- (i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;
  - (ii) RCW 9A.44.073;
  - (iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;
  - (iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;
  - (v) RCW 9A.44.083;
  - (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
  - (vii) RCW 9A.44.100;
  - (viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;
  - (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.
- (f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:
- (i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or
  - (ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.
- (g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:
- (i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or
  - (ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting

residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child,

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and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the

court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

~~((5))~~ (6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

~~((6))~~ (7) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild.

**NEW SECTION. Sec. 304.** A new section is added to chapter 26.09 RCW to read as follows:

Before entering a permanent parenting plan, the court shall determine the existence of any information and proceedings relevant to the placement of the child that are available in the judicial information system and databases.

**Sec. 305.** RCW 26.12.177 and 2005 c 282 s 30 are each amended to read as follows:

(1) All guardians ad litem and investigators appointed under this title must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements. In cases involving allegations of limiting factors under RCW 26.09.191, the guardians ad litem and investigators appointed under this title must have additional relevant training under RCW 2.56.030(15) and as recommended under section 306 of this act, when it is available.

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(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem and investigators under this title. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem and investigators under this title shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in state-initiated paternity cases only.

(e) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs.

**NEW SECTION. Sec. 306.** A new section is added to chapter 2.53 RCW to read as follows:

(1)(a) The legislature requests that the supreme court convene and support a task force to establish statewide protocols for dissolution cases.

(b) The task force shall develop: (i) Clear and concise dispute resolution procedures; (ii) in conjunction with the office of crime victims advocacy, a sexual assault training curriculum; (iii) consistent standards for parenting evaluators; and (iv) a domestic violence training curriculum for individuals making evaluations in dissolution cases. The task force shall make recommendations concerning specialized evaluators for dissolution cases, dissolution forms and procedures, and fees.

(c) The task force shall also study issues related to: (i) Venue for filing and modifying petitions; and (ii) establishing a program that would be the initial point of contact for parties in dissolution cases where parties would be provided information on the dissolution process and alternatives to dissolution. The task force shall address issues that include but are not limited to: (A) Whether the program should be required for all parties in dissolutions; (B) whether the program should be administered by the courts or county clerks; (C) the type and extent of information provided to parties and how such information should be delivered.

(2) The governor shall appoint the following members of the task force:

(a) A representative of the office of crime victims advocacy;  
 (b) A professor of law specializing in family law;  
 (c) A representative from a statewide domestic violence advocacy group;

(d) A representative from a community sexual assault program;

(e) Two noncustodial parents with at least one representing the interests of low-income noncustodial parents; and

(f) Two custodial parents with at least one representing the interests of low-income custodial parents.

(3) The chief justice of the supreme court is requested to appoint the following members of the task force:

(a) Two representatives from the superior court judges association, including a superior court judge and a court commissioner who is familiar with dissolution issues;

(b) A representative from the administrative office of the courts;

(c) A representative from the Washington state bar association's family law executive committee;

(d) A representative from a qualified legal aid provider that receives funding from the office of civil legal aid;

(e) A representative of the Washington state association of county clerks; and

(f) A guardian ad litem.

(4) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(5) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives, with at least one member.

(6) Membership of the task force may also include members of the civil legal aid oversight committee, including but not limited to the legislative members of the committee.

(7) The task force shall carefully consider all input received from interested organizations and individuals during the task force process.

(8) The task force may form an executive committee, create subcommittees, designate alternative representatives, and define other procedures, as needed, for operation of the task force.

(9) Legislative members of the task force shall be reimbursed for travel expenses under RCW 44.04.120. Nonlegislative members, except those representing an employee or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(10) The task force shall present preliminary findings and conclusions to the governor's office, the supreme court, and the appropriate committees of the legislature by September 1, 2008. A final report and recommendations, including recommendations for legislative action, if necessary, shall be completed by December 1, 2008.

(11) This section expires June 30, 2009.

#### PART IV - Additional Services

**NEW SECTION. Sec. 401.** A new section is added to chapter 26.09 RCW to read as follows:

In order to provide judicial officers with better information and to facilitate decision making which allows for the protection of children from physical, mental, or emotional harm and in order to facilitate consistent healthy contact between both parents and their children:

(1) Parties and witnesses who require the assistance of interpreters shall be provided access to qualified interpreters pursuant to chapter 2.42 or 2.43 RCW. To the extent practicable and within available resources, interpreters shall also be made available at dissolution-related proceedings.

(2) Parties and witnesses who require literacy assistance shall be referred to the multipurpose service centers established in chapter 28B.04 RCW.

(3) In matters involving guardian ad litem, the court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional review. Counties may, and to the extent state funding is provided therefor counties shall, provide indigent parties with guardian ad litem services at a reduced or waived fee.

(4) Parties may request to participate by telephone or interactive videoconference. The court may allow telephonic or interactive videoconference participation of one or more parties at any proceeding in its discretion. The court may also allow telephonic or interactive videoconference participation of witnesses.

(5) In cases involving domestic violence or child abuse, if residential time is ordered, the court may:

(a) Order exchange of a child to occur in a protected setting;



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(b) Order residential time supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the supervisor is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor if the court determines, after a hearing, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child. If the court allows a family or household member to supervise residential time, the court shall establish conditions to be followed during residential time.

(6) In cases in which the court finds that the parties do not have a satisfactory history of cooperation or there is a high level of parental conflict, the court may order the parties to use supervised visitation and safe exchange centers or alternative safe locations to facilitate the exercise of residential time.

#### PART V - Mediation

**Sec. 501.** RCW 26.09.015 and 2005 c 172 s 17 are each amended to read as follows:

(1) In any proceeding under this chapter, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the dispute.

(2)(a) Each superior court may make available a mediator. The court shall use the most cost-effective mediation services that are readily available unless there is good cause to access alternative providers. The mediator may be a member of the professional staff of a family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.

(b) In any proceeding involving issues relating to residential time or other matters governed by a parenting plan, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. Counties may, and to the extent state funding is provided therefor counties shall, provide both predecree and postdecree mediation at reduced or waived fee to the parties within one year of the filing of the dissolution petition.

(3)(a) Mediation proceedings under this chapter shall be governed in all respects by chapter 7.07 RCW, except as follows:

(i) Mediation communications in postdecree mediations mandated by a parenting plan are admissible in subsequent proceedings for the limited purpose of proving:

(A) Abuse, neglect, abandonment, exploitation, or unlawful harassment as defined in RCW 9A.46.020(1), of a child;

(B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of a family or household member as defined in RCW 26.50.010(2); or

(C) That a parent used or frustrated the dispute resolution process without good reason for purposes of RCW 26.09.184(3)(d).

(ii) If a postdecree mediation-arbitration proceeding is required pursuant to a parenting plan and the same person acts as both mediator and arbitrator, mediation communications in the mediation phase of such a proceeding may be admitted during the arbitration phase, and shall be admissible in the judicial review of such a proceeding under RCW 26.09.184(3)(e) to the extent necessary for such review to be effective.

(b) None of the exceptions under (a)(i) and (ii) of this subsection shall subject a mediator to compulsory process to testify except by court order for good cause shown, taking into consideration the need for the mediator's testimony and the interest in the mediator maintaining an appearance of impartiality. If a mediation communication is not privileged under (a)(i) of this subsection or that portion of (a)(ii) of this

subsection pertaining to judicial review, only the portion of the communication necessary for the application of the exception may be admitted, and such admission of evidence shall not render any other mediation communication discoverable or admissible except as may be provided in chapter 7.07 RCW.

(4) The mediator shall assess the needs and interests of the child or children involved in the controversy and may interview the child or children if the mediator deems such interview appropriate or necessary.

(5) Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.

#### PART VI - Residential Time

**Sec. 601.** RCW 26.09.184 and 1991 c 367 s 7 are each amended to read as follows:

(1) OBJECTIVES. The objectives of the permanent parenting plan are to:

(a) Provide for the child's physical care;

(b) Maintain the child's emotional stability;

(c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;

(d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;

(e) Minimize the child's exposure to harmful parental conflict;

(f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

(2) CONTENTS OF THE PERMANENT PARENTING PLAN. The permanent parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child.

(3) CONSIDERATION IN ESTABLISHING THE PERMANENT PARENTING PLAN. In establishing a permanent parenting plan, the court shall consider the cultural heritage and religious beliefs of a child.

(4) DISPUTE RESOLUTION. A process for resolving disputes, other than court action, shall be provided unless precluded or limited by RCW 26.09.187 or 26.09.191. A dispute resolution process may include counseling, mediation, or arbitration by a specified individual or agency, or court action. In the dispute resolution process:

(a) Preference shall be given to carrying out the parenting plan;

(b) The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support, unless an emergency exists;

(c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party;

(d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the prevailing parent;

(e) The parties have the right of review from the dispute resolution process to the superior court; and

(f) The provisions of (a) through (e) of this subsection shall be set forth in the decree.

~~((+))~~ (5) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the

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allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(b) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

(c) When mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the dispute resolution process.

~~((5))~~ (6) RESIDENTIAL PROVISIONS FOR THE CHILD. The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

~~((6))~~ (7) PARENTS' OBLIGATION UNAFFECTED. If a parent fails to comply with a provision of a parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision in a parenting plan or a child support order may result in a finding of contempt of court, under RCW 26.09.160.

~~((7))~~ (8) PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN. The permanent parenting plan shall set forth the provisions of subsections ~~((3))~~ (4)(a) through (c), ~~((4))~~ (5)(b) and (c), and ~~((6))~~ (7) of this section.

**Sec. 602.** RCW 26.09.015 and 2005 c 172 s 17 are each amended to read as follows:

(1) In any proceeding under this chapter, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the dispute.

(2) Each superior court may make available a mediator. The mediator may be a member of the professional staff of a family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.

(3)(a) Mediation proceedings under this chapter shall be governed in all respects by chapter 7.07 RCW, except as follows:

(i) Mediation communications in postdecree mediations mandated by a parenting plan are admissible in subsequent proceedings for the limited purpose of proving:

(A) Abuse, neglect, abandonment, exploitation, or unlawful harassment as defined in RCW 9A.46.020(1), of a child;

(B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of a family or household member as defined in RCW 26.50.010(2); or

(C) That a parent used or frustrated the dispute resolution process without good reason for purposes of RCW 26.09.184~~((3))~~ (4)(d).

(ii) If a postdecree mediation-arbitration proceeding is required pursuant to a parenting plan and the same person acts as both mediator and arbitrator, mediation communications in the mediation phase of such a proceeding may be admitted during the arbitration phase, and shall be admissible in the judicial review of such a proceeding under RCW 26.09.184~~((3))~~ (4)(e) to the extent necessary for such review to be effective.

(b) None of the exceptions under (a)(i) and (ii) of this subsection shall subject a mediator to compulsory process to testify except by court order for good cause shown, taking into consideration the need for the mediator's testimony and the interest in the mediator maintaining an appearance of impartiality. If a mediation communication is not privileged under (a)(i) of this subsection or that portion of (a)(ii) of this subsection pertaining to judicial review, only the portion of the communication necessary for the application of the exception may be admitted, and such admission of evidence shall not

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render any other mediation communication discoverable or admissible except as may be provided in chapter 7.07 RCW.

(4) The mediator shall assess the needs and interests of the child or children involved in the controversy and may interview the child or children if the mediator deems such interview appropriate or necessary.

(5) Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.

**Sec. 603.** RCW 26.09.187 and 1989 c 375 s 10 are each amended to read as follows:

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184~~((4))~~ (5)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and

(ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

(ii) Both parents are opposed to mutual decision making;

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection;

(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(i) The existence of a limitation under RCW 26.09.191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184~~((4))~~ (5)(a);

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184~~((4))~~ (5)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent~~(-including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child)~~;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

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(iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time ((only if the court finds the following:

~~(i) No limitation exists under RCW 26.09.191;~~

~~(ii)(A) The parties have agreed to such provisions and the agreement was knowingly and voluntarily entered into; or~~

~~(B) The parties have a satisfactory history of cooperation and shared performance of parenting functions; the parties are available to each other, especially in geographic proximity, to the extent necessary to ensure their ability to share performance of the parenting functions; and~~

~~(iii) The provisions are in the best interests of the child)) if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.~~

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

**Sec. 604.** RCW 26.09.197 and 1987 c 460 s 14 are each amended to read as follows:

After considering the affidavit required by RCW 26.09.194(1) and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

(1) ~~((Which parent has taken greater responsibility during the last twelve months for performing parenting functions relating to the daily needs of the child))~~ The relative strength, nature, and stability of the child's relationship with each parent; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

**PART VII - Data Tracking**

NEW SECTION. Sec. 701. A new section is added to chapter 26.09 RCW to read as follows:

The parties to dissolution matters shall file with the clerk of the court the residential time summary report. The summary report shall be on the form developed by the administrative office of the courts in consultation with the department of social and health services division of child support. The parties must complete the form and file the form with the court order. The clerk of the court must forward the form to the division of child support on at least a monthly basis.

NEW SECTION. Sec. 702. A new section is added to chapter 26.18 RCW to read as follows:

(1) The administrative office of the courts in consultation with the department of social and health services, division of child support, shall develop a residential time summary report

form to provide for the reporting of summary information in every case in which residential time with children is to be established or modified.

(2) The residential time summary report must include at a minimum: A breakdown of residential schedules with a reasonable degree of specificity regarding actual time with each parent, including enforcement practices, representation status of the parties, whether domestic violence, child abuse, chemical dependency, or mental health issues exist, and whether the matter was agreed or contested.

(3) The division of child support shall compile and electronically transmit the information in the residential time summary reports to the administrative office of the courts for purposes of tracking residential time awards by parent, enforcement practices, representation status of the parties, the existence of domestic violence, child abuse, chemical dependency, or mental health issues and whether the matter was agreed or contested.

(4) The administrative office of the courts shall report the compiled information, organized by each county, on at least an annual basis. These reports shall be made publicly available through the judicial information public access services and shall not contain any personal identifying information of parties in the proceedings.

**PART VIII - Miscellaneous**

NEW SECTION. Sec. 801. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 802. If specific funding for the purposes of section 306 of this act, referencing section 306 of this act by bill or chapter number and section number, is not provided by June 30, 2007, in the omnibus appropriations act, section 306 of this act is null and void.

NEW SECTION. Sec. 803. If specific funding for the purposes of section 701 of this act, referencing section 701 of this act by bill or chapter number and section number, is not provided by June 30, 2007, in the omnibus appropriations act, section 701 of this act is null and void.

NEW SECTION. Sec. 804. If specific funding for the purposes of section 702 of this act, referencing section 702 of this act by bill or chapter number and section number, is not provided by June 30, 2007, in the omnibus appropriations act, section 702 of this act is null and void.

NEW SECTION. Sec. 805. (1) Section 201 of this act takes effect January 1, 2008.

(2) Section 501 of this act takes effect January 1, 2009."

Correct the title.

and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Regala moved that the Senate refuse to concur in the House amendment(s) to Second Substitute Senate Bill No. 5470 and ask the House to recede therefrom.

The President declared the question before the Senate to be motion by Senator Regala that the Senate refuse to concur in the House amendment(s) to Second Substitute Senate Bill No. 5470 and ask the House to recede therefrom.

The motion by Senator Regala carried and the Senate refused to concur in the House amendment(s) to Second Substitute Senate Bill No. 5470 and asked the House to recede therefrom.

MESSAGE FROM THE HOUSE

April 5, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5830, with the following amendment: 5830-S AMH ELCS H3103.3

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Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 43.121 RCW to read as follows:

The legislature finds that:

(1) The years from birth to three are critical in building the social, emotional, and cognitive developmental foundations of a young child. Research into the brain development of young children reveals that children are born learning.

(2) The farther behind children are in their social, emotional, physical, and cognitive development, the more difficult it will be for them to catch up.

(3) A significant number of children age birth to five years are born with two or more of the following risk factors and have a greater chance of failure in school and beyond: Poverty; single or no parent; no parent employed full time or full year; all parents with disability; and mother without a high school degree.

(4) Parents and children involved in home visitation programs exhibit better birth outcomes, enhanced parent and child interactions, more efficient use of health care services, enhanced child development including improved school readiness, and early detection of developmental delays, as well as reduced welfare dependence, higher rates of school completion and job retention, reduction in frequency and severity of maltreatment, and higher rates of school graduation.

The legislature intends to promote the use of voluntary home visitation services to families at high risk as an early intervention strategy to alleviate the effect risk factors have on child development.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.121 RCW to read as follows:

The definitions in this section apply throughout sections 1 through 4 of this act unless the context clearly requires otherwise.

(1) "Evidence-based" means a program or practice that has had multiple site random controlled trials demonstrating that the program or practice is effective for the population.

(2) "Home visitation" means providing services in the permanent or temporary residence, or in other familiar surroundings, of the family receiving such services.

(3) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

**NEW SECTION. Sec. 3.** A new section is added to chapter 43.121 RCW to read as follows:

(1) Within available funds, the children's trust of Washington shall fund evidence-based and research-based home visitation programs for improving parenting skills and outcomes for children. Home visitation programs must be voluntary and must address the needs of families at high risk.

(2) The children's trust of Washington shall develop a plan with the department of social and health services, the department of health, the department of early learning, and the family policy council to coordinate or consolidate home visitation services for children and families and report to the appropriate committees of the legislature by December 1, 2007, with their recommendations for implementation of the plan.

**NEW SECTION. Sec. 4.** A new section is added to chapter 43.121 RCW to read as follows:

To recognize the focus on home visitation services, the Washington council for the prevention of child abuse and neglect is hereby renamed the children's trust of Washington. All references to the Washington council for the prevention of child abuse and neglect in the Revised Code of Washington shall be construed to mean the children's trust of Washington.

**NEW SECTION. Sec. 5.** RCW 43.70.530 (Home visitor program) and 1998 c 245 s 75 & 1993 c 179 s 2 are each repealed."

Correct the title.

and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Regala moved that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 5830 and ask the House to recede therefrom.

The President declared the question before the Senate to be motion by Senator Regala that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 5830 and ask the House to recede therefrom.

The motion by Senator Regala carried and the Senate refused to concur in the House amendment(s) to Substitute Senate Bill No. 5830 and asked the House to recede therefrom.

MOTION

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

MOTION

Senator Shin moved adoption of the following resolution:

SENATE RESOLUTION  
8647

By Senators Shin, Kastama, Holmquist, Kilmer, Berkey, Morton, Schoesler, Rasmussen, Keiser, Honeyford, Tom, Eide, Regala, Pridemore, Jacobsen, Sheldon, Hobbs, Oemig, Roach, Swecker, Marr, Zarelli, Prentice, Haugen and Hargrove

WHEREAS, Gifted and honor students are those who strive for academic excellence and work above and beyond the basic requirements of graduation; and

WHEREAS, Gifted and honor students are those who serve as role models for their peers and also are the future leaders of our state and our nation; and

WHEREAS, Many gifted and honor students participate in the Advanced Placement or International Baccalaureate programs in high school; and

WHEREAS, In the 2005-06 school year, 23,330 Washington students took an AP exam to earn college credit or advanced placement, or both; and

WHEREAS, Washington state has been singled out by The College Board in their recent *Report to the Nation 2007* for sustained student success in attaining high exam scores; and

WHEREAS, Washington state funds the Highly Capable Program for gifted students for up to 2% of all students in public schools; and

WHEREAS, In the 2005-06 school year, 20,264 students were eligible for this state-funded program;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate commend all gifted and honor students for their hard work and commitment to academic excellence; and

BE IT FURTHER RESOLVED, That the Washington State Senate encourage all students to strive for academic and personal excellence.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8647.

Senator Shin spoke in favor of the resolution.

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

PERSONAL PRIVILEGE

Senator Shin: "This morning, I got up in the morning, dressed and ready to walk out before 7 o'clock our legislative fellowship Tuesday morning at 7. I heard the news that the Virginia Tech those thirty-three victims are slain by a Korean student. I could not control my emotion. I didn't want to come. It shocked me more than anything and but after a moment of silence I decided to come for devotional and in that meeting I spoke about this situation to my colleagues. How sorry I am that a Korean student had killed thirty-three victims at Virginia

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Tech. I cannot...How grateful we are... to be able to come to this country and do such things? In response to that Representative John Lovick, he said, 'You know Paull, every time these things happen I look at the media, he thinks of the black students and worry about it. It hits me inside.' We all are concerned about it and, I don't know, as you perhaps know in United States most Korean-Americans about two million people look up to us as a role model and leader and for me not to prevent this happening this week shocking to me. I hope you'll forgive me, understand to pay a bit of modicum of wrong doings I contacted the Korean media, two newspapers, one TV station, two radio stations who have started the fund raising projects as we speak, to raise funds to help those families and victims and students whose murder is no fault of their own but they have suffered so much. I tried to picture myself in their situation. It is very difficult, I hope you understand the anxiety that we go through. I charged, we need to, to get together to learn each other, care for each other, to make a better world. Thank you very much Mr. President."

MOTION

At 12:00 p.m., on motion of Senator Eide, the Senate was recessed until 1:30 p.m.

AFTERNOON SESSION

The Senate was called to order at 1:30 p.m. by President Owen.

MOTION

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

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Rockefeller moved that Gubernatorial Appointment No. 9045, Don Mukai, as a member of the Board of Trustees, Lake Washington Technical College District No 26, be confirmed.

Senator Rockefeller spoke in favor of the motion.

MOTION

On motion of Senator Brandland, Senators McCaslin, Pflug, Roach and Stevens were excused.

MOTION

On motion of Senator Regala, Senator Brown was excused.

APPOINTMENT OF DON MUKAI

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9045, Don Mukai as a member of the Board of Trustees, Lake Washington Technical College District No 26.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9045, Don Mukai as a member of the Board of Trustees, Lake Washington Technical College District No 26 and the appointment was confirmed by the following vote: Yeas, 46; Nays, 0; Absent, 3; Excused, 0.

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Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hewitt, Hobbs, Holmquist, Honeyford, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 46

Absent: Senators Haugen, Jacobsen and Oemig - 3

Gubernatorial Appointment No. 9045, Don Mukai, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Lake Washington Technical College District No 26.

MOTION

On motion of Senator Regala, Senators Haugen, Jacobsen and Oemig were excused.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Shin moved that Gubernatorial Appointment No. 9057, Bruce Reid, as a member of the Board of Trustees, Lake Washington Technical College District No. 26, be confirmed.

Senator Shin spoke in favor of the motion.

APPOINTMENT OF BRUCE REID

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9057, Bruce Reid as a member of the Board of Trustees, Lake Washington Technical College District No. 26.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9057, Bruce Reid as a member of the Board of Trustees, Lake Washington Technical College District No. 26 and the appointment was confirmed by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Jacobsen - 1

Gubernatorial Appointment No. 9057, Bruce Reid, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Lake Washington Technical College District No. 26.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Shin moved that Gubernatorial Appointment No. 9148, Janis Machala, as a member of the Board of Trustees, Lake Washington Technical College District No. 26, be confirmed.

Senator Shin spoke in favor of the motion.

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## MOTION

On motion of Senator Regala, Senator Prentice was excused.

## APPOINTMENT OF JANIS MACHALA

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9148, Janis Machala as a member of the Board of Trustees, Lake Washington Technical College District No. 26.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9148, Janis Machala as a member of the Board of Trustees, Lake Washington Technical College District No. 26 and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Absent: Senator Brown - 1

Excused: Senator Prentice - 1

Gubernatorial Appointment No. 9148, Janis Machala, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Lake Washington Technical College District No. 26.

## MOTION

On motion of Rockefeller, the rules were suspended, the Senate, with a single vote, considered the confirmations of gubernatorial appointment and the vote of the Senate was recorded as a separate vote for each appointment.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

## MOTION

Senator Rockefeller moved that Gubernatorial Appointment No. 9034, Asbury Lockett, and Gubernatorial Appointment No. 9126, Mike Hudson as members of the Work Force Training and Education Coordinating Board, be confirmed.

Senator Rockefeller spoke in favor of the motion.

## APPOINTMENT OF ASBURY LOCKETT

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9034, Asbury Lockett and Gubernatorial Appointment No. 9126, Mike Hudson as members of the Work Force Training and Education Coordinating Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9034, Asbury Lockett as a member of the Work Force Training and Education Coordinating Board and the appointment was confirmed by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist,

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## APPOINTMENT OF MIKE HUDSON

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9126, Mike Hudson as a member of the Work Force Training and Education Coordinating Board and the appointment was confirmed by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

Gubernatorial Appointment No. 9034, Asbury Lockett and Gubernatorial Appointment No. 9126, Mike Hudson, having received the constitutional majority were declared confirmed as members of the Work Force Training and Education Coordinating Board.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

## MOTION

Senator Rockefeller moved that Gubernatorial Appointment No. 9184, Cheryl Terry ; and Gubernatorial Appointment No. 9186, John Turner, as members of the Clemency and Pardons Board, be confirmed.

Senator Rockefeller spoke in favor of the motion.

## APPOINTMENT OF CHERYL TERRY

The President declared the question before the Senate to be the confirmations of Gubernatorial Appointment No. 9184, Cheryl Terry and Gubernatorial Appointment No. 9186, John Turner, as members of the Clemency and Pardons Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9184, Cheryl Terry as a member of the Clemency and Pardons Board and the appointment was confirmed by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

## APPOINTMENT OF JOHN TURNER

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9186, John Turner as a member

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of the Clemency and Pardons Board and the appointment was confirmed by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

Gubernatorial Appointment No. 9184, Cheryl Terry and Gubernatorial Appointment No. 9186, John Turner having received the constitutional majority were declared confirmed as members of the Clemency and Pardons Board.

SECOND READING

CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Rockefeller moved that Gubernatorial Appointment No. 9036, Mike Marave, and Gubernatorial Appointment No. 9059, Paul Rollins, Jr. as members of the Small Business Export Finance Assistance Center Board of Directors, be confirmed.

Senator Rockefeller spoke in favor of the motion.

MOTION

On motion of Senator Regala, Senators McAuliffe and Tom were excused.

APPOINTMENT OF MIKE MARAVE

The President declared the question before the Senate to be the confirmations of Gubernatorial Appointment No. 9036, Mike Marave and Gubernatorial Appointment No. 9059, Paul Rollins, Jr. as members of the Small Business Export Finance Assistance Center Board of Directors.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9036, Mike Marave as a member of the Small Business Export Finance Assistance Center Board of Directors and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Weinstein and Zarelli - 47

Excused: Senators McAuliffe and Tom - 2

APPOINTMENT OF PAUL ROLLINS, JR.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9059, Paul Rollins, Jr. as a member of the Small Business Export Finance Assistance Center Board of Directors and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist,

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Excused: Senators McAuliffe and Tom - 2

Gubernatorial Appointment No. 9036, Mike Marave and Gubernatorial Appointment No. 9059, Paul Rollins, Jr., having received the constitutional majority were declared confirmed as members of the Small Business Export Finance Assistance Center Board of Directors.

SECOND READING

CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Rockefeller moved that Gubernatorial Appointment No. 9069, Claire Spain-Remy, and Gubernatorial Appointment No. 9118, Marc Gaspard, as members of the Board of Trustees, Pierce Community College District No. 11, be confirmed.

Senators Carrell and Rockefeller spoke in favor of the motion.

APPOINTMENT OF CLAIR SPAIN-REMY

The President declared the question before the Senate to be the confirmations of Gubernatorial Appointment No. 9069, Claire Spain-Remy, and Gubernatorial Appointment No. 9118, Marc Gaspard, as members of the Board of Trustees, Pierce Community College District No. 11.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9069, Claire Spain-Remy as a member of the Board of Trustees, Pierce Community College District No. 11 and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Weinstein and Zarelli - 47

Excused: Senators McAuliffe and Tom - 2

APPOINTMENT OF MARC GASPARD

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9118, Marc Gaspard as a member of the Board of Trustees, Pierce Community College District No. 11 and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Weinstein and Zarelli - 47

Excused: Senators McAuliffe and Tom - 2

Gubernatorial Appointment No. 9069, Claire Spain-Remy and Gubernatorial Appointment No. 9118, Marc Gaspard having

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received the constitutional majority were declared confirmed as members of the Board of Trustees, Pierce Community College District No. 11.

## MOTION

Senator Rockefeller moved that the reappointment of Elizabeth A. Willis, April 4, 2007 as a member of the State Board for Community and Technical Colleges for a term ending April 3, 2011 be substituted for Gubernatorial Appointment No. 9194 Elizabeth A. Willis, appointed November 1, 2006 as a member of the State Board for Community and Technical Colleges for a term ending April 3, 2007 and take its place on the second reading calendar.

## SECOND READING

## CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

## MOTION

Senator Rockefeller moved that Gubernatorial Appointment No. 9132, Jeff Johnson,; Gubernatorial Appointment No. 9112, Sharon Fairchild and Gubernatorial Appointment No. 9194, Elizabeth A. Willis as members of the State Board of Community and Technical Colleges, be confirmed.

Senator Rockefeller spoke in favor of the motion.

## APPOINTMENT OF JEFF JOHNSON

The President declared the question before the Senate to be the confirmations of Gubernatorial Appointment No. 9132, Jeff Johnson; Gubernatorial Appointment No. 9112, Sharon Fairchild; and Gubernatorial Appointment No. 9194, Elizabeth A. Willis; as members of the State Board of Community and Technical Colleges.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9132, Jeff Johnson as a member of the State Board of Community and Technical Colleges and the appointment was confirmed by the following vote: Yeas, 46; Nays, 0; Absent, 1; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Weinstein and Zarelli - 46

Absent: Senator Brown - 1

Excused: Senators McAuliffe and Tom - 2

## APPOINTMENT OF SHARON FAIRCHILD

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9112, Sharon Fairchild as a member of the State Board for Community and Technical Colleges and the appointment was confirmed by the following vote: Yeas, 46; Nays, 0; Absent, 1; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens,

Swecker, Weinstein and Zarelli - 46

Absent: Senator Brown - 1

Excused: Senators McAuliffe and Tom - 2

## APPOINTMENT OF ELIZABETH A WILLIS

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9194 Elizabeth A. Willis as a member of the State Board for Community and Technical Colleges and the appointment was confirmed by the following vote: Yeas, 46; Nays, 0; Absent, 1; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Weinstein and Zarelli - 46

Absent: Senator Brown - 1

Excused: Senators McAuliffe and Tom - 2

Gubernatorial Appointment No. 9132, Jeff Johnson; Gubernatorial Appointment No. 9112, Sharon Fairchild and Gubernatorial Appointment No. 9194, Elizabeth A. Willis having received the constitutional majority were declared confirmed as members of the State Board of Community and Technical Colleges.

## MOTION

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

## MESSAGE FROM THE HOUSE

April 16, 2007

MR. PRESIDENT:

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

HOUSE BILL NO. 1005,

HOUSE BILL NO. 1366,

SUBSTITUTE HOUSE BILL NO. 1417,

HOUSE BILL NO. 1457,

HOUSE BILL NO. 1520,

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1569,

HOUSE BILL NO. 1644,

HOUSE BILL NO. 1859,

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1916

SECOND SUBSTITUTE HOUSE BILL NO. 1980,

SUBSTITUTE HOUSE BILL NO. 2261,

SECOND SUBSTITUTE HOUSE BILL NO. 2262,

SUBSTITUTE HOUSE BILL NO. 2275,

HOUSE BILL NO. 2281,

and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

## MESSAGE FROM THE HOUSE

April 16, 2007

MR. PRESIDENT:

The House concurred in Senate amendments(s) to the following bills and passed the bills as amended by the Senate:

ENGROSSED SUBSTITUTUE HOUSE BILL NO. 1052,



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HOUSE BILL NO. 1065,  
 HOUSE BILL NO. 1077,  
 SECOND SUBSTITUTE HOUSE BILL NO. 1096,  
 SUBSTITUTE HOUSE BILL NO. 1099,  
 SECOND SUBSTITUTE HOUSE BILL NO. 1106,  
 SUBSTITUTE HOUSE BILL NO. 1256,  
 SUBSTITUTE HOUSE BILL NO. 1328,  
 HOUSE BILL NO. 1331,  
 HOUSE BILL NO. 1371,  
 SUBSTITUTE HOUSE BILL NO. 1407,  
 SUBSTITUTE HOUSE BILL NO. 1409,  
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1422,  
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1461,  
 SUBSTITUTE HOUSE BILL NO. 1472,  
 SECOND SUBSTITUTE HOUSE BILL NO. 1488,  
 and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MESSAGE FROM THE HOUSE

April 13, 2007

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5248, with the following amendment: 5248-S AMH ENGR H3122.E

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) The legislature finds that the goal of preserving Washington's agricultural lands is shared by citizens throughout the state. The legislature recognizes that efforts to achieve a balance between the productive use of these resource lands and associated regulatory requirements have proven difficult, but that good faith efforts to seek solutions have yielded successes. The legislature believes that this willingness to find and pursue common ground will enable Washingtonians to enjoy the benefits of a successful agricultural economy and a healthy environment, while also preventing the unnecessary conversion of valuable agricultural lands.

(2) The legislature, therefore, intends this act, the temporary delays it establishes for amending or adopting provisions of certain critical area ordinances, and the duties and requirements it prescribes for the William D. Ruckelshaus Center, to be expressions of progress in resolving, harmonizing, and advancing commonly held environmental protection and agricultural viability goals.

(3) The legislature fully expects the duties and requirements it is prescribing for the Ruckelshaus Center to be successful. If, however, the efforts of the center do not result in agreement on how to best address the conflicts between agricultural activities and certain regulatory requirements as they apply to agricultural activities, the legislature intends, upon the expiration of the delay, to require jurisdictions that have delayed amending or adopting certain regulatory measures to promptly complete all regulatory amendments or adoptions necessary to comply with the growth management act.

(4) The legislature does not intend this act to reduce or otherwise diminish existing critical area ordinances that apply to agricultural activities during the deferral period established in section 2 of this act.

**NEW SECTION. Sec. 2.** A new section is added to chapter 36.70A RCW to read as follows:

(1) For the period beginning May 1, 2007, and concluding July 1, 2010, counties and cities may not amend or adopt critical area ordinances under RCW 36.70A.060(2) as they specifically apply to agricultural activities. Nothing in this section:

(a) Nullifies critical area ordinances adopted by a county or city prior to May 1, 2007, to comply with RCW 36.70A.060(2);

(b) Limits or otherwise modifies the obligations of a county or city to comply with the requirements of this chapter pertaining to critical areas not associated with agricultural activities; or

(c) Limits the ability of a county or city to adopt or employ voluntary measures or programs to protect or enhance critical areas associated with agricultural activities.

(2) Counties and cities subject to deferral requirements under subsection (1) of this section:

(a) Should implement voluntary programs to enhance public resources and the viability of agriculture. Voluntary programs implemented under this subsection (2)(a) must include measures to evaluate the successes of these programs; and

(b) Must review and, if necessary, revise critical area ordinances as they specifically apply to agricultural activities to comply with the requirements of this chapter by December 1, 2011.

(3) For purposes of this section and section 3 of this act, "agricultural activities" means agricultural uses and practices currently existing or legally allowed on rural land or agricultural land designated under RCW 36.70A.170 including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation.

**NEW SECTION. Sec. 3.** (1) Subject to the availability of amounts appropriated for this specific purpose, the William D. Ruckelshaus Center must conduct an examination of the conflicts between agricultural activities and critical area ordinances adopted under chapter 36.70A RCW. The examination required by this section must commence by July 1, 2007.

(2) In fulfilling the requirements of this section, the center must: (a) Work and consult with willing participants including, but not limited to, agricultural, environmental, tribal, and local government interests; and (b) involve and apprise legislators and legislative staff of its efforts.

(3) The examination conducted by the center must be completed in two distinct phases in accordance with the following:

(a) In the first phase, the center must conduct fact-finding and stakeholder discussions with stakeholders identified in subsection (2) of this section. These discussions must identify stakeholder concerns, desired outcomes, opportunities, and barriers. The fact-finding must identify existing regulatory, management, and scientific information related to agricultural activities and critical areas including, but not limited to: (i) Critical area ordinances adopted under chapter 36.70A RCW; (ii) acreage enrolled in the conservation reserve enhancement program; (iii) acreage protected by conservation easements; (iv) buffer widths; (v) requirements of federally approved salmon recovery plans; (vi) the impacts of agricultural activities on Puget Sound recovery efforts; and (vii) compliance with water quality requirements. The center must issue two reports of its fact-finding efforts and stakeholder discussions to the governor and the appropriate committees of the house of representatives and the senate by December 1, 2007, and December 1, 2008; and

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(b)(i) In the second phase, the center must facilitate discussions between the stakeholders identified in subsection (2) of this section to identify policy and financial options or opportunities to address the issues and desired outcomes identified by stakeholders in the first phase of the center's examination efforts.

(ii) In particular, the stakeholders must examine innovative solutions including, but not limited to, outcome-based approaches that incorporate, to the maximum extent practicable, voluntary programs or approaches. Additionally, stakeholders must examine ways to modify statutory provisions to ensure that regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary programs or approaches.

(iii) The center must work to achieve agreement among participating stakeholders and to develop a coalition that can be used to support agreed upon changes or new approaches to protecting critical areas during the 2010 legislative session.

(4) The center must issue a final report of findings and legislative recommendations to the governor and the appropriate committees of the house of representatives and the senate by September 1, 2009.

**NEW SECTION. Sec. 4.** If specific funding for the purposes of section 3 of this act, referencing this act and section 3 of this act by bill or chapter number and section number, is not provided by June 30, 2007, in the omnibus appropriations act, this act is null and void.

**NEW SECTION. Sec. 5.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**NEW SECTION. Sec. 6.** This act expires December 1, 2011."

Correct the title.  
and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

#### MOTION

Senator Rasmussen moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5248.

Senators Rasmussen, Hatfield, Haugen and Spanel spoke in favor of the motion.

Senator Schoesler spoke against the motion.

#### MOTION

The President declared the question before the Senate to be the motion by Senator Rasmussen that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5248.

The motion by Senator Rasmussen carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5248 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5248, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5248, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 45; Nays, 2; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McCaslin, Morton, Murray, Oemig, Parlette,

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Voting nay: Senators Delvin and Prentice - 2

Excused: Senators McAuliffe and Tom - 2

SUBSTITUTE SENATE BILL NO. 5248, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MESSAGE FROM THE HOUSE

April 5, 2007

MR. PRESIDENT:

The House has passed SENATE BILL NO. 5552, with the following amendment: 5552 AMH AGNR H3232.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 90.48.366 and 1994 sp.s. c 9 s 855 are each amended to read as follows:

((By July 1, 1991,)) The department, in consultation with the departments of ((fisheries,)) fish and wildlife((;)) and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than ((fifty)) one hundred dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(1) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensitivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; (f) significant archaeological resources as determined by the ((office)) department of archaeology and historic preservation; and (g) other areas of special ecological or recreational importance, as determined by the department((; -- If the department has adopted rules for a compensation table prior to July 1, 1992, the sensitivity of significant archaeological resources shall only be included among factors to be used in the compensation table when the department revises the rules for the compensation table after July 1, 1992)); and

(3) Actions taken by the party who spilled oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife.

**Sec. 2.** RCW 90.48.368 and 1994 c 264 s 92 are each amended to read as follows:

(1) The department shall adopt rules establishing a formal process for preassessment screening of damages resulting from spills to the waters of the state causing the death of, or injury to, fish, animals, vegetation, or other resources of the state. The rules shall specify the conditions under which the department shall convene a preassessment screening committee. The

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preassessment screening process shall occur concurrently with reconnaissance activities. The committee shall use information obtained from reconnaissance activities as well as any other relevant resource and resource use information. For each incident, the committee shall determine whether a damage assessment investigation should be conducted, or, whether the compensation schedule authorized under RCW 90.48.366 and 90.48.367 should be used to assess damages. The committee may accept restoration or enhancement projects or studies proposed by the liable parties in lieu of some or all of: (a) The compensation schedule authorized under RCW 90.48.366 and 90.48.367; or (b) the claims from damage assessment studies authorized under RCW 90.48.142.

(2) A preassessment screening committee may consist of representatives of the departments of ecology, archaeology and historic preservation, fish and wildlife, health, and natural resources, ~~((social and health services, and emergency management,))~~ and the parks and recreation commission, ~~((the office of archaeology and historic preservation,))~~ as well as other federal, state, and local agencies, and tribal and local governments whose presence would enhance the reconnaissance or damage assessment aspects of spill response. The department shall chair the committee and determine which representatives will be needed on a spill-by-spill basis.

(3) The committee shall consider the following factors when determining whether a damage assessment study authorized under RCW 90.48.367 should be conducted: (a) Whether evidence from reconnaissance investigations suggests that injury has occurred or is likely to occur to publicly owned resources; (b) the potential loss in services provided by resources injured or likely to be injured and the expected value of the potential loss; (c) whether a restoration project to return lost services is technically feasible; (d) the accuracy of damage quantification methods that could be used and the anticipated cost-effectiveness of applying each method; (e) the extent to which likely injury to resources can be verified with available quantification methods; and (f) whether the injury, once quantified, can be translated into monetary values with sufficient precision or accuracy.

(4) When a resource damage assessment is required for an oil spill in the ~~((navigable))~~ waters of the state, as defined in RCW 90.56.010, the state trustee agency responsible for the resource and habitat damaged shall conduct the damage assessment and pursue all appropriate remedies with the responsible party.

(5) Oil spill damage assessment studies authorized under RCW 90.48.367 may only be conducted if the committee, after considering the factors enumerated in subsection (3) of this section, determines that the damages to be investigated are quantifiable at a reasonable cost and that proposed assessment studies are clearly linked to quantification of the damages incurred.

(6) As new information becomes available, the committee may reevaluate the scope of damage assessment using the factors listed in subsection (3) of this section and may reduce or expand the scope of damage assessment as appropriate.

(7) The preassessment screening process shall provide for the ongoing involvement of persons who may be liable for damages resulting from an oil spill. The department may negotiate with a potentially liable party to perform restoration and enhancement projects or studies which may substitute for all or part of the compensation authorized under RCW 90.48.366 and 90.48.367 or the damage assessment studies authorized under RCW 90.48.367.

(8) For the purposes of this section and RCW 90.48.367, the cost of a damage assessment shall be considered "reasonable" when the anticipated cost of the damage assessment is expected to be less than the anticipated damage that may have occurred or may occur.

**Sec. 3.** RCW 90.56.330 and 1992 c 73 s 36 are each amended to read as follows:

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Except as otherwise provided in RCW 90.56.390, any person who negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ~~((twenty))~~ one hundred thousand dollars for every such violation, and for each day the spill poses risks to the environment as determined by the director. Any person who intentionally or recklessly discharges or causes or permits the entry of oil into the waters of the state shall incur, in addition to any other penalty authorized by law, a penalty of up to ~~((one))~~ five hundred thousand dollars for every such violation and for each day the spill poses risks to the environment as determined by the director. The amount of the penalty shall be determined by the director after taking into consideration the size of the business of the violator, the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, the speed and thoroughness of the collection and removal of the oil, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty ~~((herein))~~ provided for in this section shall be imposed pursuant to RCW 43.21B.300.

**Sec. 4.** RCW 88.40.011 and 2003 c 56 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barge" means a vessel that is not self-propelled.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(9) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(10) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been

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used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means oil of any ~~((naturally occurring))~~ kind that is liquid ~~((hydrocarbons))~~ at atmospheric temperature ~~((and pressure coming from the earth, including condensate and natural gasoline;))~~ and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

**Sec. 5.** RCW 88.46.010 and 2000 c 69 s 1 are each amended to read as follows:

~~((Unless the context clearly requires otherwise;))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently

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in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(4) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

(8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means oil of any ~~((naturally occurring))~~ kind that is liquid ~~((hydrocarbons))~~ at atmospheric temperature ~~((and pressure coming from the earth, including condensate and natural gasoline;))~~ and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

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(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(19) "Spill" means an unauthorized discharge of oil into the waters of the state.

(20) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(21) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(22) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

**Sec. 6.** RCW 90.56.010 and 2000 c 69 s 15 are each amended to read as follows:

~~((For purposes of this chapter, the following definitions shall apply unless the context indicates otherwise.))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Board" means the pollution control hearings board.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Committee" means the preassessment screening committee established under RCW 90.48.368.

(7) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(8) "Department" means the department of ecology.

(9) "Director" means the director of the department of ecology.

(10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(12) "Fund" means the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(13) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(14) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(15) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(16) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; (c) conducting actions necessary to clean up the discharge; (d) conducting predamage and damage assessment studies; and (e) enforcing the provisions of this chapter and collecting for damages caused by a discharge.

(17) "Oil" or "oils" means ~~((naturally occurring))~~ oil of any kind that is liquid ((hydrocarbons)) at atmospheric temperature ((and pressure coming from the earth, including condensate and natural gasoline,)) and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(18) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(19) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(20)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

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(21) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(22) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(23) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(24) "Spill" means an unauthorized discharge of oil or hazardous substances into the waters of the state.

(25) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(26) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(27) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions."

Correct the title.

and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

#### MOTION

Senator Rockefeller moved that the Senate concur in the House amendment(s) to Senate Bill No. 5552.

Senator Rockefeller spoke in favor of the motion.

#### MOTION

The President declared the question before the Senate to be the motion by Senator Rockefeller that the Senate concur in the House amendment(s) to Senate Bill No. 5552.

The motion by Senator Rockefeller carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5552 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5552, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5552, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 35; Nays, 12; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, Murray, Oemig, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Swecker and Weinstein - 35

Voting nay: Senators Brandland, Clements, Delvin, Hewitt, Holmquist, Honeyford, McCaslin, Morton, Parlette, Schoesler, Stevens and Zarelli - 12

Excused: Senators McAuliffe and Tom - 2

SENATE BILL NO. 5552, as amended by the House, having received the constitutional majority, was declared

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

#### MESSAGE FROM THE HOUSE

April 12, 2007

MR. PRESIDENT:

The House has passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6001, with the following amendment: 6001-S.E AMH ENGR H3547.E

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) Washington is especially vulnerable to climate change because of the state's dependence on snow pack for summer stream flows and because the expected rise in sea levels threatens our coastal communities. Extreme weather, a warming Pacific Northwest, reduced snow pack, and sea level rise are four major ways that climate change is disrupting Washington's economy, environment, and communities;

(b) Washington's greenhouse gases emissions are continuing to increase, despite international scientific consensus that worldwide emissions must be reduced significantly below current levels to avert catastrophic climate change;

(c) Washington state greenhouse gases are substantially caused by the transportation sector of the economy;

(d) Washington has been a leader in actions to slow the increase of greenhouse gases emissions, such as being the first state in the nation to adopt a carbon dioxide mitigation program for new thermal electric plants, mandating integrated resource planning for electric utilities to include life-cycle costs of carbon dioxide emissions, adopting clean car standards and stronger appliance energy efficiency standards, increasing production and use of renewable liquid fuels, and increasing renewable energy sources by electric utilities;

(e) A greenhouse gases emissions performance standard will work in unison with the state's carbon dioxide mitigation policy, chapter 80.70 RCW and its related rules, for fossil-fueled thermal electric generation facilities located in the state;

(f) While these actions are significant, there is a need to assess the trend of greenhouse gases emissions statewide over the next several decades, and to take sufficient actions so that Washington meets its responsibility to contribute to the global actions needed to reduce the impacts and the pace of global warming;

(g) Actions to reduce greenhouse gases emissions will spur technology development and increase efficiency, thus resulting in benefits to Washington's economy and businesses; and

(h) The state of Washington has an obligation to provide clear guidance for the procurement of baseload electric generation to alleviate regulatory uncertainty while addressing risks that can affect the ability of electric utilities to make necessary and timely investments to ensure an adequate, reliable, and cost-effective supply of electricity.

(2) The legislature finds that companies that generate greenhouse gases emissions or manufacture products that generate such emissions are purchasing carbon credits from landowners and from other companies that provide carbon credits. Companies that are purchasing carbon credits would benefit from a program to trade and to bank carbon credits. Washington forests are one of the most effective resources that can absorb carbon dioxide from the atmosphere. Forests, and other planted lands and waters, provide carbon storage and mitigate greenhouse gases emissions. Washington contains the most productive forests in the world and both public and private landowners could benefit from a carbon storage trading and banking program.

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(3) The legislature intends by this act to establish statutory goals for the statewide reduction in greenhouse gases emissions and to adopt the recommendations provided by the Washington climate change challenge stakeholder group, which is charged with designing and recommending a comprehensive set of policies to the legislature and the governor on how to achieve the goals. The legislature further intends by this act to authorize immediate actions in the electric power generation sector for the reduction of greenhouse gases emissions.

(4) The legislature finds that:

(a) To the extent energy efficiency and renewable resources are unable to satisfy increasing energy and capacity needs, the state will rely on clean and efficient fossil fuel-fired generation and will encourage the development of cost-effective, highly efficient, and environmentally sound supply resources to provide reliability and consistency with the state's energy priorities;

(b) It is vital to ensure all electric utilities internalize the significant and underrecognized cost of emissions and to reduce Washington consumers' exposure to costs associated with future regulation of these emissions, which is consistent with the objectives of integrated resource planning by electric utilities under chapter 19.280 RCW; and

(c) The state of California recently enacted a law establishing a greenhouse gases emissions performance standard for electric utility procurement of baseload electric generation that is based on the emissions of a combined-cycle thermal electric generation facility fueled by natural gas.

(5) The legislature finds that the climate change challenge stakeholder group provides a process for identifying the policies necessary to achieve the economic and emissions reduction goals in section 3 of this act in a manner that maximizes economic opportunities and job creation in Washington.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gases emissions output" means the level of greenhouse gases emissions as surveyed and determined by the energy policy division of the department of community, trade, and economic development under section 7 of this act.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(6) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(7) "Commission" means the Washington utilities and transportation commission.

(8) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has

been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(9) "Department" means the department of ecology.

(10) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(11) "Electric utility" means an electrical company or a consumer-owned utility.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(14) "Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(15) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by the energy facility site evaluation council or a local jurisdiction.

(18) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of the effective date of this section, but may result in incidental increases in generation capacity.

**NEW SECTION. Sec. 3.** (1) The following greenhouse gases emissions reduction and clean energy economy goals are established for Washington state:

(a) By 2020, reduce overall greenhouse gases emissions in the state to 1990 levels;

(b) By 2035, reduce overall greenhouse gases emissions in the state to twenty-five percent below 1990 levels;

(c) By 2050, the state will do its part to reach global climate stabilization levels by reducing overall emissions to fifty percent below 1990 levels, or seventy percent below the state's expected emissions that year; and

(d) By 2020, increase the number of clean energy sector jobs to twenty-five thousand from the eight thousand four hundred jobs the state had in 2004.

(2)(a) By December 31, 2007, the departments of ecology and community, trade, and economic development shall report to the appropriate committees of the senate and house of representatives the total greenhouse gases emissions for 1990 and the totals in each major sector for 1990.

(b) By December 31st of each even-numbered year beginning in 2010, the departments of ecology and community, trade, and economic development shall report to the governor and the appropriate committees of the senate and house of representatives the total greenhouse gases emissions for the preceding two years, and totals in each major source sector.

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**NEW SECTION. Sec. 4.** (1) The governor shall develop policy recommendations to the legislature on how the state can achieve the greenhouse gases emissions reduction goals established under section 3 of this act. These recommendations must include, but are not limited to:

(a) How market mechanisms, such as a load-based cap and trade system, would assist in achieving the greenhouse gases emissions reduction goals;

(b) How geologic injection, forest sequestration, and other carbon sequestration options could be used to achieve state greenhouse gases emissions reduction goals;

(c) A process for replacing the highest emitting thermal electric plants that have exceeded their expected useful life with newer technologies that have lower greenhouse gases emissions levels;

(d) Methods to utilize indigenous resources, such as landfill gas, geothermal resources, and other assets that might reduce greenhouse gases emissions consistent with the purposes of this act;

(e) How regulatory and tax policies for electric utilities could be improved to help achieve these goals in a manner that is equitable for electric utilities and consumers.

(2) Recommendations under subsection (1) of this section shall be submitted to the appropriate committees of the house of representatives and the senate for consideration in the 2008 legislative session.

**NEW SECTION. Sec. 5.** (1) Beginning July 1, 2008, the greenhouse gases emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gases emissions output as determined under section 7 of this act.

(2) All baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section until the facilities are the subject of long-term financial commitments. All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gases emissions performance standard established in subsection (1) of this section.

(3) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section.

(4) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(5) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(6) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse gases emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(7) The following greenhouse gases emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as

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emissions of the power plant in determining compliance with the greenhouse gases emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (13) of this section.

(8) In adopting and implementing the greenhouse gases emissions performance standard, the department of community, trade, and economic development energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity coordination council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gases emissions performance standard on system reliability and overall costs to electricity customers.

(9) In developing and implementing the greenhouse gases emissions performance standard, the department shall, with assistance of the commission, the department of community, trade, and economic development energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(10) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse gases emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(11) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (7) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (13) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(12)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gases emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.



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(13) A project under consideration by the energy facility site evaluation council by the effective date of this section is required to include all of the requirements of subsection (11) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by the effective date of this section that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse gases emissions performance standard by purchasing verifiable greenhouse gases emissions reductions from an electric generating facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility.

**NEW SECTION. Sec. 6.** A new section is added to chapter 80.50 RCW to read as follows:

The governor may approve or otherwise take action on an amendment to a site certification under the provisions of section 5 of this act.

**NEW SECTION. Sec. 7.** The energy policy division of the department of community, trade, and economic development shall provide an opportunity for interested parties to comment on the development of a survey of new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States to determine the average rate of emissions of greenhouse gases for these turbines. The department of community, trade, and economic development shall report the results of its survey to the legislature every five years, beginning June 30, 2013. The department of community, trade, and economic development shall adopt by rule the average available greenhouse gases emissions output every five years beginning five years after the effective date of this act.

**NEW SECTION. Sec. 8.** (1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 5 of this act.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 5 of this act.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity complies with the greenhouse gases emissions performance standard established under section 5 of this act, whether the company has a need for the resource, and whether the specific resource selected is appropriate. The commission shall take into consideration factors such as the company's forecasted loads, need for energy, power plant technology, expected costs, and other associated investment decisions. The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs. A proceeding under this subsection (5) shall be conducted pursuant to chapter 34.05 RCW (part IV). The commission shall adopt rules to provide that the schedule for a proceeding under this subsection takes into account both (a) the needs of the parties to the proposed resource acquisition or power purchase agreement for timely decisions that allow transactions to be completed; and (b) the procedural rights to be provided to parties in chapter 34.05 RCW (part IV), including intervention, discovery, briefing, and hearing.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with the long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under section 5 of this act. The department shall report to the commission whether baseload electric generation will comply with the greenhouse gases emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) The commission shall adopt rules necessary to implement this section by December 31, 2008.

**NEW SECTION. Sec. 9.** (1) No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 5 of this act.

(2) The governing board shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 5 of this act. No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies

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with the greenhouse gases emissions performance standard established under section 5 of this act.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider the design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under section 5 of this act, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

**NEW SECTION. Sec. 10.** For the purposes of sections 5 through 10 of this act and RCW 80.70.020, the department, in consultation with the department of community, trade, and economic development energy policy division, the energy facility site evaluation council, the commission, and the governing boards of consumer-owned utilities, shall review the greenhouse gases emissions performance standard established in this chapter to determine need, applicability, and effectiveness no less than every five years following the effective date of this section, or upon implementation of a federal or state law or rule regulating carbon dioxide emissions of electric utilities, and report to the legislature.

**NEW SECTION. Sec. 11.** By December 31, 2007, the governor shall report to the legislature regarding the potential benefits of creating tax incentives to encourage baseload electric facilities to upgrade their equipment to reduce carbon dioxide emissions, the nature and level of tax incentives likely to produce the greatest benefits, and the cost of providing such incentives.

**NEW SECTION. Sec. 12.** Sections 1 through 5 and 7 through 10 of this act constitute a new chapter in Title 80 RCW."

Correct the title.  
and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

#### MOTION

Senator Pridemore moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6001.

Senators Pridemore and Poulsen spoke in favor of the motion.

Senators Honeyford and Delvin spoke against the motion.

#### MOTION

The President declared the question before the Senate to be the motion by Senator Pridemore that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6001.

The motion by Senator Pridemore carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 6001 by voice vote.

Senators Honeyford, Schoesler and Delvin spoke against final passage of the bill.

Senators Brown and Carrell spoke in favor of final passage

of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6001, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6001, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 37; Nays, 10; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Swecker and Weinstein - 37

Voting nay: Senators Clements, Delvin, Hewitt, Holmquist, Honeyford, McCaslin, Morton, Schoesler, Stevens and Zarelli - 10

Excused: Senators McAuliffe and Tom - 2

ENGROSSED SUBSTITUTE SENATE BILL NO. 6001, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION TO LIMIT DEBATE

Senator Eide: "Mr. President, I move that the members of the Senate be allowed to speak but once on each question before the Senate, that such speech be limited to three minutes and that members be prohibited from yielding their time, however, the maker of a motion shall be allowed to open and close debate. This motion shall be in effect through April 17, 2007."

The President declared the question before the Senate to be the motion by Senator Eide to limit debate.

The motion by Senator Eide carried and debate was limited through the end of Session.

#### MOTION

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

#### SECOND READING

ENGROSSED HOUSE BILL NO. 2070, by Representatives O'Brien, Goodman and Pearson

Concerning exceptional sentences.

The measure was read the second time.

#### MOTION

Senator Kline moved that the following striking amendment by Senators Kline and McCaslin be adopted:

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** In *State v. Pillatos*, 150 P.3d 1130 (2007), the Washington supreme court held that the changes made to the sentencing reform act concerning exceptional sentences in chapter 68, Laws of 2005 do not apply to cases where the trials had already begun or guilty pleas had already been entered prior to the effective date of the act on April 15, 2005. The legislature intends that the superior courts shall have the authority to impanel juries to find aggravating

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circumstances in all cases that come before the courts for trial or sentencing, regardless of the date of the original trial or sentencing.

**Sec. 2.** RCW 9.94A.537 and 2005 c 68 s 4 are each amended to read as follows:

(1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) In any case where an exceptional sentence above the standard range was imposed and where a new sentencing hearing is required, the superior court may impanel a jury to consider any alleged aggravating circumstances listed in RCW 9.94A.535(3), that were relied upon by the superior court in imposing the previous sentence, at the new sentencing hearing.

(3) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

~~((3))~~ (4) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented to the jury during the trial of the alleged crime, unless the jury has been impaneled solely for resentencing, or unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

~~((4))~~ (5) If the superior court conducts a separate proceeding to determine the existence of aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

~~((5))~~ (6) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence.

**NEW SECTION. Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Senators Kline and McCaslin spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Kline and McCaslin to Engrossed House Bill No. 2070.

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

#### MOTION

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

On page 1, line 1 of the title, after "sentences;" strike the remainder of the title and insert "amending RCW 9.94A.537; creating a new section; and declaring an emergency."

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On motion of Senator Benton, the rules were suspended, Engrossed House Bill No. 2070 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Benton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2070 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 2070 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Absent: Senator Brown - 1

Excused: Senator McAuliffe - 1

ENGROSSED HOUSE BILL NO. 2070 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

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

#### RULING BY THE PRESIDENT

President Owen: "In ruling upon the point of order raised by Senator Kline that the House Amendments are beyond the scope and object of Engrossed Substitute Senate Bill 5312, the President finds and rules as follows:

The underlying bill as it passed the Senate relates to transactions involving scrap and other metals. The House amendments include provisions on metal transactions, but also create a 12-month and one-day sentencing enhancement for theft and possession of stolen property, including but not limited to metal property, if the damage to the victim greatly exceeds the value of the property stolen.

There is no doubt that these penalties could be part of a multi-faceted approach to combating metal theft, addressing both those who initially steal metal and also those who knowingly possess or purchase stolen metal. Were the proposed penalties more closely tied or limited to metal theft, the President believes this language could fit within the subject matter of the bill as it passed the Senate. By including all categories of theft and possession of stolen property within the penalties, and not just those relating to metal, the House amendments impermissibly broaden the object of the measure to include different subjects and classes of violators within its provisions.

For these reasons, the President finds that the House Amendments are beyond the scope and object of the underlying bill, and Senator Kline's point of order is well-taken."

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## MOTION

Senator Kline moved that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5312 and request of the House a conference thereon.

The President declared the question before the Senate to be motion by Senator Kline that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5312.

The motion by Senator Kline carried and the Senate refused to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5312 and requested of the House a conference thereon.

## APPOINTMENT OF CONFERENCE COMMITTEE

The President appointed as members of the Conference Committee on Engrossed Substitute Senate Bill No. 5312 and the House amendment(s) thereto: Senators Kline, McCaslin and Tom.

## MOTION

On motion of Senator Eide, the appointments to the conference committee were confirmed.

## MOTION

At 3:12 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 3:55 p.m. by President Owen.

## MESSAGE FROM THE HOUSE

April 17, 2007

MR. PRESIDENT:

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

SUBSTITUTE HOUSE BILL NO. 1001,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1008,  
 SUBSTITUTE HOUSE BILL NO. 1037,  
 HOUSE BILL NO. 1038,  
 SUBSTITUTE HOUSE BILL NO. 1079,  
 SUBSTITUTE HOUSE BILL NO. 1140,  
 ENGROSSED HOUSE BILL NO. 1214,  
 HOUSE BILL NO. 1220,  
 SUBSTITUTE HOUSE BILL NO. 1255,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1260,  
 HOUSE BILL NO. 1343,  
 HOUSE BILL NO. 1449,  
 ENGROSSED HOUSE BILL NO. 1525,  
 SUBSTITUTE HOUSE BILL NO. 1651,  
 SECOND SUBSTITUTE HOUSE BILL NO. 1656,  
 SUBSTITUTE HOUSE BILL NO. 1679,  
 HOUSE BILL NO. 1722,  
 SUBSTITUTE HOUSE BILL NO. 1805,  
 SECOND SUBSTITUTE HOUSE BILL NO. 1811,  
 SECOND SUBSTITUTE HOUSE BILL NO. 1906,  
 HOUSE BILL NO. 1949,  
 SUBSTITUTE HOUSE BILL NO. 1988,  
 HOUSE BILL NO. 2004,  
 SECOND SUBSTITUTE HOUSE BILL NO. 2055,

SUBSTITUTE HOUSE BILL NO. 2115,  
 SUBSTITUTE HOUSE BILL NO. 2118,  
 SUBSTITUTE HOUSE BILL NO. 2129,  
 HOUSE BILL NO. 2240,  
 HOUSE BILL NO. 2357,  
 and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

## MESSAGE FROM THE HOUSE

April 3, 2007

MR. PRESIDENT:

The House has passed ENGROSSED SENATE BILL NO. 5669, with the following amendment: 5669.E AMH TEC H3166.1

On page 2, at the beginning of line 1, strike "license, permit, or approval requirements or"

On page 2, line 2, after "WAC" insert ", or other license, permit, or approval requirements"  
 and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

## MOTION

Senator Holmquist moved that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 5669.  
 Senator Holmquist spoke in favor of the motion.

## MOTION

The President declared the question before the Senate to be the motion by Senator Holmquist that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 5669.

The motion by Senator Holmquist carried and the Senate concurred in the House amendment(s) to Engrossed Senate Bill No. 5669 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5669, as amended by the House.

## ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5669, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 3; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Swecker, Tom, Weinstein and Zarelli - 46

Absent: Senators Brown, Hargrove and Stevens - 3  
 ENGROSSED SENATE BILL NO. 5669, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## MOTION

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On motion of Senator Brandland, Senator Stevens was excused.

MOTION

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

MESSAGE FROM THE HOUSE

April 9, 2007

MR. PRESIDENT:

The House has passed ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5843, with the following amendment: 5843-S2.E AMH HUNT H3368.1

Strike everything after the enacting clause and insert the following:

**NEW SECTION. Sec. 1.** The legislature finds that:

(1) Reliable data on student progress, characteristics of students and schools, and teacher qualifications and mobility is critical for accountability to the state and to the public;

(2) Educational data should be made available as widely as possible while appropriately protecting the privacy of individuals as provided by law;

(3) Having a single, comprehensive, and technically compatible student and school-level data system will streamline data collection for school districts, reduce inefficiencies caused by the lack of connectivity, and minimize or eliminate multiple data entry; and

(4) Schools and districts should be supported in their management of educational data and should have access to user-friendly programs and reports that can be readily used by classroom teachers and building principals to improve instruction.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) The office of the superintendent of public instruction is authorized to establish a longitudinal student data system for and on behalf of school districts in the state. The primary purpose of the data system is to better aid research into programs and interventions that are most effective in improving student performance, better understand the state's public educator workforce, and provide information on areas within the educational system that need improvement.

(2) The confidentiality of personally identifiable student data shall be safeguarded consistent with the requirements of the federal family educational rights privacy act and applicable state laws. Consistent with the provisions of these federal and state laws, data may be disclosed for educational purposes and studies, including but not limited to:

(a) Educational studies authorized or mandated by the state legislature;

(b) Studies initiated by other state educational authorities and authorized by the office of the superintendent of public instruction, including analysis conducted by the education data center established under section 3 of this act; and

(c) Studies initiated by other public or private agencies and organizations and authorized by the office of the superintendent of public instruction.

(3) Any agency or organization that is authorized by the office of the superintendent of public instruction to access student-level data shall adhere to all federal and state laws protecting student data and safeguarding the confidentiality and privacy of student records.

(4) Nothing in this section precludes the office of the superintendent of public instruction from collecting and distributing aggregate data about students or student-level data without personally identifiable information.

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**NEW SECTION. Sec. 3.** A new section is added to chapter 43.41 RCW to read as follows:

(1) An education data center shall be established in the office of financial management. The education data center shall jointly, with the legislative education and accountability program committee, conduct collaborative analyses of early learning, K-12, and higher education programs and education issues across the P-20 system, which includes the department of early learning, the superintendent of public instruction, the professional educator standards board, the state board of education, the state board for community and technical colleges, the workforce training and education coordinating board, the higher education coordinating board, public and private nonprofit four-year institutions of higher education, and the employment security department. The education data center shall conduct collaborative analyses under this section with the legislative evaluation and accountability program committee and provide data electronically to the legislative evaluation and accountability program committee, to the extent permitted by state and federal confidentiality requirements. The education data center shall be considered an authorized representative of the state educational agencies in this section under applicable federal and state statutes for purposes of accessing and compiling student record data for research purposes.

(2) The education data center shall:

(a) Coordinate with other state education agencies to compile and analyze education data, including data on student demographics that is disaggregated by distinct ethnic categories within racial subgroups, and complete P-20 research projects;

(b) Collaborate with the legislative evaluation and accountability program committee and the education and fiscal committees of the legislature in identifying the data to be compiled and analyzed to ensure that legislative interests are served;

(c) Track enrollment and outcomes through the public centralized higher education enrollment system;

(d) Assist other state educational agencies' collaborative efforts to develop a long-range enrollment plan for higher education including estimates to meet demographic and workforce needs; and

(e) Provide research that focuses on student transitions within and among the early learning, K-12, and higher education sectors in the P-20 system.

(3) The department of early learning, superintendent of public instruction, professional educator standards board, state board of education, state board for community and technical colleges, workforce training and education coordinating board, higher education coordinating board, public four-year institutions of higher education, and employment security department shall work with the education data center to develop data-sharing and research agreements, consistent with applicable security and confidentiality requirements, to facilitate the work of the center. Private, nonprofit institutions of higher education that provide programs of education beyond the high school level leading at least to the baccalaureate degree and are accredited by the Northwest association of schools and colleges or their peer accreditation bodies may also develop data-sharing and research agreements with the education data center, consistent with applicable security and confidentiality requirements. The education data center shall make data from collaborative analyses available to the education agencies and institutions that contribute data to the education data center to the extent allowed by federal and state security and confidentiality requirements applicable to the data of each contributing agency or institution.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28A.320 RCW to read as follows:

No later than the beginning of the 2008-09 school year and thereafter, each school district shall collect and electronically submit to the office of the superintendent of public instruction, in a format and according to a schedule prescribed by the office,

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the following data for each class or course offered in each school:

(1) The certification number or other unique identifier associated with the teacher's certificate for each teacher assigned to teach the class or course, including reassignments that may occur during the school year; and

(2) The statewide student identifier for each student enrolled in or being provided services through the class or course.

**NEW SECTION. Sec. 5.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) The office of the superintendent of public instruction shall develop standards for school data systems that focus on validation and verification of data entered into the systems to ensure accuracy and compatibility of data. The standards shall address but are not limited to the following topics:

- (a) Date validation;
- (b) Code validation, which includes gender, race or ethnicity, and other code elements;
- (c) Decimal and integer validation; and
- (d) Required field validation as defined by state and federal requirements.

(2) The superintendent of public instruction shall develop a reporting format and instructions for school districts to collect and submit data on student demographics that is disaggregated by distinct ethnic categories within racial subgroups so that analyses may be conducted on student achievement using the disaggregated data.

**NEW SECTION. Sec. 6.** (1) To the extent funds are appropriated for this purpose, the office of the superintendent of public instruction shall conduct a feasibility study on expanding the longitudinal student data system beyond the elements currently collected and those required under section 4 of this act.

(2) The office of the superintendent of public instruction, in consultation with the work group established under subsection (5) of this section, shall identify a preliminary set of additional data elements whose collection shall be field tested on a pilot basis in at least two school districts, with at least one with over twenty thousand in full-time equivalent enrollment and at least one with less than two thousand in full-time equivalent enrollment. Among the data elements to be field tested shall be course codes for a limited set of core high school mathematics courses, based on the classification of secondary school courses by the national center for education statistics.

(3) Additional topics addressed by the feasibility study shall include, but are not limited to:

- (a) Detailed estimates on the cost of the development and implementation of the expanded data system;
- (b) A final list of specific data elements that are necessary to allow effective and efficient research on an individual school, district, and statewide basis, and of those data elements, identification of what data is currently reported by schools and school districts and what is not reported;
- (c) An implementation plan for consistent coding of secondary courses in subjects other than mathematics that is based on a national classification system;
- (d) A phased-in implementation of a comprehensive data system with school-level financial, student, teacher, and community variables consistent with recommendations of the joint legislative audit and review committee; and
- (e) The staffing and related impacts on schools and school districts from the collection of the recommended data elements and consideration of ways to reduce duplicate reporting of data.

(4) By November 1, 2008, the office of the superintendent of public instruction shall provide a final report on the results of the feasibility study, including the results from the field tests, to the appropriate policy and fiscal committees of the legislature.

(5) To assist in conducting the feasibility study and field tests and in carrying out the responsibilities assigned under section 5 of this act, the office of the superintendent of public instruction shall convene a work group comprised of representatives of the following agencies and organizations:

The education data center established under section 3 of this act, the Washington state institute for public policy, the professional educator standards board, the state board of education, the joint legislative audit and review committee, the center for analysis of longitudinal data in education research, other research organizations as appropriate, school districts of varying sizes and geographic locations, educational service districts, the Washington school information processing cooperative, at least one additional school information system vendor, the association of Washington school principals, the Washington association of school administrators, the Washington education association, the Washington association of school business officials, the Washington association of colleges for teacher education, and the Washington state school directors' association.

**Sec. 7.** RCW 28A.410.070 and 1983 c 56 s 12 are each amended to read as follows:

(1) All certificates issued by the superintendent of public instruction shall be valid and entitle the holder thereof to employment in any school district of the state upon being registered by the school district if designated to do so by the school district, which fact shall be evidenced on the certificate in the words, "Registered for use in . . . . . district," together with the date of registry, and an official signature of the person registering the same: PROVIDED, That a copy of the original certificate duly certified by the superintendent of public instruction may be used for the purpose of registry and endorsement in lieu of the original.

(2) The superintendent of public instruction may accept applications for educator certification that are submitted using an electronic signature from the applicant.

Correct the title, and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Oemig moved that the Senate concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5843.

Senator Oemig spoke in favor of the motion.

Senators Holmquist and Brandland spoke against the motion.

MOTION

On motion of Senator Regala, Senator Poulsen was excused.

MOTION

The President declared the question before the Senate to be the motion by Senator Oemig that the Senate concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5843.

The motion by Senator Oemig carried and the Senate concurred in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5843 by a rising voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 5843, as amended by the House.

Senators Holmquist and Brandland spoke against final passage of the bill.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 5843, as amended

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by the House, and the bill passed the Senate by the following vote: Yeas, 30; Nays, 18; Absent, 0; Excused, 1.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, Murray, Oemig, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Shin, Spanel, Tom and Weinstein - 30

Voting nay: Senators Benton, Brandland, Carrell, Clements, Delvin, Hatfield, Hewitt, Holmquist, Honeyford, McCaslin, Morton, Parlette, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli - 18

Excused: Senator Hargrove - 1

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5843, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MESSAGE FROM THE HOUSE

April 10, 2007

MR. PRESIDENT:

The House has passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5894, with the following amendment: 5894-S.E AMH ENGR H3331.E

Strike everything after the enacting clause and insert the following:

### **"PART 1 CREATING A NEW CHAPTER DEDICATED TO LARGE ON-SITE SEWAGE SYSTEMS**

NEW SECTION. Sec. 1. FINDINGS AND INTENT. The legislature finds that:

(1) Protection of the environment and public health requires properly designed, operated, and maintained on-site sewage systems. Failure of those systems can pose certain health and environmental hazards if sewage leaks above ground or if untreated sewage reaches surface or groundwater.

(2) Chapter 70.118A RCW provides a framework for ongoing management of on-site sewage systems located in marine recovery areas and regulated by local health jurisdictions under state board of health rules. This chapter will provide a framework for comprehensive management of large on-site sewage systems statewide.

(3) The primary purpose of this chapter is to establish, in a single state agency, comprehensive regulation of the design, operation, and maintenance of large on-site sewage systems, and their operators, that provides both public health and environmental protection. To accomplish these purposes, this chapter provides for:

(a) The permitting and continuing oversight of large on-site sewage systems;

(b) The establishment by the department of standards and rules for the siting, design, construction, installation, operation, maintenance, and repair of large on-site sewage systems; and

(c) The enforcement by the department of the standards and rules established under this chapter.

NEW SECTION. Sec. 2. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the state department of health.

(2) "Industrial wastewater" means the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade, or

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business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. The term includes contaminated storm water and leachate from solid waste facilities.

(3) "Large on-site sewage system" means an on-site sewage system with design flows of between three thousand five hundred gallons per day and one hundred thousand gallons per day.

(4) "On-site sewage system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, and provides subsurface soil treatment and disposal of domestic sewage. It consists of a collection system, a treatment component or treatment sequence, and a subsurface soil disposal component. It may or may not include a mechanical treatment system. An on-site sewage system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. A holding tank that discharges to a sewer is not included in the definition of on-site sewage system. A system into which storm water or industrial wastewater is discharged is not included in the definition of on-site sewage system.

(5) "Person" means any individual, corporation, company, association, firm, partnership, governmental agency, or any other entity whatsoever, and the authorized agents of any such entities.

(6) "Secretary" means the secretary of health.

(7) "Waters of the state" has the same meaning as defined in RCW 90.48.020.

NEW SECTION. Sec. 3. AUTHORIZING THE DEPARTMENT TO PROVIDE COMPREHENSIVE REGULATION OF LARGE ON-SITE SEWAGE SYSTEMS.

(1) For the protection of human health and the environment the department shall:

(a) Establish and provide for the comprehensive regulation of large on-site sewage systems including, but not limited to, system siting, design, construction, installation, operation, maintenance, and repair;

(b) Control and prevent pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington, except to the extent authorized by permits issued under this chapter;

(c) Issue annual operating permits for large on-site sewage systems based on the system's ability to function properly in compliance with the applicable comprehensive regulatory requirements; and

(d) Enforce the large on-site sewage system requirements.

(2) Large on-site sewage systems permitted by the department may not be used for treatment and disposal of industrial wastewater or combined sanitary sewer and storm water systems.

(3) The work group convened under RCW 70.118A.080(4) to make recommendations to the appropriate committees of the legislature for the development of certification or licensing of maintenance specialists shall include recommendations for the development of certification or licensing of large on-site system operators.

NEW SECTION. Sec. 4. ANNUAL OPERATING PERMITS REQUIRED--APPLICATION. (1) A person may not install or operate a large on-site sewage system without an operating permit as provided in this chapter after July 1, 2009. The owner of the system is responsible for obtaining a permit.

(2) The department shall issue operating permits in accordance with the rules adopted under section 5 of this act.

(3) The department shall ensure the system meets all applicable siting, design, construction, and installation requirements prior to issuing an initial operating permit. Prior to renewing an operating permit, the department may review the performance of the system to determine compliance with rules and any permit conditions.

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(4) At the time of initial permit application or at the time of permit renewal the department shall impose those permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will be operated and maintained properly. Each application must be accompanied by a fee as established in rules adopted by the department.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each permit may be issued only for the site and owner named in the application. Permits are not transferable or assignable except with the written approval of the department.

(7) The department may deny an application for a permit or modify, suspend, or revoke a permit in any case in which it finds that the permit was obtained by fraud or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding to the permit applicant or permittee.

(8) For systems with design flows of more than fourteen thousand five hundred gallons per day, the department shall adopt rules to ensure adequate public notice and opportunity for review and comment on initial large on-site sewage system permit applications and subsequent permit applications to increase the volume of waste disposal or change effluent characteristics. The rules must include provisions for notice of final decisions. Methods for providing notice may include electronic mail, posting on the department's internet site, publication in a local newspaper, press releases, mailings, or other means of notification the department determines appropriate.

(9) A person aggrieved by the issuance of an initial permit, or by the issuance of a subsequent permit to increase the volume of waste disposal or to change effluent characteristics, for systems with design flows of more than fourteen thousand five hundred gallons per day, has the right to an adjudicative proceeding. The application for an adjudicative proceeding must be in writing, state the basis for contesting the action, include a copy of the decision, be served on and received by the department within twenty-eight days of receipt of notice of the final decision, and be served in a manner that shows proof of receipt. An adjudicative proceeding conducted under this subsection is governed by chapter 34.05 RCW.

(10) Any permit issued by the department of ecology for a large on-site sewage system under chapter 90.48 RCW is valid until it first expires after the effective date of this section. The system owner shall apply for an operating permit at least one hundred twenty days prior to expiration of the department of ecology permit.

(11) Systems required to meet operator certification requirements under chapter 70.95B RCW must continue to meet those requirements as a condition of the department operating permit.

**NEW SECTION. Sec. 5. RULE MAKING.** (1) For the protection of human health and the environment, the secretary shall adopt rules for the comprehensive regulation of large on-site sewage systems, which includes, but is not limited to, the siting, design, construction, installation, maintenance, repair, and permitting of the systems.

(2) In adopting the rules, the secretary shall, in consultation with the department of ecology, require that large on-site sewage systems comply with the applicable sections of chapter 90.48 RCW regarding control and prevention of pollution of waters of the state, including but not limited to:

(a) Surface and ground water standards established under RCW 90.48.035; and

(b) Those provisions requiring all known, available, and reasonable methods of treatment.

(3) In adopting the rules, the secretary shall ensure that requirements for large on-site sewage systems are consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county.

**NEW SECTION. Sec. 6. CIVIL PENALTIES.** (1) A person who violates a law or rule regulating large on-site sewage systems administered by the department is subject to a penalty of not more than ten thousand dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, each day's continuing violation is a separate and distinct violation. The penalty assessed must reflect the significance of the violation and the previous record of compliance on the part of the person responsible for compliance with large on-site sewage system requirements.

(2) Every person who, through an act of commission or omission, procures, aids, or abets a violation is considered to have violated the provisions of this section and is subject to the penalty provided in this section.

(3) The penalty provided for in this section must be imposed by a notice in writing to the person against whom the civil penalty is assessed and must describe the violation. The notice must be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules.

(5) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served, and reasonable attorneys' fees as are incurred if civil enforcement of the final administrative order is required to collect the penalty.

(6) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest-bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorneys' fees for the cost of the attorney general's office in representing the department.

(7) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the large on-site sewage system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(8) A judgment entered under subsection (6) or (7) of this section has the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(9) The large on-site sewage systems account is created in the custody of the state treasurer. All receipts from penalties



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imposed under this section shall be deposited into the account. Expenditures from the account shall be used by the department to provide training and technical assistance to large on-site sewage system owners and operators. Only the secretary or the secretary'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.

**NEW SECTION. Sec. 7. INJUNCTIONS.** Notwithstanding the existence or use of any other remedy, the department may bring an action to enjoin a violation or threatened violation of this chapter or rules adopted under this chapter. The department may bring the action in the superior court of the county in which the large on-site sewage system is located or in the superior court of Thurston county.

**NEW SECTION. Sec. 8.** The authority and duties created in this chapter are in addition to any authority and duties already provided in law. Nothing in this chapter limits the powers of the state or any political subdivision to exercise such authority.

**PART 2  
AMENDING CHAPTERS 70.118 AND 70.05 RCW TO  
ENHANCE LOCAL  
HEALTH OFFICER ENFORCEMENT AUTHORITY  
REGARDING ON-SITE SYSTEMS**

**NEW SECTION. Sec. 9.** A new section is added to chapter 70.118 RCW to read as follows:

**CIVIL PENALTIES.** A local health officer who is responsible for administering and enforcing regulations regarding on-site sewage disposal systems is authorized to issue civil penalties for violations of those regulations under the same limitations and requirements imposed on the department under section 6 of this act, except that the amount of a penalty shall not exceed one thousand dollars per day for every violation, and judgments shall be entered in the name of the local health jurisdiction and penalties shall be placed into the general fund or funds of the entity or entities operating the local health jurisdiction.

**Sec. 10.** RCW 70.05.070 and 1999 c 391 s 5 are each amended to read as follows:

The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and section 9 of this act, the confidentiality provisions in RCW 70.24.105 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department.

**PART 3  
AMENDING STATE BOARD OF HEALTH RULE-  
MAKING AUTHORITY FOR  
ON-SITE SEWAGE SYSTEMS**

**Sec. 11.** RCW 43.20.050 and 1993 c 492 s 489 are each amended to read as follows:

(1) The state board of health shall provide a forum for the development of public health policy in Washington state. It is authorized to recommend to the secretary means for obtaining appropriate citizen and professional involvement in all public health policy formulation and other matters related to the powers and duties of the department. It is further empowered to hold hearings and explore ways to improve the health status of the citizenry.

(a) At least every five years, the state board shall convene regional forums to gather citizen input on public health issues.

(b) Every two years, in coordination with the development of the state biennial budget, the state board shall prepare the state public health report that outlines the health priorities of the ensuing biennium. The report shall:

(i) Consider the citizen input gathered at the forums;

(ii) Be developed with the assistance of local health departments;

(iii) Be based on the best available information collected and reviewed according to RCW 43.70.050 and recommendations from the council;

(iv) Be developed with the input of state health care agencies. At least the following directors of state agencies shall provide timely recommendations to the state board on suggested health priorities for the ensuing biennium: The secretary of social and health services, the health care authority administrator, the insurance commissioner, the superintendent of public instruction, the director of labor and industries, the director of ecology, and the director of agriculture;

(v) Be used by state health care agency administrators in preparing proposed agency budgets and executive request legislation;

(vi) Be submitted by the state board to the governor by January 1<sup>st</sup> of each even-numbered year for adoption by the governor. The governor, no later than March 1<sup>st</sup> of that year, shall approve, modify, or disapprove the state public health report.

(c) In fulfilling its responsibilities under this subsection, the state board may create ad hoc committees or other such committees of limited duration as necessary.

(2) In order to protect public health, the state board of health shall:

(a) Adopt rules necessary to assure safe and reliable public drinking water and to protect the public health. Such rules shall establish requirements regarding:

(i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;

(ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;

(iii) Public water system management and reporting requirements;

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(iv) Public water system planning and emergency response requirements;

(v) Public water system operation and maintenance requirements;

(vi) Water quality, reliability, and management of existing but inadequate public water systems; and

(vii) Quality standards for the source or supply, or both source and supply, of water for bottled water plants.

(b) Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of wastes, solid and liquid, including but not limited to sewage, garbage, refuse, and other environmental contaminants; adopt standards and procedures governing the design, construction, and operation of sewage, garbage, refuse and other solid waste collection, treatment, and disposal facilities;

(c) Adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, cleanliness and space in all types of public facilities including but not limited to food service establishments, schools, institutions, recreational facilities and transient accommodations and in places of work;

(d) Adopt rules for the imposition and use of isolation and quarantine;

(e) Adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness, and rules governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as admit of and may best be controlled by universal rule; and

(f) Adopt rules for accessing existing data bases for the purposes of performing health related research.

(3) The state board shall adopt rules for the design, construction, installation, operation, and maintenance of those on-site sewage systems with design flows of less than three thousand five hundred gallons per day.

(4) The state board may delegate any of its rule-adopting authority to the secretary and rescind such delegated authority.

~~((4))~~ (5) All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township thereof, shall enforce all rules adopted by the state board of health. In the event of failure or refusal on the part of any member of such boards or any other official or person mentioned in this section to so act, he or she shall be subject to a fine of not less than fifty dollars, upon first conviction, and not less than one hundred dollars upon second conviction.

~~((5))~~ (6) The state board may advise the secretary on health policy issues pertaining to the department of health and the state.

#### PART 4 EXEMPTING OPERATORS CERTIFIED BY THE DEPARTMENT OF HEALTH

**Sec. 12.** RCW 90.48.162 and 1972 ex.s. c 140 s 1 are each amended to read as follows:

Any county or any municipal or public corporation operating or proposing to operate a sewerage system, including any system which collects only domestic sewerage, which results in the disposal of waste material into the waters of the state shall procure a permit from the department of ecology before so disposing of such materials. This section is intended to extend the permit system of RCW 90.48.160 to counties and municipal or public corporations and the provisions of RCW 90.48.170 through ~~((90.48.210))~~ 90.48.200 and 90.52.040 shall be applicable to the permit requirement imposed under this section. A permit under this chapter is not required for large on-site sewage systems permitted by the department of health under chapter 70.-- RCW (sections 1 through 8 of this act) or for on-site sewage systems permitted by local health jurisdictions under rules of the state board of health.

**Sec. 13.** RCW 90.48.110 and 2002 c 161 s 5 are each amended to read as follows:

(1) Except under subsection (2) of this section, all engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage systems or sewage treatment or disposal plants, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the department, before construction thereof may begin. No approval shall be given until the department is satisfied that said plans and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the state's waters as provided for in this chapter. Approval under this chapter is not required for large on-site sewage systems permitted by the department of health under chapter 70.-- RCW (sections 1 through 8 of this act) or for on-site sewage systems regulated by local health jurisdictions under rules of the state board of health.

(2) To promote efficiency in service delivery and intergovernmental cooperation in protecting the quality of the state's waters, the department may delegate the authority for review and approval of engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage system or sewage treatment or disposal plants, and the proposed method of future operations and maintenance of said facility or facilities and industrial pretreatment systems, to local units of government requesting such delegation and meeting criteria established by the department.

(3) For any new or revised general sewer plan submitted for review under this section, the department shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general sewer plan. For rejections of plans or extensions of the timeline, the department shall provide in writing to the local government entity the reason for such action. In addition, the governing body of the local government entity and the department may mutually agree to an extension of the deadlines contained in this section.

#### PART 5 AMENDING RCW 36.94.010 TO CLARIFY ITS APPLICABILITY TO LARGE ON-SITE SEWAGE SYSTEMS

**Sec. 14.** RCW 36.94.010 and 1997 c 447 s 10 are each amended to read as follows:

As used in this chapter:

(1) A "system of sewerage" means and may include any or all of the following:

(a) Sanitary sewage collection, treatment, and/or disposal facilities and services, including without limitation on-site or off-site sanitary sewerage facilities, large on-site sewage systems defined under section 2 of this act, inspection services and maintenance services for private or public on-site systems, or any other means of sewage treatment and disposal approved by the county;

(b) Combined sanitary sewage disposal and storm or surface water drains and facilities;

(c) Storm or surface water drains, channels, and facilities;

(d) Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal, and rights and interests in property relating to the system;

(e) Combined water and sewerage systems;

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(f) Point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a county;

(g) Public restroom and sanitary facilities;

(h) The facilities and services authorized in RCW 36.94.020; and

(i) Any combination of or part of any or all of such facilities.

(2) A "system of water" means and includes:

(a) A water distribution system, including dams, reservoirs, aqueducts, plants, pumping stations, transmission and lateral distribution lines and other facilities for distribution of water;

(b) A combined water and sewerage system;

(c) Any combination of or any part of any or all of such facilities.

(3) A "sewerage and/or water general plan" means a general plan for a system of sewerage and/or water for the county which shall be an element of the comprehensive plan established by the county pursuant to RCW 36.70.350(6) and/or chapter 35.63 RCW, if there is such a comprehensive plan.

(a) A sewerage general plan shall include the general location and description of treatment and disposal facilities, trunk and interceptor sewers, pumping stations, monitoring and control facilities, channels, local service areas and a general description of the collection system to serve those areas, a description of on-site sanitary sewerage system inspection services and maintenance services, and other facilities and services as may be required to provide a functional and implementable plan, including preliminary engineering to assure feasibility. The plan may also include a description of the regulations deemed appropriate to carrying out surface drainage plans.

(b) A water general plan shall include the general location and description of water resources to be utilized, wells, treatment facilities, transmission lines, storage reservoirs, pumping stations, and monitoring and control facilities as may be required to provide a functional and implementable plan.

(c) Water and/or sewerage general plans shall include preliminary engineering in adequate detail to assure technical feasibility and, to the extent then known, shall further discuss the methods of distributing the cost and expense of the system and shall indicate the economic feasibility of plan implementation. The plans may also specify local or lateral facilities and services. The sewerage and/or water general plan does not mean the final engineering construction or financing plans for the system.

(4) "Municipal corporation" means and includes any city, town, metropolitan municipal corporation, any public utility district which operates and maintains a sewer or water system, any sewer, water, diking, or drainage district, any diking, drainage, and sewerage improvement district, and any irrigation district.

(5) A "private utility" means and includes all utilities, both public and private, which provide sewerage and/or water service and which are not municipal corporations within the definition of this chapter. The ownership of a private utility may be in a corporation, nonprofit or for profit, in a cooperative association, in a mutual organization, or in individuals.

(6) "Board" means one or more boards of county commissioners and/or the legislative authority of a home rule charter county.

NEW SECTION. Sec. 15. Sections 1 through 8 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 16. Captions and part headings used in this act are not any part of the law.

NEW SECTION. Sec. 17. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2007, in the omnibus appropriations act, this act is null and void."

Correct the title.  
and the same are herewith transmitted.

MOTION

Senator Rockefeller moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5894.

Senator Rockefeller spoke in favor of the motion.

MOTION

The President declared the question before the Senate to be the motion by Senator Rockefeller that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5894.

The motion by Senator Rockefeller carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5894 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5894, as amended by the House.

Senator Honeyford spoke on final passage of the bill.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5894, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 36; Nays, 12; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, Murray, Oemig, Parlette, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Sheldon, Shin, Spanel, Swecker, Tom, Weinstein and Zarelli - 36

Voting nay: Senators Carrell, Clements, Delvin, Hewitt, Holmquist, Honeyford, McCaslin, Morton, Pflug, Roach, Schoesler and Stevens - 12

Excused: Senator Hargrove - 1

ENGROSSED SUBSTITUTE SENATE BILL NO. 5894, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 14, 2007

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 1396 and asks Senate to recede therefrom.  
and the same is herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Murray moved that the Senate recede from its position on Substitute House Bill No. 1396 and pass the bill without the Senate amendment(s).

The President declared the question before the Senate to be motion by Senator Murray that the Senate recede from its position on Substitute House Bill No. 1396 and pass the bill without Senate amendment(s).

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The motion by Senator Murray carried and the Senate receded from its position on Substitute House Bill No. 1396.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1396, without the Senate amendment(s), and the bill passed the Senate by the following vote: Yeas, 44; Nays, 4; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Swecker, Tom, Weinstein and Zarelli - 44

Voting nay: Senators Carrell, Holmquist, McCaslin and Stevens - 4

Excused: Senator Hargrove - 1

SUBSTITUTE HOUSE BILL NO. 1396, without the Senate amendment(s), having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MESSAGE FROM THE HOUSE

April 14, 2007

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 1694 and asks Senate to recede therefrom. and the same is herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

#### MOTION

Senator Murray moved that the Senate recede from its position in the House amendment(s) to Substitute House Bill No. 1694.

The President declared the question before the Senate to be motion by Senator Murray that the Senate recede from its position in the House amendment(s) to Substitute House Bill No. 1694.

The motion by Senator Murray carried and the Senate receded from its position in the House amendment(s) to Substitute House Bill No. 1694.

#### MOTION

On motion of Senator Murray, the rules were suspended and Substitute House Bill No. 1694 was returned to second reading for the purposes of amendment.

The President declared the question before the Senate to be the motion by Senator Murray that the rules be suspended and Substitute House Bill No. 1694 be returned to second reading for the purposes of amendment.

The motion by Senator Murray carried by voice vote.

#### SECOND READING

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SUBSTITUTE HOUSE BILL NO. 1694, by House Committee on Transportation (originally sponsored by Representatives Flannigan, Upthegrove and Kenney)

Requiring the agency council on coordinated transportation to coordinate special needs transportation.

The measure was read the second time.

#### MOTION

Senator Murray moved that the following striking amendment by Senators Murray and Swecker be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 47.06B.010 and 1999 c 385 s 1 are each amended to read as follows:

The legislature finds that transportation systems for persons with special needs are not operated as efficiently as possible. In ~~((some))~~ too many cases, programs established by the legislature to assist persons with special needs can not be accessed due to these inefficiencies and coordination barriers.

It is the intent of the legislature that public transportation agencies, pupil transportation programs, private nonprofit transportation providers, and other public agencies sponsoring programs that require transportation services coordinate those transportation services. Through coordination of transportation services, programs will achieve increased efficiencies and will be able to provide more rides to a greater number of persons with special needs.

Sec. 2. RCW 47.06B.020 and 1998 c 173 s 2 are each amended to read as follows:

(1) The agency council on coordinated transportation is created. The council is composed of ~~((nine))~~ ten voting members and ~~((eight))~~ four nonvoting, legislative members.

(2) The ~~((nine))~~ ten voting members are the superintendent of public instruction or a designee, the secretary of transportation or a designee, the secretary of the department of social and health services or a designee, and ~~((six))~~ seven members appointed by the governor as follows:

(a) One representative from the office of the governor;

(b) ~~((Two))~~ Three persons who are consumers of special needs transportation services, which must include:

(i) One person designated by the executive director of the governor's committee on disability issues and employment; and  
(ii) One person who is designated by the executive director of the developmental disabilities council;

(c) One representative from the Washington association of pupil transportation;

(d) One representative from the Washington state transit association; and

(e) One of the following:

(i) A representative from the community transportation association of the Northwest; or

(ii) A representative from the community action council association.

(3) The ~~((eight))~~ four nonvoting members are legislators as follows:

(a) ~~((Four))~~ Two members from the house of representatives, ~~((two))~~ one from each of the two largest caucuses, appointed by the speaker of the house of representatives, ~~((two who are members of))~~ including at least one member from the house transportation policy and budget committee ((and two who are members of)) or the house appropriations committee; and

(b) ~~((Four))~~ Two members from the senate, ~~((two))~~ one from each of the two largest caucuses, appointed by the president of the senate, ~~((two members of))~~ including at least one member from the senate transportation committee ((and two members of)) or the senate ways and means committee.

(4) Gubernatorial appointees of the council will serve two-year terms. Members may not receive compensation for their

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service on the council, but will be reimbursed for actual and necessary expenses incurred in performing their duties as members as set forth in RCW 43.03.220.

(5) The secretary of transportation or a designee shall serve as the chair.

(6) The department of transportation shall provide necessary staff support for the council.

(7) The council may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the council and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710.

(8) The meetings of the council must be open to the public, with the agenda published in advance, and minutes kept and made available to the public. The public notice of the meetings must indicate that accommodations for persons with disabilities will be made available upon request.

(9) All meetings of the council must be held in locations that are readily accessible to public transportation, and must be scheduled for times when public transportation is available.

(10) The council shall make an effort to include presentations by and work sessions including persons with special transportation needs.

**Sec. 3.** RCW 47.06B.030 and 1999 c 385 s 5 are each reenacted and amended to read as follows:

(1) To assure implementation of ((the Program for)) an effective system of coordinated transportation that meets the needs of persons with special transportation needs, the agency council on coordinated transportation((, the council, in coordination with stakeholders,)) shall adopt a biennial work plan that must, at a minimum:

((1) Develop guidelines for local planning of coordinated transportation in accordance with this chapter;

(2) Initiate local planning processes by contacting the board of commissioners and county councils in each county and encouraging them to convene local planning forums for the purpose of implementing special needs coordinated transportation programs at the community level;

(3) Work with local community forums to designate a local lead organization that shall cooperate and coordinate with private and nonprofit transportation brokers and providers, local public transportation agencies, local governments, and user groups;

(4) Provide a forum at the state level in which state agencies will discuss and resolve coordination issues and program policy issues that may impact transportation coordination and costs;

(5) Provide guidelines for state agencies to use in creating policies, rules, or procedures to encourage the participation of their constituents in community-based planning and coordination, in accordance with this chapter;

(6) Facilitate state-level discussion and action on problems and barriers identified by the local forums that can only be resolved at either the state or federal level;

(7) Develop and test models for determining the impacts of facility siting and program policy decisions on transportation costs;

(8) Develop methodologies and provide support to local and state agencies in identifying transportation costs;

(9) Develop guidelines for setting performance measures and evaluating performance;

(10) Develop monitoring reporting criteria and processes to assess state and local level of participation with this chapter;

(11) Administer and manage grant funds to develop, test, and facilitate the implementation of coordinated systems;

(12) Develop minimum standards for safety, driver training, and vehicles, and provide models for processes and technology to support coordinated service delivery systems;

(13) Provide a clearinghouse for sharing information about transportation coordination best practices and experiences;

~~— (14) Promote research and development of methods and tools to improve the performance of transportation coordination in the state;~~

~~— (15) Provide technical assistance and support to communities;~~

~~— (16) Facilitate, monitor, provide funding as available, and give technical support to local planning processes;~~

~~— (17) Form, convene, and give staff support to stakeholder work groups as needed to continue work on removing barriers to coordinated transportation;~~

~~— (18) Advocate for the coordination of transportation for people with special transportation needs at the federal, state, and local levels;~~

~~— (19) Recommend to the legislature changes in laws to assist coordination of transportation services;~~

~~— (20) Petition the office of financial management to make whatever changes are deemed necessary to identify transportation costs in all executive agency budgets;~~

~~— (21) Report to the legislature by December 1, 2000, on council activities including, but not limited to, the progress of community planning processes, what demonstration projects have been undertaken, how coordination affected service levels, and whether these efforts produced savings that allowed expansion of services. Reports must be made once every two years thereafter, and other times as the council deems necessary))~~

(a) Focus on projects that identify and address barriers in laws, policies, and procedures;

(b) Focus on results; and

(c) Identify and advocate for transportation system improvements for persons with special transportation needs.

(2) The council shall, as necessary, convene work groups at the state, regional, or local level to develop and implement coordinated approaches to special needs transportation.

(3) To improve the service experienced by persons with special transportation needs, the council shall develop statewide guidelines for customer complaint processes so that information about policies regarding the complaint processes is available consistently and consumers are appropriately educated about available options. To be eligible for funding on or after January 1, 2008, organizations applying for state paratransit/special needs grants as described in section 226(1), chapter 370, Laws of 2006 must implement a process following the guidelines established by the council.

(4) The council shall represent the needs and interests of persons with special transportation needs in statewide efforts for emergency and disaster preparedness planning by advising the emergency management council on how to address transportation needs for high-risk individuals during and after disasters.

**Sec. 4.** RCW 47.06B.040 and 1999 c 385 s 6 are each amended to read as follows:

~~((The council may request, and may require as a condition of receiving coordination grants, selected county governments to convene local planning forums and invite participation of all entities, including tribal governments, that serve or transport persons with special transportation needs. Counties are encouraged to coordinate and combine their forums and planning processes with other counties, as they find it appropriate. The local community forums must:~~

~~(1) Designate a lead organization to facilitate the community planning process on an ongoing basis;~~

~~(2) Identify functional boundaries for the local coordinated transportation system;~~

~~(3) Clarify roles and responsibilities of the various participants;~~

~~(4) Identify community resources and needs;~~

~~(5) Prepare a plan for developing a coordinated transportation system that meets the intent of this chapter, addresses community needs, and efficiently uses community resources to address unmet needs;~~

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~~(6) Implement the community coordinated transportation plan;~~

~~(7) Develop performance measures consistent with council guidelines;~~

~~(8) Develop a reporting process consistent with council guidelines;~~

~~(9) Raise issues and barriers to the council when resolution is needed at either the state or federal level;~~

~~(10) Develop a process for open discussion and input on local policy and facility siting decisions that may have an impact on the special needs transportation costs and service delivery of other programs and agencies in the community-)~~

The agency council on coordinated transportation shall review and recommend certification of local plans developed by regional transportation planning organizations based on meeting federal requirements. Each regional transportation planning organization must submit to the council an updated plan that includes the elements, consistent with federal planning requirements, identified by the council beginning on July 1, 2007, and every four years thereafter.

Each regional transportation planning organization must submit to the council every two years a prioritized regional human service and transportation project list.

**Sec. 5.** RCW 47.80.023 and 1998 c 171 s 8 are each amended to read as follows:

Each regional transportation planning organization shall have the following duties:

(1) Prepare and periodically update a transportation strategy for the region. The strategy shall address alternative transportation modes and transportation demand management measures in regional corridors and shall recommend preferred transportation policies to implement adopted growth strategies. The strategy shall serve as a guide in preparation of the regional transportation plan.

(2) Prepare a regional transportation plan as set forth in RCW 47.80.030 that is consistent with county-wide planning policies if such have been adopted pursuant to chapter 36.70A RCW, with county, city, and town comprehensive plans, and state transportation plans.

(3) Certify by December 31, 1996, that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region reflect the guidelines and principles developed pursuant to RCW 47.80.026, are consistent with the adopted regional transportation plan, and, where appropriate, conform with the requirements of RCW 36.70A.070.

(4) Where appropriate, certify that county-wide planning policies adopted under RCW 36.70A.210 and the adopted regional transportation plan are consistent.

(5) Develop, in cooperation with the department of transportation, operators of public transportation services and local governments within the region, a six-year regional transportation improvement program which proposes regionally significant transportation projects and programs and transportation demand management measures. The regional transportation improvement program shall be based on the programs, projects, and transportation demand management measures of regional significance as identified by transit agencies, cities, and counties pursuant to RCW 35.58.2795, 35.77.010, and 36.81.121, respectively. The program shall include a priority list of projects and programs, project segments and programs, transportation demand management measures, and a specific financial plan that demonstrates how the transportation improvement program can be funded. The program shall be updated at least every two years for the ensuing six-year period.

(6) Designate a lead planning agency to coordinate preparation of the regional transportation plan and carry out the other responsibilities of the organization. The lead planning agency may be a regional organization, a component county, city, or town agency, or the appropriate Washington state department of transportation district office.

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(7) Review level of service methodologies used by cities and counties planning under chapter 36.70A RCW to promote a consistent regional evaluation of transportation facilities and corridors.

(8) Work with cities, counties, transit agencies, the department of transportation, and others to develop level of service standards or alternative transportation performance measures.

(9) Submit to the agency council on coordinated transportation, as provided in chapter 47.06B RCW, beginning on July 1, 2007, and every four years thereafter, an updated plan that includes the elements identified by the council. Each regional transportation planning organization must submit to the council every two years a prioritized regional human service and transportation project list.

**NEW SECTION. Sec. 6.** A new section is added to chapter 47.06B RCW to read as follows:

The agency council on coordinated transportation shall submit a progress report on council activities to the legislature by December 1, 2009, and every other year thereafter. The report must describe the council's progress in attaining the applicable goals identified in the council's biennial work plan and highlight any problems encountered in achieving these goals. The information will be reported in a form established by the council.

**NEW SECTION. Sec. 7.** (1) The joint transportation committee, in consultation with the agency council on coordinated transportation and the joint legislative audit and review committee, as deemed appropriate by the committee, shall conduct a study and review the legal and programmatic changes and best practices necessary for effective coordination of transportation services at the regional level for persons with special transportation needs.

(2) The study shall:

(a) Include a comprehensive, statewide survey of existing transportation resources for persons with special transportation needs;

(b) Identify opportunities for improving coordination by determining a uniform system of:

(i) Measuring and reporting trip costs;

(ii) Provider billing practices;

(iii) Provider agreements and reporting requirements; and

(iv) Sharing eligibility information and trip requirements; and

(c) Make recommendations for:

(i) Improving access to customer services;

(ii) Integrating services of transportation service providers and brokers; and

(iii) Best practices to effectively coordinate transportation services for persons with special transportation needs.

(3) In conducting the study, the committee shall:

(a) Convene one or more meetings to consult with local and regional special needs transportation providers, brokers, users of transit services, representatives of nonprofit organizations that provide related transportation services, including hopelink, and representatives of other agencies and organizations, including the department of social and health services;

(b) Identify federal funding and related program barriers to improved coordination between state and federal programs and to reasonable cost sharing for those programs;

(c) Review and consider other relevant model coordinated special needs transportation systems throughout the nation as a source of best practices for Washington state, including the ACCESS transportation system in Pittsburgh, Pennsylvania;

(d) Evaluate using nontraditional service providers, such as public utility districts;

(e) Evaluate methods to influence facility siting decisions for state agencies serving persons with special transportation needs in order to make facilities accessible; and

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ROLL CALL

(f) Evaluate appropriate standards and strategies for a decentralized broker system, including the state's role in this system.

(4) The committee shall provide a draft final report to the transportation committees of the senate and the house of representatives by December 15, 2008.

**Sec. 8.** RCW 47.06B.900 and 1999 c 385 s 7 are each amended to read as follows:

The agency council on coordinated transportation is terminated on June 30, (~~2007~~) 2010, as provided in RCW 47.06B.901.

**Sec. 9.** RCW 47.06B.901 and 1999 c 385 s 8 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, (~~2008~~) 2011:

(1) RCW 47.06B.010 and 2007 c ... s 1 (section 1 of this act), 1999 c 385 s 1, & 1998 c 173 s 1;

(2) RCW 47.06B.012 and 1999 c 385 s 2;

(3) (~~RCW 47.06B.015 and 1999 c 385 s 3;~~

(~~4~~) RCW 47.06B.020 and ((1999 c 385 s 4)) 2007 c ... s 2 (section 2 of this act) & 1998 c 173 s 2;

((~~5~~)) (4) RCW 47.06B.030 and 2007 c ... s 3 (section 3 of this act), 1999 c 385 s 5, & 1998 c 173 s 3; ((~~and~~

(~~6~~)) (5) RCW 47.06B.040 and 2007 c ... s 4 (section 4 of this act) & 1999 c 385 s 6; and

(6) Section 6 of this act.

NEW SECTION. Sec. 10. 1999 c 372 s 13 is repealed.

NEW SECTION. Sec. 11. RCW 47.06B.015 (Program for Agency Coordinated Transportation) and 1999 c 385 s 3 are each repealed."

Senators Murray and Swecker spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Murray and Swecker to Substitute House Bill No. 1694.

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

MOTION

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

On page 1, line 2 of the title, after "transportation;" strike the remainder of the title and insert "amending RCW 47.06B.010, 47.06B.020, 47.06B.040, 47.80.023, 47.06B.900, and 47.06B.901; reenacting and amending RCW 47.06B.030; adding a new section to chapter 47.06B RCW; creating a new section; repealing RCW 47.06B.015; and repealing 1999 c 372 s 13."

MOTION

On motion of Senator Murray, the rules were suspended, Substitute House Bill No. 1694 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Murray spoke in favor of passage of the bill.

MOTION

On motion of Senator Regala, Senators Fairley and Pridemore were excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1694 as amended by the Senate.

The Secretary called the roll on the final passage of Substitute House Bill No. 1694 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Clements, Delvin, Eide, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 46

Excused: Senators Brown, Fairley and Hargrove - 3

SUBSTITUTE HOUSE BILL NO. 1694 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 16, 2007

MR. PRESIDENT:

The Speaker ruled the Senate amendment{s} to SUBSTITUTE HOUSE BILL NO. 1098 to be beyond scope & object of the bill. House refuses to concur in said amendment{s} and asks the Senate to recede therefrom. and the same is herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

Senator Keiser moved that the Senate recede from its position in the Senate amendment(s) to Substitute House Bill No. 1098.

The President declared the question before the Senate to be motion by Senator Keiser that the Senate recede from its position in the Senate amendment(s) to Substitute House Bill No. 1098.

The motion by Senator Keiser carried and the Senate receded from its position in the Senate amendment(s) to Substitute House Bill No. 1098.

MOTION

On motion of Senator Keiser, the rules were suspended and Substitute House Bill No. 1098 was returned to second reading for the purposes of amendment.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1098, by House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Hinkle, Schual-Berke, Campbell, Morrell, Green, Darneille, Ormsby, B. Sullivan, Dickerson, Kenney, Moeller and Wallace)

Authorizing suspension of restriction on the availability of vaccines during outbreaks.

The measure was read the second time.

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## MOTION

Senator Keiser moved that the following striking amendment by Senators Keiser and Pflug be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 70.95M.115 and 2006 c 231 s 2 are each amended to read as follows:

(1) Beginning July 1, 2007, a person who is known to be pregnant or who is under three years of age shall not be vaccinated with a mercury-containing vaccine or injected with a mercury-containing product that contains more than 0.5 micrograms of mercury per 0.5 milliliter dose.

(2) Notwithstanding subsection (1) of this section, an influenza vaccine may contain up to 1.0 micrograms of mercury per 0.5 milliliter dose.

(3) The secretary of the department of health may, upon the secretary's or local public health officer's declaration of ~~((a public health emergency))~~ an outbreak of vaccine-preventable disease or of a shortage of vaccine that complies with subsection (1) or (2) of this section, suspend the requirements of this section for the duration of the ~~((emergency))~~ outbreak or shortage. A person who is known to be pregnant or lactating or a parent or legal guardian of a child under eighteen years of age shall be informed if the person or child is to be vaccinated or injected with any mercury-containing product that contains more than the mercury limits per dose in subsections (1) and (2) of this section.

(4) All vaccines and products referenced under this section must meet food and drug administration licensing requirements."

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

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Keiser and Pflug to Substitute House Bill No. 1098.

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

## MOTION

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

On page 1, line 1 of the title, after "outbreaks;" strike the remainder of the title and insert "and amending RCW 70.95M.115."

## MOTION

On motion of Senator Keiser, the rules were suspended, Substitute House Bill No. 1098 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1098 as amended by the Senate.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1098 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford,

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Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Excused: Senators Hargrove and Pridemore - 2

SUBSTITUTE HOUSE BILL NO. 1098 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## MOTION

At 4:39 p.m., on motion of Senator Eide, the Senate adjourned until 9:30 a.m. Wednesday, April 18, 2007.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate



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