

EIGHTY SIXTH DAY

MORNING SESSION

Senate Chamber, Olympia, Tuesday, April 5, 2011

The Senate was called to order at 10:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present.

The Sergeant at Arms Color Guard consisting of Pages Austin Benton and Brad Benton, presented the Colors. Dr. John McVay, President of Walla Walla University, offered the prayer.

PERSONAL PRIVILEGE

Senator Hewitt: "Thank you Mr. President. Well, it was not duly noted Mr. President that you are an honorary doctorate of Walla Walla University. I don't think that should go untold."

MOTION

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

MOTION

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

REPORTS OF STANDING COMMITTEES

April 1, 2011

SB 5862 Prime Sponsor, Senator Hargrove: Regarding the administration of natural resources programs. Reported by Committee on Natural Resources & Marine Waters

MAJORITY recommendation: That Substitute Senate Bill No. 5862 be substituted therefor, and the substitute bill do pass. Signed by Senators Ranker, Chair; Regala, Vice Chair; Hargrove and Swecker.

MINORITY recommendation: Do not pass. Signed by Senator Stevens.

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

Passed to Committee on Ways & Means.

MOTION

On motion of Senator Eide, the measure listed on the Standing Committee report was referred to the committee as designated.

MOTION

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

MESSAGE FROM THE GOVERNOR
GUBERNATORIAL APPOINTMENTS

March 21, 2011

TO THE HONORABLE, THE SENATE OF THE STATE OF WASHINGTON

Ladies and Gentlemen:

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

STUART A. HALSAN, appointed March 21, 2011, for the term ending September 30, 2015, as Member, Board of Trustees, Community College District No. 12 (Centralia College).

Sincerely,

CHRISTINE O. GREGOIRE, Governor

Referred to Committee on Higher Education & Workforce Development.

MOTION

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

MOTION

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

MESSAGE FROM THE HOUSE

April 4, 2011

MR. PRESIDENT:

The House has passed:

SENATE BILL NO. 5057,
SUBSTITUTE SENATE BILL NO. 5152,
SENATE BILL NO. 5174,
SUBSTITUTE SENATE BILL NO. 5184,
SUBSTITUTE SENATE BILL NO. 5195,
SUBSTITUTE SENATE BILL NO. 5337.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

INTRODUCTION AND FIRST READING

SB 5913 by Senators Prentice, Hobbs and Benton

AN ACT Relating to increasing the permissible deposit of public funds with credit unions and authorizing the deposit of public funds at federally chartered credit unions; and amending RCW 39.58.240.

Referred to Committee on Financial Institutions, Housing & Insurance.

SB 5914 by Senators Tom and Zarelli

AN ACT Relating to teacher performance; amending RCW 28A.405.140, 28A.405.220, 28A.405.415, 28A.150.410, and 28A.400.200; adding new sections to chapter 28A.405 RCW;

adding a new section to chapter 28A.150 RCW; creating new sections; and providing an effective date.

Referred to Committee on Ways & Means.

SB 5915 by Senators Kilmer, Murray, Zarelli and Tom

AN ACT Relating to higher education funding and performance; amending RCW 28B.15.067, 28B.15.068, 28B.76.270, and 28B.76.200; adding new sections to chapter 28B.15 RCW; adding a new section to chapter 28B.76 RCW; adding a new section to chapter 28B.10 RCW; adding a new section to chapter 28B.50 RCW; creating a new section; and repealing RCW 28B.10.920, 28B.10.921, and 28B.10.922.

Referred to Committee on Ways & Means.

SB 5916 by Senator Murray

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

Referred to Committee on Ways & Means.

SB 5917 by Senator Murray

AN ACT Relating to allowing the liquor control board to implement a pilot project appointing up to ten colocated contract liquor stores in urban areas; and amending RCW 66.08.050.

Referred to Committee on Ways & Means.

MOTION

On motion of Senator Eide, all measures listed on the Introduction and First Reading report were referred to the committees as designated with the exception of Senate Bill No. 5914 which was referred to the Committee on Ways & Means.

MOTION

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

MOTION

Senator Fraser moved adoption of the following resolution:

SENATE RESOLUTION 8647

By Senators Fraser, King, Kohl-Welles, Rockefeller, Shin, White, McAuliffe, Roach, and Regala

WHEREAS, The Peace Corps was established in 1961 through the leadership of President John F. Kennedy to: "Help the people of interested countries in meeting their need for trained men and women"; "help promote a better understanding of Americans on the part of peoples served"; and "help promote a better understanding of other peoples"; and

WHEREAS, The Peace Corps is celebrating its 50th anniversary in 2011; and

WHEREAS, Since 1961, approximately 200,000 Americans have served as Peace Corps volunteers in 139 host countries in what some call "the toughest job you'll ever love"; and

WHEREAS, Today, over 8,000 Peace Corps volunteers nationwide continue to work with local governments, communities, schools, and businesses in 77 countries to address changing needs in education, health, business, community development, and information technology; and

WHEREAS, During the Peace Corps' half-century of service, 8,400 tough-minded and dedicated volunteers from the state of Washington have assisted countries around the world; and

WHEREAS, Currently seven percent of Peace Corps volunteers are over age 50, contributing their invaluable, unique life experiences and professional expertise; and

WHEREAS, Washington State ranks 3rd among all states in the number of Peace Corps volunteers; and

WHEREAS, Today 372 Washingtonians currently serve in the Peace Corps; and

WHEREAS, Washington State's colleges and universities represent a notable source of Peace Corps volunteers; and

WHEREAS, Returned volunteers bring back a deeper understanding of the world's populations, continue to serve our country in a variety of ways, and represent a valuable domestic return on America's investment;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate offers our congratulations to the Peace Corps as it turns 50; recognizes its outstanding accomplishments; and conveys our deep appreciation to all present and former Peace Corps volunteers who continue to promote peace and friendship at home and around the world; and

BE IT FURTHER RESOLVED, That the Washington State Senate is pleased to recognize six individuals currently associated with the Senate for their contributions as Peace Corps volunteers: Senator Paull Shin, who trained Peace Corps volunteers beginning in 1961 and later served in Borneo Malaysia; Elyse Bell, daughter of Senator King's Legislative Assistant, Laura Bell, who is currently volunteering in Benin, until 2012; John Woolley, Deputy Legislative Auditor, former volunteer in Sierra Leon, 1977-1980; Devon Jenkins, son of Senator Kohl-Welles, former volunteer in Niger, 2004-2005; and Ann Zukoski and Mark Bartlett, sister-in-law and brother-in-law of Senate Counsel Keith Buchholz, volunteers in the Central African Republic, 1989-1991; and

BE IT FURTHER RESOLVED, That copies of this resolution be transmitted to: The National Peace Corps Headquarters, Washington, D.C.; the Peace Corps Northwest Regional Office, Seattle; the National Peace Corps Association; the Seattle Peace Corps Association; the Olympia Area Returned Peace Corps Volunteers; the Inland Peace Corps Association; the Bellingham Peace Corps Association; and Senator Paull Shin, Elyse Bell, Laura Bell, Senator Curtis King, John Woolley, Ann Zukoski, Mark Bartlett, Devon Jenkins, and Senator Jeanne Kohl-Welles.

Senators Fraser, King, Shin, Kohl-Welles and Roach spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8647.

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

MOTION

Senator Fraser moved that the resolution be modified to recognize Senator Shin's Peace Corps service which was recently learned.

REPLY BY THE PRESIDENT

EIGHTY SIXTH DAY, APRIL 5, 2011

President Owen: "Senator Fraser, we will take care of that issue for you."

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced returned Peace Corps volunteers, led by Bob Finley, who were seated in the gallery.

PERSONAL PRIVILEGE

Senator Shin: "Thank you very much. In as much as we talked about the Peace Corp, I want to share a very compassionate and humanitarian story with you if I may. This year, June 25 at the front of the Korean Veterans Memorial we are starting to produce a movie called 'Exodus for Freedom'. This is a story about General Douglas MacArthur during the Korean War. He and forces advanced into North Korea beyond thirty-eighth parallel and Chinese crossed over and McArthur ordered all U. S. troops to evacuate from north of the thirty-eighth parallel. There's a small port called Heungnam Captain Edmond Almond with seventeen cargo ships loaded with trucks and tanks and ammunition, ready to depart. And from the horizon he saw thousands of refugees running toward the ship and he looked at them again, and looked back at the ships again, after several times without permission from the commanding general he ordered all the tanks, all the trucks, all the ammunition dumped into sea and mind you he loaded seventy-six thousand refugees in the ship and brought to safety. In remembering this story the Korean government and U. S. decided to produce a movie together to commemorate not only the sixtieth anniversary of the Korean War but the story of a miracle, story of humanity. The stars that we are asking former governor of California Arnold Schwarzenegger for him to come to be a commanding officer or captain if he comes here. I'd like to invite you to the Korean Veteran Memorial where we will start recognizing Korean Memorial there and produce the movie which will be showing both in the United States and Korea. I thought this was the most compassionate story of humanity and this is what America is all about folks. Thank you Mr. President."

MOTION

At 10:30 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 11:47 a.m. by President Owen.

SIGNED BY THE PRESIDENT

The President signed:

SENATE BILL NO. 5057,
SUBSTITUTE SENATE BILL NO. 5152,
SENATE BILL NO. 5174,
SUBSTITUTE SENATE BILL NO. 5184,
SUBSTITUTE SENATE BILL NO. 5195,
SUBSTITUTE SENATE BILL NO. 5337.

MOTION

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

SECOND READING

2011 REGULAR SESSION
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Delvin moved that Gubernatorial Appointment No. 9079, David Mitchell, as a member of the Board of Trustees, Columbia Basin Community College District No. 19, be confirmed.

Senator Delvin spoke in favor of the motion.

APPOINTMENT OF DAVID MITCHELL

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9079, David Mitchell as a member of the Board of Trustees, Columbia Basin Community College District No. 19.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9079, David Mitchell as a member of the Board of Trustees, Columbia Basin Community College District No. 19 and the appointment was confirmed by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

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

Absent: Senator Benton

Gubernatorial Appointment No. 9079, David Mitchell, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Columbia Basin Community College District No. 19.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1547, by House Committee on Ways & Means (originally sponsored by Representatives Darneille, Hunter, Dickerson, Cody, Hunt, Kagi, Sullivan and Kenney)

Concerning the deportation of criminal alien offenders.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Human Services & Corrections be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 9.94A.685 and 1993 c 419 s 1 are each amended to read as follows:

(1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and ~~((naturalization service))~~ customs enforcement agency for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime or crimes of which the

offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(2) No offender may be released under this section unless the secretary or the secretary's designee ((find [finds] that such release is in the best interests of the state of Washington. Further, releases under this section may occur only with the approval of the sentencing court and the prosecuting attorney of the county of conviction)) has reached an agreement with the immigration and customs enforcement agency that the alien offender placed on conditional release status will be detained in total confinement at a facility operated by the immigration and customs enforcement agency pending the offender's return to the country of origin or other location designated in the final deportation or exclusion order.

((3)) No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030(~~, or any other offense that is a crime against a person~~).

((4)) (3) The unserved portion of the term of confinement of any offender released under this section shall be tolled at the time the offender is released to the immigration and (~~naturalization service~~) customs enforcement agency for deportation. Upon the release of an offender to the immigration and (~~naturalization service~~) customs enforcement agency, the department shall issue a warrant for the offender's arrest within the United States. This warrant shall remain in effect (~~until the expiration of the offender's conditional release~~) indefinitely.

((5)) (4) Upon arrest of an offender, the department (~~shall~~) may seek extradition as necessary and the offender (~~shall~~) may be returned to the department for completion of the unserved portion of the offender's term of total confinement. If returned, the offender shall also be required to fully comply with all the terms and conditions of the sentence.

((6)) (5) Alien offenders released to the immigration and (~~naturalization service~~) customs enforcement agency for deportation under this section are not thereby relieved of their obligation to pay restitution or other legal financial obligations ordered by the sentencing court.

((7)) (6) Any offender released pursuant to this section who returns illegally to the United States may not thereafter be released again pursuant to this section.

((8)) (7) The secretary is authorized to take all reasonable actions to implement this section and shall assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter the state of Washington.

(8) The provisions of this section apply to persons convicted before, on, or after the effective date of this section.

NEW SECTION. Sec. 2. 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."

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections to Engrossed Substitute House Bill No. 1547.

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

MOTION

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

On page 1, line 1 of the title, after "offenders;" strike the remainder of the title and insert "amending RCW 9.94A.685; and declaring an emergency."

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Substitute House Bill No. 1547 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 Hargrove and Carrell spoke in favor of passage of the bill.

MOTION

On motion of Senator Delvin, Senator Benton was excused.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1547 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1547 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

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

Voting nay: Senator Kohl-Welles

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1547 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1053, by House Committee on Judiciary (originally sponsored by Representatives Moeller, Kenney, Ladenburg, Appleton, Roberts, Darneille and Uptegrove)

Implementing recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force.

The measure was read the second time.

MOTION

Senator Kline moved that the following committee striking amendment by the Committee on Judiciary be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 11.88.020 and 1997 c 312 s 1 are each amended to read as follows:

(1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is

(a) under eighteen years of age except as otherwise provided herein;

(b) of unsound mind;

(c) convicted of a felony or of a misdemeanor involving moral turpitude;

(d) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(e) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(f) a person whom the court finds unsuitable.

(2) The professional guardian certification requirements required under this section shall not apply to a testamentary guardian appointed under RCW 11.88.080.

(3) If a guardian or limited guardian is not a certified professional guardian or financial institution authorized under this section, the guardian or limited guardian shall complete any standardized training for lay guardians made available by the administrative office of the courts and the superior court where the petition is filed unless granted a waiver by the court under RCW 11.92.043.

(a) If a petitioner requests the appointment of a specific individual to act as a guardian or limited guardian, the petition for guardianship or limited guardianship shall include evidence of the successful completion of the required training by the proposed guardian or limited guardian. The superior court may defer the completion of the training requirement to a date no later than ninety days after appointment if the petitioner requests expedited appointment due to emergent circumstances.

(b) If no person is identified to be appointed guardian or limited guardian at the time the petition is filed, then the court shall require the completion of the required training by a date no later than ninety days after the appointment.

Sec. 2. RCW 11.88.030 and 2009 c 521 s 36 are each amended to read as follows:

(1) Any person or entity may petition for the appointment of a qualified person, (~~trust company, national bank, or nonprofit corporation~~) certified professional guardian, or financial institution authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment; and

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed. The petition shall include evidence of successful completion of any training required under RCW 11.88.020 by the proposed guardian or limited guardian unless the petitioner requests expedited appointment due to emergent circumstances.

(2)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(3) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE COUNTY SUPERIOR COURT BY IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;

- (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- (6) TO POSSESS A LICENSE TO DRIVE;
- (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

(5) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

Sec. 3. RCW 11.92.043 and 1991 c 289 s 11 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:

- (a) The address and name of the incapacitated person and all residential changes during the period;
- (b) The services or programs which the incapacitated person receives;
- (c) The medical status of the incapacitated person;
- (d) The mental status of the incapacitated person;
- (e) Changes in the functional abilities of the incapacitated person;
- (f) Activities of the guardian for the period;
- (g) Any recommended changes in the scope of the authority of the guardian;

(h) The identity of any professionals who have assisted the incapacitated person during the period;

(i)(i) Evidence of the guardian or limited guardian's successful completion of any standardized training for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (A) Was appointed prior to the effective date of this section; (B) is not a certified professional guardian or financial institution authorized under RCW 11.88.020; and (C) has not previously completed the requirements of RCW 11.88.020(3).

(ii) The superior court may: (A) Waive this requirement for good cause. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts about the guardianship, whether the guardian is a family member caring for a developmentally disabled child or other family member whose estate is worth two thousand dollars or less; the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or (B) extend the time period for completion of the training requirement for ninety days, upon: (I) Petition by the guardian or limited guardian; or (II) any other method as provided by local court rule; and

(j) Evidence of the guardian or limited guardian's successful completion of any additional or updated training offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020.

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

- (a) Therapy or other procedure which induces convulsion;
- (b) Surgery solely for the purpose of psychosurgery;
- (c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW ((71.05.370)) 71.05.217.

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040.

Sec. 4. RCW 11.88.095 and 1995 c 297 s 5 are each amended to read as follows:

(1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) ~~((When the next report of the guardian is due;~~

~~(d)))~~ The date the account or report shall be filed. The date of filing an account or report shall be within ninety days after the anniversary date of the appointment;

(d) A directive to the clerk of court to issue letters of guardianship;

(e) Whether the guardian ad litem shall continue acting as guardian ad litem;

~~((f)))~~ (f) Whether a review hearing shall be required upon the filing of the inventory;

~~((g)))~~ (g) Whether a review hearing is required upon filing the initial personal care plan;

(h) The authority of the guardian, if any, for investment and expenditure of the ward's estate; ~~(and~~

~~(e)))~~ (i) Names and addresses of those persons described in RCW 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship. The guardian, within ninety days from the date of the appointment, shall, in writing, notify the persons identified by the court of their right to request special notice of proceedings as described in RCW 11.92.150; and

(j) A guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

GUARDIANSHIP SUMMARY

Date Guardian Appointed:

Due Date for Report and

Accounting:

Date of Next Hearing

Bond Amount: \$.....

Restricted Account

Agreements Required

Due Date for Inventory:

Due Date for Care Plan:

<u>Incapacitated Person</u> (IP)	<u>Guardian of:</u> [] Estate [] <u>Person</u>
<u>Name:</u>	<u>Name:</u>
<u>Address:</u>	<u>Address:</u>

<u>Phone:</u>	<u>Phone:</u>
<u>Facsimile:</u>	<u>Facsimile:</u>

<u>Interested Parties</u>	<u>Address</u>	<u>Relation to IP</u>

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) Unless otherwise ordered, any powers of attorney or durable powers of attorney shall be revoked upon appointment of a guardian or limited guardian of the estate.

If there is an existing medical power of attorney, the court must make a specific finding of fact regarding the continued validity of that medical power of attorney before appointing a guardian or limited guardian for the person.

Sec. 5. RCW 11.88.125 and 2008 c 6 s 805 are each amended to read as follows:

(1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person(~~s~~) shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(~~f~~)) (i). Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or limited guardian shall be released from all duties and

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

- (a) The date the minor attained legal age;
- (b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;
- (c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and
- (d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

NOTICE OF FILING A
DECLARATION OF
COMPLETION OF
GUARDIANSHIP

CAPTION OF CASE

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the day of, 19 . . . ; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this day of, 19 . . .

.....
Guardian

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically

discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within (~~thirty~~) ninety days of the date of termination of the guardianship, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW 11.92.040(2) and (b) an intermediate personal care status report under RCW 11.92.043(2).

(4) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates.

Sec. 8. RCW 11.92.053 and 1995 c 297 s 7 are each amended to read as follows:

Within ninety days, unless the court orders a different deadline for good cause, after the termination of a guardianship for any reason, the guardian or limited guardian of the estate shall petition the court for an order settling his or her account as filed in accordance with RCW 11.92.040(2) with regard to any receipts, expenditures, and investments made and acts done by the guardian to the date of the termination. Upon the filing of the petition, the court shall set a date for the hearing of the petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to the petition or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved, and the court may appoint a guardian ad litem to review the report.

At the hearing on the petition of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving the account, and the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order. However, within one year after the incompetent attains his or her majority any such account may be challenged by the incapacitated person on the ground of fraud.

Sec. 9. RCW 11.92.040 and 1991 c 289 s 10 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within ~~((thirty))~~ ninety days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(4) If the court reviews an account or report filed by a guardian or limited guardian, a court order approving the account or report must contain a guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

GUARDIANSHIP SUMMARY

Date Guardian Appointed:

Due Date for Report and Accounting:

Date of Next Hearing:

Bond Amount: \$.....

Restricted Account Agreements Required

<u>Incapacitated Person (IP)</u>	<u>Guardian of:</u> [] Estate [] Person
<u>Name:</u>	<u>Name:</u>
<u>Address:</u>	<u>Address:</u>
<u>Phone:</u>	<u>Phone:</u>
<u>Facsimile:</u>	<u>Facsimile:</u>

<u>Standby Guardian</u>	<u>Address</u>	<u>Relation to IP</u>

<u>Interested Parties</u>	<u>Address</u>	<u>Relation to IP</u>

(5) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

~~((5))~~ (6) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

~~((6))~~ (7) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person: PROVIDED, HOWEVER, That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

to the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof;

(8) To provide evidence of the guardian or limited guardian's successful completion of any standardized training for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (a) Was appointed prior to the effective date of this section; (b) is not a certified professional guardian or financial institution authorized under RCW 11.88.020; and (c) has not previously completed the requirements of RCW 11.88.020(3). The superior court may: (i) Waive this requirement for good cause. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts about the guardianship, whether the guardian is a family member caring for a developmentally disabled child or other family member whose estate is worth two thousand dollars or less; the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or (ii) extend the time period for completion of the training requirement for ninety days, upon: (A) Petition by the guardian or limited guardian; or (B) any other method as provided by local court rule; and

(9) To provide evidence of the guardian or limited guardian's successful completion of any additional or updated training offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020.

Sec. 10. RCW 11.92.050 and 1995 c 297 s 6 are each amended to read as follows:

(1) Upon the filing of any intermediate guardianship or limited guardianship account or report required by statute, or of any intermediate account or report required by court rule or order, the guardian or limited guardian may petition the court for an order settling ~~((his or her))~~ the guardianship account or report with regard to any receipts, expenditures, and investments made and acts done by the guardian or limited guardian to the date of the interim report.

(2) Upon such ~~((petition))~~ account or report being filed, the court may in its discretion, where the size or condition of the estate warrants it, set a date for the hearing of the petition and require the service of the petition and a notice of the hearing as provided in RCW 11.88.040 as now or hereafter amended or as specified by the court; and, in the event a hearing is ordered, the court may also appoint a guardian ad litem, whose duty it shall be to investigate the account or report of the guardian or limited guardian of the estate and to advise the court thereon at the hearing, in writing.

(3) At the hearing on or upon the court's review of the account or report of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects

discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account or report.

(4) If a guardian or limited guardian fails to file the account or report or fails to appear at a hearing, the court may enter an order to show cause and require the guardian or limited guardian to appear at a show cause hearing. At the show cause hearing the court may enter an order for one or more of the following actions:

(a) Directing the guardian or limited guardian to appear before the court subject to contempt sanctions;

(b) Appointing a guardian ad litem;

(c) Removing the guardian or limited guardian and appointing a successor;

(d) Requiring the completion of any approved guardianship training made available to the guardian by the court; or

(e) Providing other and further relief the court deems just and equitable.

(5) If the court has appointed a guardian ad litem, the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after the incapacitated person attains his or her majority any such interim account may be challenged by the incapacitated person on the ground of fraud.

~~((2))~~ (6) The procedure established in ~~((subsection (1) of))~~ this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW 11.92.043."

Senator Kline spoke in favor of adoption of the committee striking amendment.

MOTION

Senator Pflug moved that the following amendment by Senators Pflug and Kline to the committee striking amendment be adopted:

On page 2, line 10 of the amendment, after "11.92.043" insert "or 11.92.040"

On page 3, at the beginning of line 32 of the amendment, insert the following:

"(2)"

Remember the remaining subsections consecutively and correct internal references accordingly.

On page 6, line 13 of the amendment, after "to" strike all material through "section" and insert "July 24, 2011"

On page 6, beginning on line 17 of the amendment, after "may" strike all material through "rule" on line 30 and insert ", upon (A) petition by the guardian or limited guardian; or (B) any other method as provided by local court rule: (I) For good cause, waive this requirement for guardians appointed prior to July 24, 2011. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts about the guardianship, whether the guardian is a family member caring for another family member with a developmental disability whose estate is worth three thousand dollars or less; the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or (II) extend the time period for completion of the training requirement for ninety days"

On page 21, line 7 of the amendment, after "to" strike all material through "section" and insert "July 24, 2011"

On page 21, beginning on line 10 of the amendment, after "may" strike all material through "rule" on line 24 and insert ", upon (i) petition by the guardian or limited guardian; or (ii) any other method as provided by local court rule: (A) For good cause, waive this requirement for guardians appointed prior to July 24, 2011. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts about the guardianship, whether the guardian is a family member caring for another family member with a developmental disability whose estate is worth three thousand dollars or less; the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or (B) extend the time period for completion of the training requirement for ninety days"

Senator Pflug spoke in favor of adoption of the amendment to the committee striking amendment.

MOTION

On motion of Senator Eide, further consideration of Substitute House Bill No. 1053 was deferred and the bill held its place on the second reading calendar.

MOTION

The Senate resumed consideration of Substitute House Bill No. 1053.

The President declared the question before the Senate to be the adoption of the amendment by Senators Pflug and Kline on page 2, line 10 to the committee striking amendment to Substitute House Bill No. 1053.

The motion by Senator Pflug carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Roach moved that the following amendment by Senator Roach to the committee striking amendment be adopted:

On page 2, line 7 of the amendment, after "training" insert "video or web cast"

On page 2, line 10 of the amendment, after "11.92.043." insert "The training video or web cast must be provided at no cost to the guardian or limited guardian."

On page 2, line 14 of the amendment, after "training" insert "video or web cast"

On page 2, line 21 of the amendment, after "training" insert "video or web cast"

On page 6, line 10 of the amendment, after "training" insert "video or web cast"

On page 6, line 16 of the amendment, after "RCW 11.88.020(3)." insert "The training video or web cast must be provided at no cost to the guardian or limited guardian."

On page 6, line 32 of the amendment, after "training" insert "video or web cast"

On page 6, line 36 of the amendment, after "RCW 11.88.020" insert ". The training video or web cast must be provided at no cost to the guardian or limited guardian"

On page 21, line 4 of the amendment, after "training" insert "video or web cast"

On page 21, line 10 of the amendment, after "RCW 11.88.020(3)." insert "The training video or web cast must be provided at no cost to the guardian or limited guardian."

On page 21, line 26 of the amendment, after "training" insert "video or web cast"

On page 21, line 30 of the amendment, after "RCW 11.88.020" insert ". The training video or web cast must be provided at no cost to the guardian or limited guardian"

Senator Roach spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Roach on page 2, line 7 to the committee striking amendment to Substitute House Bill No. 1053.

The motion by Senator Roach carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Judiciary as amended to Substitute House Bill No. 1053.

The motion by Senator Kline carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

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

On page 1, line 3 of the title, after "force;" strike the remainder of the title and insert "amending RCW 11.88.020, 11.88.030, 11.92.043, 11.88.095, 11.88.125, 11.88.140, 11.92.053, 11.92.040, and 11.92.050; and adding a new section to chapter 11.88 RCW."

MOTION

On motion of Senator Kline, the rules were suspended, Substitute House Bill No. 1053 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 Kline, Carrell and Roach 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. 1053 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1053 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

SUBSTITUTE HOUSE BILL NO. 1053 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.

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1041, by House Committee on Judiciary (originally sponsored by Representatives Green, Angel, Goodman, McCune, Kelley, Hope, Dammeier, Warnick, Blake, Hurst, Moeller and Upthegrove)

Including correctional employees who have completed government-sponsored law enforcement firearms training to the lists of law enforcement personnel that are exempt from certain firearm restrictions.

The measure was read the second time.

MOTION

Senator Kline moved that the following committee striking amendment by the Committee on Judiciary be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.41.060 and 2005 c 453 s 3 are each amended to read as follows:

The provisions of RCW 9.41.050 shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens or their deputies, correctional personnel and community corrections officers who have completed government-sponsored law enforcement firearms training and have been subject to a check through the national instant criminal background check system or an equivalent background check within the past five years, or other law enforcement officers of this state or another state. Correctional personnel and community corrections officers seeking the waiver provided for by this section are required to pay for any background check that is needed in order to exercise the waiver;

(2) Members of the armed forces of the United States or of the national guard or organized reserves, when on duty;

(3) Officers or employees of the United States duly authorized to carry a concealed pistol;

(4) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of the person, if possessing, using, or carrying a pistol in the usual or ordinary course of the business;

(5) Regularly enrolled members of any organization duly authorized to purchase or receive pistols from the United States or from this state;

(6) Regularly enrolled members of clubs organized for the purpose of target shooting, when those members are at or are going to or from their places of target practice;

(7) Regularly enrolled members of clubs organized for the purpose of modern and antique firearm collecting, when those members are at or are going to or from their collector's gun shows and exhibits;

(8) Any person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area;

(9) Any person while carrying a pistol unloaded and in a closed opaque case or secure wrapper; ((c))

(10) Law enforcement officers retired for service or physical disabilities, except for those law enforcement officers retired because of mental or stress-related disabilities. This subsection

applies only to a retired officer who has: (a) Obtained documentation from a law enforcement agency within Washington state from which he or she retired that is signed by the agency's chief law enforcement officer and that states that the retired officer was retired for service or physical disability; and (b) not been convicted or found not guilty by reason of insanity of a crime making him or her ineligible for a concealed pistol license; or

(11) Correctional personnel and community corrections officers who have completed government-sponsored law enforcement firearms training and who are retired for service or physical disabilities, except for correctional personnel or community corrections officers retired because of mental or stress-related disabilities. This subsection applies only if the person has: (a) Obtained documentation from the agency within Washington state from which the person retired that states that the person was retired for service or physical disability; and (b) not been convicted or found not guilty by reason of insanity of a crime making him or her ineligible for a concealed pistol license. Government-sponsored law enforcement firearms training must be training that correctional personnel and community corrections officers receive as part of their job requirement and reference to such training does not constitute a mandate that it be provided by the correctional facility.

Sec. 2. RCW 9.41.300 and 2008 c 33 s 1 are each amended to read as follows:

(1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon:

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court, except an order under chapter 13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

For purposes of this subsection (1)(b), "weapon" means any firearm, explosive as defined in RCW 70.74.010, or any weapon of the kind usually known as slung shot, sand club, or metal knuckles, or any knife, dagger, dirk, or other similar weapon that is capable of causing death or bodily injury and is commonly used with the intent to cause death or bodily injury.

In addition, the local legislative authority shall provide either a stationary locked box sufficient in size for pistols and key to a weapon owner for weapon storage, or shall designate an official to receive weapons for safekeeping, during the owner's visit to restricted areas of the building. The locked box or designated official shall be located within the same building used in connection with court proceedings. The local legislative authority shall be liable for any negligence causing damage to or loss of a weapon either placed in a locked box or left with an official during the owner's visit to restricted areas of the building.

The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

(c) The restricted access areas of a public mental health facility certified by the department of social and health services for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for evaluation and treatment. Restricted access areas do not include common areas of egress and ingress open to the general public;

(d) That portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age; or

(e) The restricted access areas of a commercial service airport designated in the airport security plan approved by the federal transportation security administration, including passenger screening checkpoints at or beyond the point at which a passenger initiates the screening process. These areas do not include airport drives, general parking areas and walkways, and shops and areas of the terminal that are outside the screening checkpoints and that are normally open to unscreened passengers or visitors to the airport. Any restricted access area shall be clearly indicated by prominent signs indicating that firearms and other weapons are prohibited in the area.

(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

(i) Any pistol in the possession of a person licensed under RCW 9.41.070 or exempt from the licensing requirement by RCW 9.41.060; or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3)(a) Cities, towns, and counties may enact ordinances restricting the areas in their respective jurisdictions in which firearms may be sold, but, except as provided in (b) of this subsection, a business selling firearms may not be treated more restrictively than other businesses located within the same zone. An ordinance requiring the cessation of business within a zone shall not have a shorter grandfather period for businesses selling firearms than for any other businesses within the zone.

(b) Cities, towns, and counties may restrict the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds, if the business has a storefront, has hours during which it is open for business, and posts advertisements or signs observable to passersby that firearms are available for sale. A business selling firearms that exists as of the date a restriction is enacted under this subsection (3)(b) shall be grandfathered according to existing law.

(4) Violations of local ordinances adopted under subsection (2) of this section must have the same penalty as provided for by state law.

(5) The perimeter of the premises of any specific location covered by subsection (1) of this section shall be posted at reasonable intervals to alert the public as to the existence of any law restricting the possession of firearms on the premises.

(6) Subsection (1) of this section does not apply to:

(a) A person engaged in military activities sponsored by the federal or state governments, while engaged in official duties;

(b) Law enforcement personnel, except that subsection (1)(b) of this section does apply to a law enforcement officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any

party has alleged the existence of domestic violence as defined in RCW 26.50.010; or

(c) Security personnel while engaged in official duties.

(7) Subsection (1)(a), (b), (c), and (e) of this section does not apply to correctional personnel or community corrections officers who have completed government-sponsored law enforcement firearms training, except that subsection (1)(b) of this section does apply to a correctional employee or community corrections officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010.

(8) Subsection (1)(a) of this section does not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises or checks his or her firearm. The person may reclaim the firearms upon leaving but must immediately and directly depart from the place or facility.

~~((8))~~ (9) Subsection (1)(c) of this section does not apply to any administrator or employee of the facility or to any person who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises.

~~((9))~~ (10) Subsection (1)(d) of this section does not apply to the proprietor of the premises or his or her employees while engaged in their employment.

~~((10))~~ (11) Government-sponsored law enforcement firearms training must be training that correctional personnel and community corrections officers receive as part of their job requirement and reference to such training does not constitute a mandate that it be provided by the correctional facility.

(12) Any person violating subsection (1) of this section is guilty of a gross misdemeanor.

~~((11))~~ (13) "Weapon" as used in this section means any firearm, explosive as defined in RCW 70.74.010, or instrument or weapon listed in RCW 9.41.250.

NEW SECTION. Sec. 3. A new section is added to chapter 9.41 RCW to read as follows:

The exemptions from firearms restrictions in RCW 9.41.060 and 9.41.300 for correctional personnel and community corrections officers who complete government-sponsored law enforcement firearms training do not create a duty on the part of the state or local governmental entities with respect to the off-duty conduct of correctional personnel and community corrections officers involving the use or misuse of a firearm.

The state of Washington, local governmental entities, and their officers, employees, and agents are not liable for any civil damages caused by the use or misuse of a firearm by off-duty correctional personnel or community corrections officers based on any act or omission in the provision of government-sponsored firearms training to the correctional personnel or community corrections officers."

Senators Kline and Pflug spoke in favor of adoption of the committee striking amendment.

MOTION

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

On page 1, line 7 of the amendment, after "officers" insert "as long as they are employed as such"

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

On page 2, line 12 of the amendment, after "wrapper;" strike "(~~or~~)" and insert "or"

On page 2, beginning on line 22 of the amendment, after "license" strike all material through "facility" on line 37

On page 5, line 34 of the amendment, after "officers" insert ", as long as they are employed as such."

Senators Fraser, Pflug, Kline and Delvin spoke in favor of adoption of the amendment to the committee striking amendment.

Senators Sheldon, Carrell and Roach spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Fraser and others on page 1, line 7 to the committee striking amendment to Engrossed Substitute House Bill No. 1041.

The motion by Senator Fraser carried and the amendment to the committee striking amendment was adopted by a rising vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Judiciary as amended to Engrossed Substitute House Bill No. 1041.

The motion by Senator Kline carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

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

On page 1, line 4 of the title, after "restrictions;" strike the remainder of the title and insert "amending RCW 9.41.060 and 9.41.300; and adding a new section to chapter 9.41 RCW."

MOTION

On motion of Senator Kline, the rules were suspended, Engrossed Substitute House Bill No. 1041 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

MOTION

On motion of Senator Ericksen, Senator Stevens was excused.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1041 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1041 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

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

Excused: Senator Stevens

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1041 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 12:33 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 2:37 p.m. by President Owen.

SECOND READING

CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Fraser moved that Gubernatorial Appointment No. 9121, Brian Vance, as a member of the Board of Trustees, South Puget Sound Community College District No. 24, be confirmed.

Senator Fraser spoke in favor of the motion.

APPOINTMENT OF BRIAN VANCE

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9121, Brian Vance as a member of the Board of Trustees, South Puget Sound Community College District No. 24.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9121, Brian Vance as a member of the Board of Trustees, South Puget Sound Community College District No. 24 and the appointment was confirmed by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

Gubernatorial Appointment No. 9121, Brian Vance, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, South Puget Sound Community College District No. 24.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1186, by House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Rolfes, Hudgins, Uptegrove, Appleton, Roberts, Pedersen, Carlyle, Goodman, Liias, Van De Wege, Dickerson, Cody, Fitzgibbon, Dunshee, McCoy, Finn, Jacks, Reykdal, Tharinger, Frockt, Billig, Hunt, Kenney, Stanford, Ryu and Seaquist)

Concerning requirements under the state's oil spill program.

The measure was read the second time.

MOTION

Senator Ranker moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that the "deepwater horizon" wellhead blowout, explosion, and oil spill in the Gulf of Mexico on April 20, 2010, resulted in the release of two hundred million gallons of crude oil into the environment. Impacts after the spill have included deaths and injuries, extensive damage to the marine environment and wildlife habitats, as well as large socioeconomic damages to local citizens, commercial fishing, tourism, businesses, and recreation. As late as six months after the spill, four thousand two hundred square miles of the Gulf of Mexico were closed to commercial shrimp harvest. The incident in the Gulf of Mexico is a reminder that the threat of major spills to Washington's environment, natural resources, economy, quality of life, and private property is significant.

(2) The legislature further finds that during the fall of 2010 the department of ecology compiled lessons learned from the Gulf of Mexico spill and the Puget Sound partnership convened an oil spill work group in an effort to ensure there is a rapid and aggressive response to a large scale spill in Washington and that oversight of spills is well coordinated among different levels of government and industry. The legislature intends to build upon these efforts, and other recent studies, to improve Washington's prevention and response capabilities. While current oil spill contingency plans are required to address worst case spills, it is also clear that the state will benefit from additional preparation for a large scale oil spill of the magnitude possible by failures of an oil tanker or a tank barge, particularly within the confined waters of Puget Sound. Lessons learned from the 2010 deepwater horizon incident demonstrate that improvements to Washington's existing oil spill prevention, preparedness, and response capabilities are both prudent and possible.

Sec. 2. RCW 88.46.010 and 2009 c 11 s 7 are each reenacted and amended to read as follows:

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)(a) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration:

~~((a))~~ (i) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development~~((:))~~; and

~~((b))~~ (ii) Processes that are currently in use.

(b) In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(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) "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.

(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) "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.

(13) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature 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.

(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) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Race Rocks light" means the nautical landmark located southwest of the city of Victoria, British Columbia.

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

(19) "Severe weather conditions" means observed nautical conditions with sustained winds measured at forty knots and wave heights measured between twelve and eighteen feet.

(20) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(21) "Spill" means an unauthorized discharge of oil into the waters of the state.

(22) "Strait of Juan de Fuca" means waters off the northern coast of the Olympic Peninsula seaward of a line drawn from New Dungeness light in Clallam county to Discovery Island light on Vancouver Island, British Columbia, Canada.

(23) "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.

(24) "Vessel emergency" means a substantial threat of pollution originating from a covered vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability.

(25) "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.

(26) "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.

(27) "Vessels of opportunity response system" means nondedicated boats and operators, including fishing and other vessels, that are under contract with and equipped by contingency plan holders to assist with oil spill response activities, including on-water oil recovery in the near shore environment and the placement of oil spill containment booms to protect sensitive habitats.

(28) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessels of opportunity response system to respond when needed and available to spills in a defined geographic area.

(29) "Volunteer coordination system" means an oil spill response system that, before a spill occurs, prepares for the coordination of volunteers to assist with appropriate oil spill response activities, which may include shoreline protection and cleanup, wildlife recovery, field observation, light construction, facility maintenance, donations management, clerical support, and other aspects of a spill response.

(30) "Umbrella plan holder" means a nonprofit corporation established consistent with this chapter for the purposes of providing oil spill response and contingency plan coverage.

NEW SECTION. Sec. 3. A new section is added to chapter 88.46 RCW to read as follows:

(1) In addition to meeting the requirements specified in RCW 88.46.060, contingency plans for tank vessels operating in Washington waters must provide for the organization and contracting of a vessels of opportunity response system as required by this section.

(2)(a) The owner or operator of a tank vessel operating in Washington waters shall establish or fund a vessels of opportunity response system to supplement the timely and effective response to spills in the vessel's area of operation.

(b) The vessels of opportunity response system must be composed of an adequate number of regional vessels of opportunity response groups so as to be prepared to respond to a spill anywhere within the tank vessel's area of operation and be underway within

twelve hours of activation by the incident commander or unified command, to the extent that a twelve-hour spill response is determined to be safe and effective. For tank vessels with an area of operation limited to the Columbia river, the vessels of opportunity response system may be limited to one regional vessels of opportunity response group located near the mouth of the river.

(c) Each regional vessels of opportunity response group must be composed of a sufficient number of participating nondedicated vessels to satisfy the following planning standards:

(i) By July 1, 2012, two vessels are available to respond at any one time;

(ii) By July 1, 2013, four vessels are available to respond at any one time; and

(iii) On and after July 1, 2014, six vessels are available to respond at any one time.

(3) A vessels of opportunity response system must ensure the following:

(a) Participating vessels have access to and can be rapidly equipped, consistent with subsections (4) and (5) of this section, with dedicated response equipment including equipment as provided in section 5(1)(a) of this act. The response equipment made available to vessels of opportunity response groups may vary among individual response groups based on the expected operating environment where the equipment will be utilized. While vessels of opportunity response groups must have access to equipment as provided in section 5(1)(a) of this act, the equipment utilized by individual vessels may vary within each group and not all vessels must have access to such equipment during a spill response;

(b) The appropriate response equipment is readily available to the individual vessels participating in a regional vessels of opportunity response group; and

(c) Crews of the participating vessels are:

(i) Equipped with appropriate personal protection gear; and

(ii) Properly trained to utilize response equipment as provided in section 5(1)(a) of this act. Crew training may be limited to safe response equipment utilization and deployment and not the maintenance of response equipment.

(4) Nothing in this section requires prepositioning response equipment that would require a major refit of a participating vessel of opportunity or dedicated response vessel.

(5) The dedicated response equipment made available to a regional vessels of opportunity group may be dedicated equipment owned and maintained by the contingency plan holder and not by the owner or operator of the participating vessel as long as the participating vessels have access to, and can be equipped with, the equipment as required in this section.

(6)(a) The requirements of this section may be fulfilled by one or more private organizations or nonprofit corporations providing umbrella coverage under contract to single or multiple tank vessels. Any organization or corporation providing coverage to satisfy the requirements of this section must ensure that the vessels of opportunity response system being provided includes the establishment of a minimum of six distinct regional vessels of opportunity response groups stationed so as to be able to respond to incidents occurring in the following locations:

(i) The outer coast;

(ii) The Strait of Juan de Fuca;

(iii) Northern Puget Sound, including the San Juan Islands;

(iv) Central Puget Sound;

(v) Southern Puget Sound; and

(vi) The mouth of the Columbia river.

(b) The department may require a private organization or nonprofit corporation providing umbrella coverage to satisfy the requirements of this section to station regional vessels of opportunity response groups in areas that are in addition to the

minimum required response areas of this subsection based on risk and need.

(7) Each regional vessel of opportunity response group must complete a minimum of two drills a year to ensure that the overall vessels of opportunity response system is maintained at an appropriate level of readiness and the actual number of participating vessels is sufficient to meet the planning standards provided in subsection (2)(c) of this section. The department may award credit to the plan holder for practice drills accordingly. Each successful activation of the vessels of opportunity response system may be considered by the department to satisfy a drill covering this portion of the contingency plan.

(8) The decision to activate a vessels of opportunity response system during a spill response, and provide direction as to how and where the regional vessels of opportunity response groups should respond, is the responsibility of the designated incident commander or the unified command.

(9) The department may implement and enforce the requirements of this section without adopting rules.

(10) The department shall adjust requirements provided in this section where the department determines that compliance with a requirement is not practicable.

NEW SECTION. Sec. 4. A new section is added to chapter 88.46 RCW to read as follows:

(1) The department shall establish a volunteer coordination system. The volunteer coordination system may be included as a part of the state's overall oil spill response strategy, and may be implemented by local emergency management organizations, in coordination with any analogous federal efforts, to supplement the state's timely and effective response to spills.

(2) The department should consider how the volunteer coordination system will:

(a) Coordinate with the incident commander or unified command of an oil spill and any affected local governments to receive, screen, and register volunteers who are not affiliated with the emergency management organization or a local nongovernmental organization;

(b) Coordinate the management of volunteers with local nongovernmental organizations and their affiliated volunteers;

(c) Coordinate appropriate response operations with different classes of volunteers, including pretrained volunteers and convergent volunteers, to fulfill requests by the department or an oil spill incident commander or unified command;

(d) Coordinate public outreach regarding the need for and use of volunteers;

(e) Determine minimum participation criteria for volunteers; and

(f) Identify volunteer training requirements and, if applicable, provide training opportunities for volunteers prior to an oil spill response incident.

(3) An act or omission by any volunteer participating in a spill response or training as part of a volunteer coordination system, while engaged in such activities, does not impose any liability on any state agency, any participating local emergency management organization, or the volunteer for civil damages resulting from the act or omission. However, the immunity provided under this subsection does not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct.

(4) The decisions to utilize volunteers in an oil spill response, which volunteers to utilize, and to determine which response activities are appropriate for volunteer participation in any given response are the sole responsibilities of the designated incident commander or unified command.

NEW SECTION. Sec. 5. A new section is added to chapter 88.46 RCW to read as follows:

(1) In addition to meeting the requirements specified in this chapter applicable to all covered vessels, contingency plans for tank vessels must provide for:

(a) Response systems that represent best available protection and are located in close proximity to vessels of opportunity response groups as provided in section 3 of this act. The response systems must: (i) Be capable of oil recovery in currents of three knots and in adverse weather normally experienced in the area of operation for an individual vessel of opportunity response group; and (ii) be composed, at minimum, of on-water oil collection, oil skimming, and on-water storage equipment. Equipment required under this section must supplement equipment required under subsections (2) and (3) of this section. Nothing in this subsection requires repositioning response equipment that would require a major refit of a participating vessel of opportunity or dedicated response vessel; and

(b) Access to aerial remote sensing technology that enhances the ability of response personnel to detect and respond to oil spills in times of low visibility and at night, including technology that is capable of aerial oil identification, location mapping, and downloading of the information in real time to response vessels and the command post. This technology is not required to be stationed in Washington, but must be capable of being operational at the site of an incident within four hours of a response request.

(2) In addition to meeting the requirements specified in this chapter applicable to all covered vessels, contingency plans for tank vessels must provide for:

(a) Rapid access to equipment located within the state that reflects the best achievable protection for the expected operating environment in the vessel's area of operation without requiring equipment with capabilities that exceeds the response requirements for the expected operating environment; and

(b) Continuous operation of oil spill response activities without regard to the operating environment to the maximum extent practicable and without jeopardizing crew safety, as determined by the incident commander or the unified command.

(3) In reviewing tank vessel contingency plans to measure compliance with this subsection and subsection (2) of this section, the department must ensure that, at a minimum, plans:

(a) Provide access to dedicated equipment appropriate for the operating environment as needed to achieve oil recovery, to the maximum extent practicable and without jeopardizing crew safety; including, being capable of oil recovery in currents of three knots and in adverse weather normally experienced in the area of operation. These response systems must include on-water oil collection, oil skimming, and on-water storage equipment, and trained personnel representing best achievable protection. Equipment intended to be used for response activities on the outer coast or the Strait of Juan de Fuca must also be capable of open water operations;

(b) Include a technical analysis of best achievable technology and best achievable protection for the expected operating environment in the vessel's area of operation; and

(c) Provide adequate capacity for storage or proper disposal of the volume and type of oil considered by the contingency plan so as to achieve continuous operation of oil recovery to the maximum extent practicable considering currents, wave heights, weather conditions, and the safety of response personnel.

(4)(a) The department may implement and enforce the requirements of subsection (1) of this section without adopting rules.

(b) Subject to the availability of amounts appropriated for this specific purpose, the department shall adopt rules specifying requirements under subsections (2) and (3) of this section.

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

(c) The department may not revise standards to require equipment upgrades under this section more than once in any five-year period.

(5) The department shall adjust requirements provided in this section where the department determines that compliance with a requirement is not practicable.

NEW SECTION. Sec. 6. A new section is added to chapter 88.46 RCW to read as follows:

(1) The department is responsible for ordering joint large-scale, multiple plan equipment deployment drills of tank vessels to determine the adequacy of the owner's or operator's compliance with the contingency plan requirements of this chapter. The department must order at least one drill as outlined in this section every three years.

(2) Drills ordered under this section must focus on, at a minimum, the following:

(a) The functional ability for multiple contingency plans to be simultaneously activated with the purpose of testing the ability for dedicated equipment and trained personnel cited in multiple contingency plans to be activated in a large scale spill; and

(b) The operational readiness during both the first six hours of a spill and, at the department's discretion, over multiple operational periods of response.

(3) Drills ordered under this section may be incorporated into other drill requirements under this chapter to avoid increasing the number of drills and equipment deployments otherwise required.

(4) Each successful drill conducted under this section may be considered by the department as a drill of the underlying contingency plan and credit may be awarded to the plan holder accordingly.

(5) The department shall, when practicable, coordinate with applicable federal agencies, the state of Oregon, and the province of British Columbia to establish a drill incident command and to help ensure that lessons learned from the drills are evaluated with the goal of improving the underlying contingency plans.

Sec. 7. RCW 88.46.060 and 2005 c 78 s 2 are each amended to read as follows:

(1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department, removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs consistent with this chapter to evaluate whether personnel and equipment

provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, ~~((and))~~ natural resources, and ~~((the office of))~~ archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the prepositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; ~~((and))~~

(o) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules;

(p) Compliance with section 8 of this act if the contingency plan is submitted by an umbrella plan holder; and

(q) Include any additional elements of contingency plans as required by this chapter.

~~(2)((~~and~~)) The owner or operator of a ((~~tank~~)) covered vessel ((~~of three thousand gross tons or more shall~~)) must submit ((~~a~~)) any required contingency plan updates to the department within ((~~six months after~~)) the timelines established by the department ((~~adopts rules establishing standards for contingency plans under subsection (1) of this section.~~~~

(b) Contingency plans for all other covered vessels shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period).

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or a ((~~Washington state~~)) nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by a ~~((Washington state))~~ nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife, shellfish beds, and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6)(a) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(b) The department must notify the plan holder in writing within sixty-five days of an initial or amended plan's submittal to the department as to whether the plan is disapproved, approved, or conditionally approved. If a plan is conditionally approved, the department must clearly describe each condition and specify a schedule for plan holders to submit required updates.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a covered vessel shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the

department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

NEW SECTION. Sec. 8. A new section is added to chapter 88.46 RCW to read as follows:

(1) When submitting a contingency plan to the department under RCW 88.46.060, any umbrella plan holders that enroll both tank vessels and covered vessels that are not tank vessels must, in addition to satisfying the other requirements of this chapter, specify:

(a) The maximum worst case discharge volume from covered vessels that are not tank vessels to be covered by the umbrella plan holder's contingency plan; and

(b) The maximum worst case discharge volume from tank vessels to be covered by the umbrella plan holder's contingency plan.

(2) Tank vessel owners or operators that are enrolled with an umbrella plan holder and that have worse case discharge volumes larger than the maximum volume covered by the contingency plan of the umbrella plan holder must demonstrate to the satisfaction of the department that the owner or operator of the tank vessel has access to the necessary additional response capabilities.

Sec. 9. RCW 88.46.100 and 2000 c 69 s 10 are each amended to read as follows:

((1)) In ((order to assist the state in identifying areas of the navigable waters of the state needing special attention, the owner or operator of a covered vessel shall notify the)) addition to any notifications that the owner or operator of a covered vessel must provide to the United States coast guard ((within one hour:

(a) Of the disability of the covered vessel if the disabled vessel is within twelve miles of the shore of the state; and

(b) Of a collision or a near miss incident within twelve miles of the shore of the state.

(2) The state military department and the department shall request the coast guard to notify the state military department as soon as possible after the coast guard receives notice of a disabled covered vessel or of a collision or near miss incident within twelve miles of the shore of the state. The department shall negotiate an agreement with the coast guard governing procedures for coast guard notification to the state regarding disabled covered vessels and collisions and near miss incidents.

(3) The department shall prepare a summary of the information collected under this section and provide the summary to the regional marine safety committees, the coast guard, and others in order to identify problems with the marine transportation system.

(4) For the purposes of this section:

(a) A tank vessel or cargo vessel is considered disabled if any of the following occur:

(i) Any accidental or intentional grounding;

(ii) The total or partial failure of the main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel;

(iii) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including but not limited to, fire, flooding, or collision with another vessel;

(iv) Any other occurrence that creates the serious possibility of an oil spill or an occurrence that may result in such a spill.

(b) A barge is considered disabled if any of the following occur:

(i) The towing mechanism becomes disabled;

(ii) The towboat towing the barge becomes disabled through occurrences defined in (a) of this subsection.

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

(c) A near miss incident is an incident that requires the pilot or master of a covered vessel to take evasive actions or make significant course corrections in order to avoid a collision with another ship or to avoid a grounding as required by the international rules of the road.

(5) Failure of any person to make a report under this section shall not be used as the basis for the imposition of any fine or penalty) regarding a vessel emergency, the owner or operator of a covered vessel must notify the state of any vessel emergency that results in the discharge or substantial threat of discharge of oil to state waters or that may affect the natural resources of the state within one hour of the onset of that emergency. The purpose of this notification is to enable the department to coordinate with the vessel operator, contingency plan holder, and the United States coast guard to protect the public health, welfare, and natural resources of the state and to ensure all reasonable spill preparedness and response measures are in place prior to a spill occurring.

Sec. 10. RCW 90.48.366 and 2007 c 347 s 1 are each amended to read as follows:

(1) The department, in consultation with the departments of 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:

(a) For spills totaling one thousand gallons or more in any one event, no less than ~~((one dollar))~~ three dollars per gallon of oil spilled and no greater than ~~((one))~~ three hundred dollars per gallon of oil spilled; and

(b) For spills totaling less than one thousand gallons in any one event, no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled.

(2) Oil recovered from the water within forty-eight hours of a discharge must be deducted from the total spill volume for purposes of determining the amount of compensation assessed under the compensation schedule.

(3) The compensation schedule adopted under this section 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:

~~((4))~~ (a) 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))~~ (b) The sensitivity of the affected area as determined by such factors as:

~~((1))~~ (i) The location of the spill;

~~((1))~~ (ii) Habitat and living resource sensitivity;

~~((1))~~ (iii) Seasonal distribution or sensitivity of living resources;

~~((1))~~ (iv) Areas of recreational use or aesthetic importance;

~~((1))~~ (v) 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;

~~((1))~~ (vi) Significant archaeological resources as determined by the department of archaeology and historic preservation; and

~~((1))~~ (vii) Other areas of special ecological or recreational importance, as determined by the department; and

~~((3))~~ (c) Actions taken by the party who spilled oil or any party liable for the spill that:

~~((1))~~ (i) 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

~~((1))~~ (ii) 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. 11. RCW 90.56.370 and 2000 c 69 s 21 are each amended to read as follows:

(1) Any person owning oil or having control over oil that enters the waters of the state in violation of RCW 90.56.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry.

(2) Damages for which responsible parties are liable under this section include loss of income, revenue, the means of producing income or revenue, or an economic benefit resulting from an injury to or loss of real or personal property or natural resources.

(3) Damages for which responsible parties are liable under this section include damages provided in subsections (1) and (2) of this section resulting from any action conducted in response to a violation of RCW 90.56.320, including actions to collect, investigate, perform surveillance over, remove, contain, treat, or disperse oil discharged into waters of the state.

(4) In any action to recover damages resulting from the discharge of oil in violation of RCW 90.56.320, the owner or person having control over the oil shall be relieved from strict liability, without regard to fault, if that person can prove that the discharge was caused solely by:

(a) An act of war or sabotage;

(b) An act of God;

(c) Negligence on the part of the United States government; or

(d) Negligence on the part of the state of Washington.

~~((3))~~ (5) The liability established in this section shall in no way affect the rights which: (a) The owner or other person having control over the oil may have against any person whose acts may in any way have caused or contributed to the discharge of oil, or (b) the state of Washington may have against any person whose actions may have caused or contributed to the discharge of oil.

NEW SECTION. Sec. 12. (1) The director of the department of ecology must formally request that the federal government contribute to the establishment of regional oil spill response equipment caches in Washington to ensure adequate response capabilities during a multiple spill event.

(2) This section expires December 31, 2014.

NEW SECTION. Sec. 13. (1) The department of ecology shall prepare a report to the legislature, consistent with RCW 43.01.036, that identifies the lessons learned through the implementation of sections 3 through 6 of this act and presents any recommendations for changes in the state oil spill preparation and response policies gleaned from the lessons learned.

(2) In preparing the report required in this section, the department of ecology shall consult with both the Puget Sound partnership and a diverse selection of appropriate stakeholders interested in tank vessel oil spill preparedness and response to be invited to participate by the director of the department of ecology. Any recommendations by the department of ecology must also identify any relevant perspectives of the invited stakeholders on the cost-benefit and cost-effectiveness of alternative approaches.

(3) The report required by this section must be delivered by January 5, 2015.

(4) This section expires July 31, 2015.

NEW SECTION. Sec. 14. A new section is added to chapter 88.46 RCW to read as follows:

(1) If necessary, the department shall adjust the requirements provided in section 3 of this act to ensure that the documented costs of compliance with that section, above and beyond the costs of compliance with this chapter and rules of the department on the effective date of this section, do not exceed ten million dollars in any

one year. For the purposes of this subsection, "costs of compliance" with section 3 of this act are direct operating costs, such as training and drills, and do not include any equipment requirements. The maximum cost figure must be adjusted for inflation using the consumer price index as calculated by the United States department of labor.

(2) If necessary, the department shall adjust the requirements provided in section 5 of this act to ensure that the documented costs of compliance with that section, above and beyond the costs of compliance with this chapter and rules of the department on the effective date of this section, do not exceed thirty million dollars in any five-year period. For the purposes of this subsection, "costs of compliance" with section 5 of this act are capital equipment costs and direct operating costs for the equipment. The maximum cost figure must be adjusted for inflation using the consumer price index as calculated by the United States department of labor.

NEW SECTION. Sec. 15. (1) The requirements of this act must be met according to the compliance schedule provided in this subsection. The owners or operators of all affected vessels must either have new contingency plans approved by the department of ecology or updates to existing contingency plans approved by the department of ecology for the following plan components by the following dates:

- (a) Compliance with section 3 of this act by July 1, 2012;
- (b) Compliance with section 5(1)(a) of this act by July 1, 2012;
- (c) Compliance with section 5(1)(b) of this act by July 1, 2013;
- (d) With the exception of section 5(1) of this act, compliance with the remainder of section 5 of this act by July 1, 2013; and
- (e) Other than section 12 of this act and RCW 90.56.370 and 90.48.366, which become enforceable on the effective date of this section, all other sections of this act must be complied with by October 1, 2011.

(2) The department of ecology must comply with section 4 of this act by July 1, 2014.

(3) In the initial implementation of sections 3 through 6 and 8 of this act and RCW 88.46.060, the department of ecology shall consult with appropriate stakeholders interested in tank vessel oil spill preparedness and response, as invited to participate by the director of the department of ecology. However, nothing in this subsection limits the ability of the department of ecology to implement this act in the manner deemed most appropriate by the department of ecology.

(4) Any rules the department of ecology is required to adopt under this act or deems necessary to adopt for the implementation of this act must be adopted in time to facilitate the submittal and approval of new or updated contingency plans according to the compliance schedule in subsection (1) of this section.

(5) This section expires July 31, 2014."

MOTION

Senator Ranker moved that the following committee amendment by the Committee on Ways & Means to the committee striking amendment by the Committee on Ways & Means be not adopted:

Beginning on page 1, after line 2 of the amendment, strike all of section 1

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

Beginning on page 5, line 35 of the amendment, strike all of sections 3 through 15 and insert the following:

NEW SECTION. Sec. 2. A new section is added to chapter 88.46 RCW to read as follows:

(1) The department shall evaluate and update planning standards for oil spill response equipment required under contingency plans required by this chapter, including aerial

surveillance, in order to ensure access in the state to equipment that represents the best achievable protection to respond to a worst case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety, as determined by the incident commander or the unified command.

(2) The department shall by rule update the planning standards at five-year intervals to ensure the maintenance of best available protection over time.

(3) The department shall evaluate and update planning standards for tank vessels by December 31, 2012.

NEW SECTION. Sec. 3. A new section is added to chapter 88.46 RCW to read as follows:

By December 31, 2012, the department shall complete rule making for purposes of improving the effectiveness of the vessels of opportunity system to participate in spill response.

NEW SECTION. Sec. 4. A new section is added to chapter 88.46 RCW to read as follows:

(1) The department shall establish a volunteer coordination system. The volunteer coordination system may be included as a part of the state's overall oil spill response strategy, and may be implemented by local emergency management organizations, in coordination with any analogous federal efforts, to supplement the state's timely and effective response to spills.

(2) The department should consider how the volunteer coordination system will:

(a) Coordinate with the incident commander or unified command of an oil spill and any affected local governments to receive, screen, and register volunteers who are not affiliated with the emergency management organization or a local nongovernmental organization;

(b) Coordinate the management of volunteers with local nongovernmental organizations and their affiliated volunteers;

(c) Coordinate appropriate response operations with different classes of volunteers, including pretrained volunteers and convergent volunteers, to fulfill requests by the department or an oil spill incident commander or unified command;

(d) Coordinate public outreach regarding the need for and use of volunteers;

(e) Determine minimum participation criteria for volunteers; and

(f) Identify volunteer training requirements and, if applicable, provide training opportunities for volunteers prior to an oil spill response incident.

(3) An act or omission by any volunteer participating in a spill response or training as part of a volunteer coordination system, while engaged in such activities, does not impose any liability on any state agency, any participating local emergency management organization, or the volunteer for civil damages resulting from the act or omission. However, the immunity provided under this subsection does not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct.

(4) The decisions to utilize volunteers in an oil spill response, which volunteers to utilize, and to determine which response activities are appropriate for volunteer participation in any given response are the sole responsibilities of the designated incident commander or unified command.

NEW SECTION. Sec. 5. A new section is added to chapter 88.46 RCW to read as follows:

(1) The department is responsible for requiring joint large-scale, multiple plan equipment deployment drills of tank vessels to determine the adequacy of the owner's or operator's compliance with the contingency plan requirements of this chapter. The department must order at least one drill as outlined in this section every three years.

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

(2) Drills required under this section must focus on, at a minimum, the following:

(a) The functional ability for multiple contingency plans to be simultaneously activated with the purpose of testing the ability for dedicated equipment and trained personnel cited in multiple contingency plans to be activated in a large scale spill; and

(b) The operational readiness during both the first six hours of a spill and, at the department's discretion, over multiple operational periods of response.

(3) Drills required under this section may be incorporated into other drill requirements under this chapter to avoid increasing the number of drills and equipment deployments otherwise required.

(4) Each successful drill conducted under this section may be considered by the department as a drill of the underlying contingency plan and credit may be awarded to the plan holder accordingly.

(5) The department shall, when practicable, coordinate with applicable federal agencies, the state of Oregon, and the province of British Columbia to establish a drill incident command and to help ensure that lessons learned from the drills are evaluated with the goal of improving the underlying contingency plans.

Sec. 6. RCW 88.46.060 and 2005 c 78 s 2 are each amended to read as follows:

(1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department, removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs consistent with this chapter to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, ~~(and)~~ natural resources, and ~~(the office of)~~ archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other

wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the repositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; ~~(and)~~

(o) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules;

(p) Compliance with section 7 of this act if the contingency plan is submitted by an umbrella plan holder; and

(q) Include any additional elements of contingency plans as required by this chapter.

~~(2)((a)) The owner or operator of a ((tank)) covered vessel ((of three thousand gross tons or more shall)) must submit ((a)) any required contingency plan updates to the department within ((six months after)) the timelines established by the department ((adopts rules establishing standards for contingency plans under subsection (1) of this section.~~

~~(b) Contingency plans for all other covered vessels shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen month period).~~

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or a ~~((Washington state))~~ nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by a ~~((Washington state))~~ nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the

department, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife, shellfish beds, and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6)(a) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(b) The department must notify the plan holder in writing within sixty-five days of an initial or amended plan's submittal to the department as to whether the plan is disapproved, approved, or conditionally approved. If a plan is conditionally approved, the department must clearly describe each condition and specify a schedule for plan holders to submit required updates.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a covered vessel shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

NEW SECTION. Sec. 7. A new section is added to chapter 88.46 RCW to read as follows:

(1) When submitting a contingency plan to the department under RCW 88.46.060, any umbrella plan holder that enrolls both tank vessels and covered vessels that are not tank vessels must, in addition to satisfying the other requirements of this chapter, specify:

(a) The maximum worst case discharge volume from covered vessels that are not tank vessels to be covered by the umbrella plan holder's contingency plan; and

(b) The maximum worst case discharge volume from tank vessels to be covered by the umbrella plan holder's contingency plan.

(2) Any owner or operator of a covered vessel having a worst case discharge volume that exceeds the maximum volume covered by an approved umbrella plan holder may enroll with the umbrella plan holder if the owner or operator of the covered vessel maintains an agreement with another entity to provide supplemental equipment sufficient to meet the requirements of this chapter.

(3) The department may approve an umbrella plan holder that covers vessels having a worst case discharge volume that exceeds the maximum volume if:

(a) The department determines that the umbrella plan holder should be approved for a lower discharge volume;

(b) The owner or operator includes documentation in the plan and demonstrates to the satisfaction of the department showing that any vessel that exceeds the umbrella plan holder's maximum volume has access to supplemental equipment and programs sufficient to meet the worst case discharge volume of the vessel; and

(c) The department has previously approved a plan that relies on a listing of the supplemental equipment and programs to meet the requirements of this chapter.

Sec. 8. RCW 88.46.100 and 2000 c 69 s 10 are each amended to read as follows:

((1)) In ((order to assist the state in identifying areas of the navigable waters of the state needing special attention, the owner or operator of a covered vessel shall notify the)) addition to any notifications that the owner or operator of a covered vessel must provide to the United States coast guard ((within one hour:

(a) Of the disability of the covered vessel if the disabled vessel is within twelve miles of the shore of the state; and

(b) Of a collision or a near miss incident within twelve miles of the shore of the state.

(2) The state military department and the department shall request the coast guard to notify the state military department as soon as possible after the coast guard receives notice of a disabled covered vessel or of a collision or near miss incident within twelve miles of the shore of the state. The department shall negotiate an agreement with the coast guard governing procedures for coast guard notification to the state regarding disabled covered vessels and collisions and near miss incidents.

(3) The department shall prepare a summary of the information collected under this section and provide the summary to the regional marine safety committees, the coast guard, and others in order to identify problems with the marine transportation system.

(4) For the purposes of this section:

(a) A tank vessel or cargo vessel is considered disabled if any of the following occur:

(i) Any accidental or intentional grounding;

(ii) The total or partial failure of the main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel;

(iii) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including but not limited to, fire, flooding, or collision with another vessel;

(iv) Any other occurrence that creates the serious possibility of an oil spill or an occurrence that may result in such a spill.

(b) A barge is considered disabled if any of the following occur:

(i) The towing mechanism becomes disabled;

(ii) The towboat towing the barge becomes disabled through occurrences defined in (a) of this subsection.

(c) A near miss incident is an incident that requires the pilot or master of a covered vessel to take evasive actions or make

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

significant course corrections in order to avoid a collision with another ship or to avoid a grounding as required by the international rules of the road.

(5) Failure of any person to make a report under this section shall not be used as the basis for the imposition of any fine or penalty) regarding a vessel emergency, the owner or operator of a covered vessel must notify the state of any vessel emergency that results in the discharge or substantial threat of discharge of oil to state waters or that may affect the natural resources of the state within one hour of the onset of that emergency. The purpose of this notification is to enable the department to coordinate with the vessel operator, contingency plan holder, and the United States coast guard to protect the public health, welfare, and natural resources of the state and to ensure all reasonable spill preparedness and response measures are in place prior to a spill occurring.

Sec. 9. RCW 90.48.366 and 2007 c 347 s 1 are each amended to read as follows:

(1) The department, in consultation with the departments of 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:

(a) For spills totaling one thousand gallons or more in any one event, no less than ~~(one dollar)~~ three dollars per gallon of oil spilled and no greater than ~~(one)~~ three hundred dollars per gallon of oil spilled; and

(b) For spills totaling less than one thousand gallons in any one event, no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled.

(2) Persistent oil recovered from the surface of the water within forty-eight hours of a discharge must be deducted from the total spill volume for purposes of determining the amount of compensation assessed under the compensation schedule.

(3) The compensation schedule adopted under this section 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))~~ (a) 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))~~ (b) The sensitivity of the affected area as determined by such factors as:

~~((a))~~ (i) The location of the spill;

~~((b))~~ (ii) Habitat and living resource sensitivity;

~~((c))~~ (iii) Seasonal distribution or sensitivity of living resources;

~~((d))~~ (iv) Areas of recreational use or aesthetic importance;

~~((e))~~ (v) 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))~~ (vi) Significant archaeological resources as determined by the department of archaeology and historic preservation; and

~~((g))~~ (vii) Other areas of special ecological or recreational importance, as determined by the department; and

~~((3))~~ (c) Actions taken by the party who spilled oil or any party liable for the spill that:

~~((a))~~ (i) 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))~~ (ii) 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. 10. RCW 90.56.370 and 2000 c 69 s 21 are each amended to read as follows:

(1) Any person owning oil or having control over oil that enters the waters of the state in violation of RCW 90.56.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry.

(2) Damages for which responsible parties are liable under this section include loss of income, net revenue, the means of producing income or revenue, or an economic benefit resulting from an injury to or loss of real or personal property or natural resources

(3) Damages for which responsible parties are liable under this section include damages provided in subsections (1) and (2) of this section resulting from the use and deployment of chemical dispersants or from in situ burning in response to a violation of RCW 90.56.320.

(4) In any action to recover damages resulting from the discharge of oil in violation of RCW 90.56.320, the owner or person having control over the oil shall be relieved from strict liability, without regard to fault, if that person can prove that the discharge was caused solely by:

(a) An act of war or sabotage;

(b) An act of God;

(c) Negligence on the part of the United States government; or

(d) Negligence on the part of the state of Washington.

~~((3))~~ (5) The liability established in this section shall in no way affect the rights which: (a) The owner or other person having control over the oil may have against any person whose acts may in any way have caused or contributed to the discharge of oil, or

(b) the state of Washington may have against any person whose actions may have caused or contributed to the discharge of oil.

NEW SECTION. Sec. 11. (1) The director of the department of ecology must formally request that the federal government contribute to the establishment of regional oil spill response equipment caches in Washington to ensure adequate response capabilities during a multiple spill event.

(2) This section expires December 31, 2014."

On page 23, beginning on line 2 of the title amendment, after "insert" strike the remainder of the title amendment and insert "amending RCW 88.46.060, 88.46.100, 90.48.366, and 90.56.370; reenacting and amending RCW 88.46.010; adding new sections to chapter 88.46 RCW; creating a new section; prescribing penalties; and providing an expiration date."

The President declared the question before the Senate to be the motion by Senator Ranker to not adopt the committee amendment by the Committee on Ways & Means to the committee striking amendment to Engrossed Second Substitute House Bill No. 1186.

The motion by Senator Ranker carried and the committee amendment to the committee striking amendment was not adopted by voice vote.

MOTION

Senator Ranker moved that the following amendment by Senator Ranker and others to the committee striking amendment be adopted:

Beginning on page 1, after line 2 of the amendment, strike all of section 1

Renumber the remaining sections and correct any internal references accordingly.

Beginning on page 5, line 35 of the amendment, strike all of sections 3 through 15 and insert the following:

"NEW SECTION. Sec. 2. A new section is added to chapter 88.46 RCW to read as follows:

(1) The department shall evaluate and update planning standards for oil spill response equipment required under contingency plans required by this chapter, including aerial surveillance, in order to ensure access in the state to equipment that represents the best achievable protection to respond to a worst case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety, as determined by the incident commander or the unified command.

(2) The department shall by rule update the planning standards at five-year intervals to ensure the maintenance of best available protection over time. Rule updates to covered non-tank vessels shall minimize potential impacts to discretionary cargo moved through the state.

(3) The department shall evaluate and update planning standards for tank vessels by December 31, 2012.

NEW SECTION. Sec. 3. A new section is added to chapter 88.46 RCW to read as follows:

By December 31, 2012, the department shall complete rule making for purposes of improving the effectiveness of the vessels of opportunity system to participate in spill response.

NEW SECTION. Sec. 4. A new section is added to chapter 88.46 RCW to read as follows:

(1) The department shall establish a volunteer coordination system. The volunteer coordination system may be included as a part of the state's overall oil spill response strategy, and may be implemented by local emergency management organizations, in coordination with any analogous federal efforts, to supplement the state's timely and effective response to spills.

(2) The department should consider how the volunteer coordination system will:

(a) Coordinate with the incident commander or unified command of an oil spill and any affected local governments to receive, screen, and register volunteers who are not affiliated with the emergency management organization or a local nongovernmental organization;

(b) Coordinate the management of volunteers with local nongovernmental organizations and their affiliated volunteers;

(c) Coordinate appropriate response operations with different classes of volunteers, including pretrained volunteers and convergent volunteers, to fulfill requests by the department or an oil spill incident commander or unified command;

(d) Coordinate public outreach regarding the need for and use of volunteers;

(e) Determine minimum participation criteria for volunteers; and

(f) Identify volunteer training requirements and, if applicable, provide training opportunities for volunteers prior to an oil spill response incident.

(3) An act or omission by any volunteer participating in a spill response or training as part of a volunteer coordination system, while engaged in such activities, does not impose any liability on any state agency, any participating local emergency management organization, or the volunteer for civil damages resulting from the act or omission. However, the immunity provided under this subsection does not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct.

(4) The decisions to utilize volunteers in an oil spill response, which volunteers to utilize, and to determine which response activities are appropriate for volunteer participation in any given response are the sole responsibilities of the designated incident commander or unified command.

NEW SECTION. Sec. 5. A new section is added to chapter 88.46 RCW to read as follows:

(1) The department is responsible for requiring joint large-scale, multiple plan equipment deployment drills of tank vessels to determine the adequacy of the owner's or operator's compliance with the contingency plan requirements of this chapter. The department must order at least one drill as outlined in this section every three years.

(2) Drills required under this section must focus on, at a minimum, the following:

(a) The functional ability for multiple contingency plans to be simultaneously activated with the purpose of testing the ability for dedicated equipment and trained personnel cited in multiple contingency plans to be activated in a large scale spill; and

(b) The operational readiness during both the first six hours of a spill and, at the department's discretion, over multiple operational periods of response.

(3) Drills required under this section may be incorporated into other drill requirements under this chapter to avoid increasing the number of drills and equipment deployments otherwise required.

(4) Each successful drill conducted under this section may be considered by the department as a drill of the underlying contingency plan and credit may be awarded to the plan holder accordingly.

(5) The department shall, when practicable, coordinate with applicable federal agencies, the state of Oregon, and the province of British Columbia to establish a drill incident command and to help ensure that lessons learned from the drills are evaluated with the goal of improving the underlying contingency plans.

Sec. 6. RCW 88.46.060 and 2005 c 78 s 2 are each amended to read as follows:

(1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department, removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs consistent with this chapter to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, ~~((and))~~ natural resources, and ~~((the office of))~~ archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the repositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; ~~((and))~~

(o) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules;

(p) Compliance with section 7 of this act if the contingency plan is submitted by an umbrella plan holder; and

(q) Include any additional elements of contingency plans as required by this chapter.

~~(2)((a)) The owner or operator of a ((tank)) covered vessel ((of three thousand gross tons or more shall)) must submit ((a) any required contingency plan updates to the department within ((six months after)) the timelines established by the department ((adopts rules establishing standards for contingency plans under subsection (1) of this section.~~

(b) Contingency plans for all other covered vessels shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period).

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or a ~~((Washington state))~~ nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by a ~~((Washington state))~~ nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the

standards established pursuant to RCW 90.56.240, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife, shellfish beds, and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

~~(6)(a)~~ The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(b) The department must notify the plan holder in writing within sixty-five days of an initial or amended plan's submittal to the department as to whether the plan is disapproved, approved, or conditionally approved. If a plan is conditionally approved, the department must clearly describe each condition and specify a schedule for plan holders to submit required updates.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a covered vessel shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

NEW SECTION. Sec. 7. A new section is added to chapter 88.46 RCW to read as follows:

(1) When submitting a contingency plan to the department under RCW 88.46.060, any umbrella plan holder that enrolls both tank vessels and covered vessels that are not tank vessels must, in addition to satisfying the other requirements of this chapter, specify:

(a) The maximum worst case discharge volume from covered vessels that are not tank vessels to be covered by the umbrella plan holder's contingency plan; and

(b) The maximum worst case discharge volume from tank vessels to be covered by the umbrella plan holder's contingency plan.

(2) Any owner or operator of a covered vessel having a worst case discharge volume that exceeds the maximum volume covered by an approved umbrella plan holder may enroll with the umbrella plan holder if the owner or operator of the covered vessel maintains an agreement with another entity to provide supplemental equipment sufficient to meet the requirements of this chapter.

(3) The department must approve an umbrella plan holder that covers vessels having a worst case discharge volume that exceeds the maximum volume if:

(a) The department determines that the umbrella plan holder should be approved for a lower discharge volume;

(b) The vessel owner or operator provides documentation to the umbrella plan holder authorizing the umbrella plan holder to activate additional resources sufficient to meet the worst case discharge volume of the vessel; and

(c) The department has previously approved a plan that provides access to the same resources identified in (3)(b) to meet the requirements of this chapter for worst case discharge volumes equal to or greater than the worst case discharge volume of the vessel.

(4) The umbrella plan holder must describe in the plan how the activation of additional resources will be implemented and provide the department the ability to review and inspect any documentation that the umbrella plan holder relies on to enroll a vessel with a worst case discharge that exceeds the plan's maximum volume.

Sec. 8. RCW 88.46.100 and 2000 c 69 s 10 are each amended to read as follows:

((1)) In ((order to assist the state in identifying areas of the navigable waters of the state needing special attention, the owner or operator of a covered vessel shall notify the)) addition to any notifications that the owner or operator of a covered vessel must provide to the United States coast guard ((within one hour:

(a) Of the disability of the covered vessel if the disabled vessel is within twelve miles of the shore of the state; and

(b) Of a collision or a near miss incident within twelve miles of the shore of the state.

(2) The state military department and the department shall request the coast guard to notify the state military department as soon as possible after the coast guard receives notice of a disabled covered vessel or of a collision or near miss incident within twelve miles of the shore of the state. The department shall negotiate an agreement with the coast guard governing procedures for coast guard notification to the state regarding disabled covered vessels and collisions and near miss incidents.

(3) The department shall prepare a summary of the information collected under this section and provide the summary to the regional marine safety committees, the coast guard, and others in order to identify problems with the marine transportation system.

(4) For the purposes of this section:

(a) A tank vessel or cargo vessel is considered disabled if any of the following occur:

(i) Any accidental or intentional grounding;

(ii) The total or partial failure of the main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel;

(iii) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including but not limited to, fire, flooding, or collision with another vessel;

(iv) Any other occurrence that creates the serious possibility of an oil spill or an occurrence that may result in such a spill.

(b) A barge is considered disabled if any of the following occur:

(i) The towing mechanism becomes disabled;

(ii) The towboat towing the barge becomes disabled through occurrences defined in (a) of this subsection.

(c) A near miss incident is an incident that requires the pilot or master of a covered vessel to take evasive actions or make significant course corrections in order to avoid a collision with another ship or to avoid a grounding as required by the international rules of the road.

(5) Failure of any person to make a report under this section shall not be used as the basis for the imposition of any fine or penalty) regarding a vessel emergency, the owner or operator of a covered vessel must notify the state of any vessel emergency that results in the discharge or substantial threat of discharge of oil to state waters or that may affect the natural resources of the state within one hour of the onset of that emergency. The purpose of this notification is to enable the department to coordinate with the vessel operator, contingency plan holder, and the United States coast guard to protect the public health, welfare, and natural resources of the state and to ensure all reasonable spill preparedness and response measures are in place prior to a spill occurring.

Sec. 9. RCW 90.48.366 and 2007 c 347 s 1 are each amended to read as follows:

(1) The department, in consultation with the departments of 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:

(a) For spills totaling one thousand gallons or more in any one event, no less than ((one dollar)) three dollars per gallon of oil spilled and no greater than ((one)) three hundred dollars per gallon of oil spilled; and

(b) For spills totaling less than one thousand gallons in any one event, no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled.

(2) Persistent oil recovered from the surface of the water within forty-eight hours of a discharge must be deducted from the total spill volume for purposes of determining the amount of compensation assessed under the compensation schedule.

(3) The compensation schedule adopted under this section 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:

((+)) (a) 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)) (b) The sensitivity of the affected area as determined by such factors as:

((+)) (i) The location of the spill;

((+)) (ii) Habitat and living resource sensitivity;

((+)) (iii) Seasonal distribution or sensitivity of living resources;

((+)) (iv) Areas of recreational use or aesthetic importance;

((+)) (v) 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;

((+)) (vi) Significant archaeological resources as determined by the department of archaeology and historic preservation; and

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

~~((e))~~ (vii) Other areas of special ecological or recreational importance, as determined by the department; and

~~((3))~~ (c) Actions taken by the party who spilled oil or any party liable for the spill that:

~~((a))~~ (i) 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))~~ (ii) 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. 10. RCW 90.56.370 and 2000 c 69 s 21 are each amended to read as follows:

(1) Any person owning oil or having control over oil that enters the waters of the state in violation of RCW 90.56.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry.

(2) Damages for which responsible parties are liable under this section include loss of income, net revenue, the means of producing income or revenue, or an economic benefit resulting from an injury to or loss of real or personal property or natural resources.

(3) Damages for which responsible parties are liable under this section include damages provided in subsections (1) and (2) of this section resulting from the use and deployment of chemical dispersants or from in situ burning in response to a violation of RCW 90.56.320.

(4) In any action to recover damages resulting from the discharge of oil in violation of RCW 90.56.320, the owner or person having control over the oil shall be relieved from strict liability, without regard to fault, if that person can prove that the discharge was caused solely by:

- (a) An act of war or sabotage;
- (b) An act of God;
- (c) Negligence on the part of the United States government; or
- (d) Negligence on the part of the state of Washington.

~~((3))~~ (5) The liability established in this section shall in no way affect the rights which: (a) The owner or other person having control over the oil may have against any person whose acts may in any way have caused or contributed to the discharge of oil, or (b) the state of Washington may have against any person whose actions may have caused or contributed to the discharge of oil.

NEW SECTION. Sec. 11. (1) The director of the department of ecology must formally request that the federal government contribute to the establishment of regional oil spill response equipment caches in Washington to ensure adequate response capabilities during a multiple spill event.

(2) This section expires December 31, 2014."

Senator Ranker spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Ranker and others on page 1, after line 2 to the committee striking amendment to Engrossed Second Substitute House Bill No. 1186.

The motion by Senator Ranker carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Engrossed Second Substitute House Bill No. 1186.

The motion by Senator Ranker carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendments were adopted:

On page 1, line 2 of the title, after "program;" strike the remainder of the title and insert "amending RCW 88.46.060, 88.46.100, 90.48.366, and 90.56.370; reenacting and amending RCW 88.46.010; adding new sections to chapter 88.46 RCW; creating new sections; prescribing penalties; and providing expiration dates."

On page 23, beginning on line 2 of the title amendment, after "insert" strike the remainder of the title amendment and insert "amending RCW 88.46.060, 88.46.100, 90.48.366, and 90.56.370; reenacting and amending RCW 88.46.010; adding new sections to chapter 88.46 RCW; creating a new section; prescribing penalties; and providing an expiration date."

MOTION

On motion of Senator Ranker, the rules were suspended, Engrossed Second Substitute House Bill No. 1186 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 Ranker, Morton and Ericksen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1186 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1186 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

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

Voting nay: Senators Baxter and Delvin

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1186 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1719, by House Committee on Judiciary (originally sponsored by Representatives Rodne, Schmick, Haler, Smith, Wilcox, Johnson, Klippert, Kristiansen, McCune, Short, Ross and Warnick)

Limiting liability for unauthorized passengers in a vehicle.

The measure was read the second time.

MOTION

On motion of Senator Kline, the rules were suspended, Substitute House Bill No. 1719 was advanced to third reading, the

second reading considered the third and the bill was placed on final passage.

Senators Kline 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. 1719.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1719 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

SUBSTITUTE HOUSE BILL NO. 1719, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1179, by Representatives Hunt, Hudgins, Appleton, Liias, Miloscia, McCoy, Reykdal, Goodman, Darneille, Van De Wege, Upthegrove, Ormsby, Billig, Orwall, Green, Kenney, Dickerson, Santos, Frockt, Tharinger and Moscoso

Clarifying that public employees may attend informational or educational meetings regarding legislative issues.

The measure was read the second time.

MOTION

On motion of Senator Pridemore, the rules were suspended, House Bill No. 1179 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Pridemore spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1179.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1179 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

HOUSE BILL NO. 1179, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1145, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Overstreet, Hurst, Klippert, Hinkle, Angel, Ross, Nealey, Warnick, Kirby, Short, Fagan, Hunt, Kelley, Eddy, Bailey, Kenney, McCune and Condotta)

Establishing mail theft provisions.

The measure was read the second time.

MOTION

Senator Kline moved that the following committee striking amendment by the Committee on Judiciary be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. It is important to the citizens of this state to have confidence in the security of the mail. Mail contains personal information, medical records, and financial documents. Theft of mail has become a serious problem in our state because mail is a key source of information for identity thieves. Currently, there is no law that adequately addresses the seriousness of this crime. This act is intended to accurately recognize the seriousness of taking personal, medical, or financial identifying information and compromising the integrity of our mail system.

Sec. 2. RCW 9A.56.010 and 2006 c 277 s 4 are each amended to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(2) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(3) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of," "owned by," or other markings or words identifying ownership;

(4) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(5) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed;

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

(6) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(7) "Mail," in addition to its common meaning, means any letter, postal card, package, bag, or other item that is addressed to a specific address for delivery by the United States postal service or any commercial carrier performing the function of delivering similar items to residences or businesses, provided the mail:

(a)(i) Is addressed with a specific person's name, family name, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(ii) Is not addressed to a generic unnamed occupant or resident of the address without an identifiable person, family, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(b) Has been left for collection or delivery in any letter box, mail box, mail receptacle, or other authorized depository for mail, or given to a mail carrier, or left with any private business that provides mail boxes or mail addresses for customers or when left in a similar location for collection or delivery by any commercial carrier; or

(c) Is in transit with a postal service, mail carrier, letter carrier, commercial carrier, or that is at or in a postal vehicle, postal station, mail box, postal airplane, transit station, or similar location of a commercial carrier; or

(d) Has been delivered to the intended address, but has not been received by the intended addressee.

Mail, for purposes of this act, does not include magazines, catalogs, direct mail inserts, newsletters, advertising circulars, or any mail that is considered third class mail by the United States postal service;

(8) "Mail box," in addition to its common meaning, means any authorized depository or receptacle of mail for the United States postal service or authorized depository for a commercial carrier that provides services to the general public, including any address to which mail is or can be addressed, or a place where the United States postal service or equivalent commercial carrier delivers mail to its addressee;

(9) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed before or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . ." "owned by . . .," or other markings or words identifying ownership;

~~((8))~~ (10) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

~~((9))~~ (11) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

~~((10))~~ (12) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle;

~~((11))~~ (13) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

~~((12))~~ (14) "Received by the intended addressee" means that the addressee, owner of the delivery mail box, or authorized agent has removed the delivered mail from its delivery mail box;

(15) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant

services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

~~((13))~~ (16) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

~~((14))~~ (17) "Stolen" means obtained by theft, robbery, or extortion;

~~((15))~~ (18) "Subscription television service" means cable or encrypted video and related audio and data services intended for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

~~((16))~~ (19) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

~~((17))~~ (20) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the transmission, transfer, or reception of a telephonic communication or an electronic communication;

~~((18))~~ (21) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Except as provided in RCW 9A.56.340(4) and 9A.56.350(4), whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a criminal episode or a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

For purposes of this subsection, "criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the

sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved. Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

~~((49))~~ (22) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement.

NEW SECTION. Sec. 3. A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of mail theft if he or she: (a) Commits theft of mail addressed to three or more different addresses; and (b) commits theft of a minimum of ten separate pieces of mail.

(2) Each set of ten separate pieces of stolen mail addressed to three or more different mail boxes constitutes a separate and distinct crime and may be punished accordingly.

(3) Mail theft is a class C felony.

NEW SECTION. Sec. 4. A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of possession of stolen mail if he or she: (a) Possesses stolen mail addressed to three or more different mail boxes; and (b) possesses a minimum of ten separate pieces of stolen mail.

(2) "Possesses stolen mail" means to knowingly receive, retain, possess, conceal, or dispose of stolen mail knowing that it has been stolen, and to withhold or appropriate to the use of any person other than the true owner, or the person to whom the mail is addressed.

(3) The fact that the person who stole the mail has not been convicted, apprehended, or identified is not a defense to the charge of possessing stolen mail.

(4) Each set of ten separate pieces of stolen mail addressed to three or more different mail boxes constitutes a separate and distinct crime and may be punished accordingly.

(5) Possession of stolen mail is a class C felony.

NEW SECTION. Sec. 5. A new section is added to chapter 9A.56 RCW to read as follows:

Every person who, in the commission of mail theft or possession of stolen mail, shall commit any other crime, may be punished therefor as well as for the mail theft or possession of stolen mail, and may be prosecuted for each crime separately."

Senators Kline and Pflug spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Judiciary to Substitute House Bill No. 1145.

The motion by Senator Kline carried and the committee 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 "theft;" strike the remainder of the title and insert "amending RCW 9A.56.010; adding new sections to chapter 9A.56 RCW; creating a new section; and prescribing penalties."

MOTION

On motion of Senator Kline, the rules were suspended, Substitute House Bill No. 1145 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1145 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1145 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

SUBSTITUTE HOUSE BILL NO. 1145 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1227, by Representatives Ross, Taylor, Chandler, Hinkle, Warnick, Armstrong, Johnson, Moeller, Harris and Condotta

Concerning the waiver of restaurant corkage fees.

The measure was read the second time.

MOTION

On motion of Senator Holmquist Newbry, the rules were suspended, House Bill No. 1227 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Holmquist Newbry, Kohl-Welles and Roach spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1227.

ROLL CALL

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

The Secretary called the roll on the final passage of House Bill No. 1227 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 4; Absent, 0; Excused, 0.

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

Voting nay: Senators Hargrove, Morton, Pridemore and Shin
HOUSE BILL NO. 1227, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1625, by Representatives Hunter, Bailey, Seaquist, Hinkle, Moeller and Carlyle

Addressing the default investment option available to new members of the plan 3 retirement systems.

The measure was read the second time.

MOTION

On motion of Senator Brown, the rules were suspended, House Bill No. 1625 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Brown spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1625.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1625 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

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

Absent: Senator Kline

HOUSE BILL NO. 1625, 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.

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced the China Rail Transportation Delegation from China who were seated in the gallery.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1710, by House Committee on Education (originally sponsored by Representatives Moscoso, Liias, Probst, Ladenburg, Hasegawa,

McCoy, Haler, Dahlquist, Green, Wilcox, McCune, Zeiger, Roberts, Stanford, Billig, Maxwell, Hunt and Kenney)

Creating a strategic plan for career and technical education.

The measure was read the second time.

MOTION

Senator McAuliffe moved that the following committee striking amendment by the Committee on Early Learning & K-12 Education be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature continues to find that access to high quality career and technical education for middle and high school students is a key strategy for reducing the dropout rate and closing the achievement gap. Career and technical education increases the number of young people who obtain a meaningful postsecondary credential. Improving career and technical education is also an efficiency measure, because reductions in the dropout rate are associated with increased earnings for individuals and reduced societal costs in the criminal justice and welfare systems.

(2) The legislature further finds that much progress has been made since 2008 to enhance the rigor and relevance of career and technical education programs and to align and integrate instruction more closely with academic subjects, high demand fields, industry certification, and postsecondary education. Activities to support these objectives have included:

(a) Requiring all preparatory career and technical education programs to lead to industry certification or offer dual high school and college credit;

(b) Expanding state support for middle school career and technical education programs, especially in science, technology, and engineering;

(c) Providing support for schools to develop or upgrade programs in high demand fields and offer preapprenticeships;

(d) Developing model career and technical programs of study leading to industry credentials or degrees;

(e) Assisting school districts with identifying academic and career and technical education course equivalencies;

(f) Pilot-testing programs to integrate academic, career and technical, basic skills, and English as a second language instruction; and

(g) Developing performance measures and targets for accountability.

(3) Therefore, the legislature intends to ensure that progress will be continued and enhanced by providing a mechanism for monitoring continuous improvement in the rigor, relevance, and recognition of secondary career and technical education programs and improvement in students' access to these programs.

NEW SECTION. Sec. 2. (1) Within existing resources, the office of the superintendent of public instruction shall convene a working group to develop a statewide strategic plan for secondary career and technical education.

(2) The strategic plan must include:

(a) A vision statement, goals, and measurable annual objectives for continuous improvement in the rigor, relevance, recognition, and student access in career and technical education programs that build on current initiatives and progress in improving career and technical education, and are consistent with targets and performance measures required under the federal Carl Perkins act; and

(b) Recommended activities and strategies, in priority order, to accomplish the objectives and goals, including activities and strategies that:

(i) Can be accomplished within current resources and funding formulas;

(ii) Should receive top priority for additional investment; and

(iii) Could be phased-in over the next ten years.

(3) In particular, the working group must examine:

(a) Proposed changes to high school graduation requirements and strategies to ensure that students continue to have opportunities to pursue career and technical education career and college pathways along with a meaningful high school diploma;

(b) How career and technical education courses can be used to meet the common core standards and how in turn the standards can be used to enhance the rigor of career and technical education;

(c) Ways to improve student access to high quality career and technical education courses and work experiences, not only in skill centers but also in middle school, comprehensive high schools, and rural areas;

(d) Ways to improve the transition from K-12 to community and technical college, university, and private technical college programs;

(e) Methods for replicating innovative middle and high schools that engage students in exploring careers, use project-based learning, and build meaningful partnerships with businesses and the community; and

(f) A framework for a series of career and technical education certifications that are: (i) Transferable between and among secondary schools and postsecondary institutions; and (ii) articulated across secondary and postsecondary levels so that students receive credit for knowledge and skills they have already mastered.

(4) The working group membership shall include:

(a) School district and skill center career and technical education directors and teachers and school guidance counselors;

(b) Community and technical college professional-technical faculty;

(c) At least one of each of the following: A school director, a principal, a counselor, and a parent;

(d) Representatives from industry, labor, tech prep consortia, local workforce development councils, private technical colleges, and the Washington association for career and technical education; and

(e) A representative from the workforce training and education coordinating board.

(5) The office of the superintendent of public instruction shall submit a progress report to the education committees of the legislature and to the quality education council by December 1, 2011. The final strategic plan, including priorities, recommendations, and measurable annual objectives for continuous improvement, is due by December 1, 2012."

Senator McAuliffe spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Early Learning & K-12 Education to Substitute House Bill No. 1710.

The motion by Senator McAuliffe carried and the committee 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 "education;" strike the remainder of the title and insert "and creating new sections."

MOTION

On motion of Senator McAuliffe, the rules were suspended, Substitute House Bill No. 1710 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 McAuliffe and Benton 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. 1710 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1710 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 3; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Chase, Conway, Delvin, Eide, Erickson, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senators Baxter, Carrell and Schoesler

SUBSTITUTE HOUSE BILL NO. 1710 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1243, by House Committee on Judiciary (originally sponsored by Representatives Kretz, Blake, Haigh, Smith, Johnson, Kelley, Finn, Warnick, Moeller, Harris, Roberts, McCune, Stanford, Haler, Taylor and Condotta)

Concerning crimes against animals belonging to another person.

The measure was read the second time.

MOTION

On motion of Senator Kline, the rules were suspended, Substitute House Bill No. 1243 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline, Pflug, Honeyford and Becker 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. 1243.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1243 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

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

SUBSTITUTE HOUSE BILL NO. 1243, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1492, by House Committee on Judiciary (originally sponsored by Representatives Pedersen and Rodne)

Concerning the Uniform Commercial Code Article 9A on secured transactions.

The measure was read the second time.

MOTION

On motion of Senator Kline, the rules were suspended, Engrossed Substitute House Bill No. 1492 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline, Carrell and Pflug spoke in favor of passage of the bill.

MOTION

On motion of Senator Ericksen, Senator Delvin was excused.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1492.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1492 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1492, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1725, by Representatives Sells, Reykdal, Ormsby, Kenney and Upthegrove

Addressing administrative efficiencies for the workers' compensation program.

The measure was read the second time.

MOTION

Senator Conway moved that the following committee striking amendment by the Committee on Labor, Commerce & Consumer Protection be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 51.04.030 and 2004 c 65 s 1 are each amended to read as follows:

(1) The director shall supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, including chiropractic care, and including care provided by licensed advanced registered nurse practitioners, to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: PROVIDED, That the medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule after consultation with the workers' compensation advisory committee established in RCW 51.04.110: PROVIDED FURTHER, That the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: AND PROVIDED FURTHER, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as statewide access to quality service is maintained for injured workers.

(2) The director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to injured workers, whether aliens or other injured workers, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule and its associated billing or payment instructions and policies constitute a "rule" as used in RCW 34.05.010(16).

(3) The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination

thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it.

Sec. 2. RCW 51.04.082 and 1986 c 9 s 2 are each amended to read as follows:

Any notice or order required by this title to be mailed to any employer may be served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state, but if the notice or order is mailed, it shall be addressed to the address of the employer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. If requested by the employer, any notice or order may be sent by secure electronic means except orders communicating the closure of a claim. Correspondence and notices sent electronically are considered received on the date sent by the department. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax or any increases or penalties thereon.

Sec. 3. RCW 51.24.060 and 2001 c 146 s 9 are each amended to read as follows:

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: **PROVIDED**, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: **PROVIDED**, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: **PROVIDED**, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys'

fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by ~~((registered or certified mail))~~ a method for which receipt can be confirmed or tracked, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(7) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by ~~((certified mail, return receipt requested))~~ a method for which receipt can be confirmed or tracked; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

Sec. 4. RCW 51.32.240 and 2008 c 280 s 2 are each amended to read as follows:

(1)(a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department or self-insurer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the state fund or by the self-insurer, as the case may be, subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department of labor and industries or an appeal with the board of industrial insurance appeals within sixty days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in

the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim whether state fund or self-insured.

(a) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience. However, if the director waives in whole or in part any such payments due a self-insurer, the self-insurer shall be reimbursed the amount waived from the self-insured employer overpayment reimbursement fund.

(b) The department shall collect information regarding self-insured claim overpayments resulting from final decisions of the board and the courts, and recoup such overpayments on behalf of the self-insurer from any open, new, or reopened state fund or self-insured claims. The department shall forward the amounts collected to the self-insurer to whom the payment is owed. The department may provide information as needed to any self-insurers from whom payments may be collected on behalf of the department or another self-insurer. Notwithstanding RCW 51.32.040, any self-insurer requested by the department to forward payments to the department pursuant to this subsection shall pay the department directly. The department shall credit the amounts recovered to the appropriate fund, or forward amounts collected to the appropriate self-insurer, as the case may be.

(c) If a self-insurer is not fully reimbursed within twenty-four months of the first attempt at recovery through the collection process pursuant to this subsection and by means of processes pursuant to subsection (6) of this section, the self-insurer shall be reimbursed for the remainder of the amount due from the self-insured employer overpayment reimbursement fund.

(d) For purposes of this subsection, "recipient" does not include health service providers whose treatment or services were authorized by the department or self-insurer.

(e) The department or self-insurer shall first attempt recovery of overpayments for health services from any entity that provided health insurance to the worker to the extent that the health insurance entity would have provided health insurance benefits but for workers' compensation coverage.

(5)(a) Whenever any payment of benefits under this title has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the willful misrepresentation was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental

pension fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (5), it is willful misrepresentation for a person to obtain payments or other benefits under this title in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

(i) Willful false statement; or

(ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (5), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this title.

(d) For purposes of this subsection (5), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (5), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages pursuant to RCW 51.08.178(4).

(6) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (5) of this section, the director, director's designee, or self-insurer may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm,

corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by ~~((certified-mail))~~ a method for which receipt can be confirmed or tracked accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(7) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer.

Sec. 5. RCW 51.48.120 and 1995 c 160 s 5 are each amended to read as follows:

If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by ~~((certified-mail))~~ a method for which receipt can be confirmed or tracked to the employer's last known address or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries.

Sec. 6. RCW 51.48.150 and 1995 c 160 s 6 are each amended to read as follows:

The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to

EIGHTY SIXTH DAY, APRIL 5, 2011

withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, by ~~((certified mail, return receipt requested))~~ a method for which receipt can be confirmed or tracked, or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's duly authorized representative upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

Sec. 7. RCW 51.52.050 and 2008 c 280 s 1 are each amended to read as follows:

(1) Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, ~~((which shall be addressed to such person at his or her last known address as shown by the records of the department))~~ or if the worker, beneficiary, employer, or other person affected thereby chooses, the department may send correspondence and other legal notices by secure electronic means except for orders communicating the closure of a claim. Persons who choose to receive correspondence and other legal notices electronically shall be provided information to assist them in ensuring all electronic documents and communications are received. Correspondence and notices must be addressed to such a person at his or her last known postal or electronic address as shown by the records of the department. Correspondence and notices sent electronically are considered received on the date sent by the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the

2011 REGULAR SESSION

department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia. However, a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

(2)(a) Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal.

(b) An order by the department awarding benefits shall become effective and benefits due on the date issued. Subject to (b)(i) and (ii) of this subsection, if the department order is appealed the order shall not be stayed pending a final decision on the merits unless ordered by the board. Upon issuance of the order granting the appeal, the board will provide the worker with notice concerning the potential of an overpayment of benefits paid pending the outcome of the appeal and the requirements for interest on unpaid benefits pursuant to RCW 51.52.135. A worker may request that benefits cease pending appeal at any time following the employer's motion for stay or the board's order granting appeal. The request must be submitted in writing to the employer, the board, and the department. Any employer may move for a stay of the order on appeal, in whole or in part. The motion must be filed within fifteen days of the order granting appeal. The board shall conduct an expedited review of the claim file provided by the department as it existed on the date of the department order. The board shall issue a final decision within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later. The board's final decision may be appealed to superior court in accordance with RCW 51.52.110. The board shall grant a motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal. The board shall not consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay. If a self-insured employer prevails on the merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

(i) If upon reconsideration requested by a worker or medical provider, the department has ordered an increase in a permanent partial disability award from the amount reflected in an earlier order, the award reflected in the earlier order shall not be stayed pending a final decision on the merits. However, the increase is stayed without further action by the board pending a final decision on the merits.

(ii) If any party appeals an order establishing a worker's wages or the compensation rate at which a worker will be paid temporary or permanent total disability or loss of earning power benefits, the worker shall receive payment pending a final decision on the merits based on the following:

(A) When the employer is self-insured, the wage calculation or compensation rate the employer most recently submitted to the department; or

(B) When the employer is insured through the state fund, the highest wage amount or compensation rate uncontested by the parties.

Payment of benefits or consideration of wages at a rate that is higher than that specified in (b)(ii)(A) or (B) of this subsection is stayed

without further action by the board pending a final decision on the merits.

(c) In an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Labor, Commerce & Consumer Protection to Engrossed Substitute House Bill No. 1725.

The motion by Senator Conway carried and the committee 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 "program;" strike the remainder of the title and insert "and amending RCW 51.04.030, 51.04.082, 51.24.060, 51.32.240, 51.48.120, 51.48.150, and 51.52.050."

MOTION

On motion of Senator Conway, the rules were suspended, Engrossed Substitute House Bill No. 1725 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 Conway spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1725 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1725 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

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

Absent: Senator Shin

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1725 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1304, by House Committee on Health Care & Wellness (originally sponsored by Representatives Jinkins, Harris, Green, Cody, Van De Wege, Kelley, Schmick, Bailey, Clibborn, Moeller, Hinkle and Reykdal)

Concerning the administration of drugs by health care assistants.

The measure was read the second time.

MOTION

On motion of Senator Keiser, the rules were suspended, Substitute House Bill No. 1304 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Becker spoke in favor of passage of the bill.

MOTION

On motion of Senator White, Senators Fraser and Haugen were excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1304.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1304 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

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

Excused: Senators Fraser and Haugen

SUBSTITUTE HOUSE BILL NO. 1304, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1939, by Representative Appleton

Defining federally recognized tribes as agencies for purposes of agency-affiliated counselors.

The measure was read the second time.

MOTION

On motion of Senator Pridemore, the rules were suspended, House Bill No. 1939 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Pridemore spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1939.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1939 and the bill passed the Senate by the following vote: Yeas, 41; Nays, 6; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Hargrove, Harper, Hatfield, Hill, Hobbs, Kastama, Keiser, Kilmer, King, Kline,

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom, White and Zarelli

MOTION

Voting nay: Senators Baxter, Becker, Hewitt, Holmquist Newbry, Honeyford and Stevens

On motion of Senator White, the rules were suspended, Engrossed Substitute House Bill No. 1826 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Excused: Senators Fraser and Haugen

Senator White spoke in favor of passage of the bill.

HOUSE BILL NO. 1939, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1826.

SECOND READING

ROLL CALL

SECOND SUBSTITUTE HOUSE BILL NO. 1519, by House Committee on Education Appropriations & Oversight (originally sponsored by Representatives Hope, Dunshee, Anderson, Haler, Pettigrew, Fagan, Sells, Johnson, Orwall, Haigh, Kenney, Kelley and Ormsby)

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1826 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Regarding school assessments for students with cognitive disabilities.

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

The measure was read the second time.

Absent: Senator Baumgartner

MOTION

On motion of Senator McAuliffe, the rules were suspended, Second Substitute House Bill No. 1519 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1826, 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.

Senators McAuliffe and Litzow spoke in favor of passage of the bill.

SECOND READING

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1519.

SENATE BILL NO. 5806, by Senators Conway, Swecker, Kastama, Hobbs, Roach, Kilmer, Shin and Kline

ROLL CALL

Authorizing a statewide raffle to benefit veterans and their families.

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1519 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

The measure was read the second time.

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

MOTION

SECOND SUBSTITUTE HOUSE BILL NO. 1519, 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.

On motion of Senator Conway, the rules were suspended, Senate Bill No. 5806 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Conway spoke in favor of passage of the bill.

SECOND READING

POINT OF ORDER

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1826, by House Committee on Ways & Means (originally sponsored by Representatives Orcutt, Sells, McCune, Rolfes, Angel and Hurst)

Senator Hargrove: "Yes, I would like to ask the President to rule on whether this bill expands gambling and therefore requires a sixty percent vote by the senate."

Providing taxpayers additional appeal protections for value changes.

MOTION

On motion of Senator White, Senator Kline was excused.

The measure was read the second time.

MOTION

On motion of Senator Eide, further consideration of Senate Bill No. 5806 was deferred and the bill held its place on the third reading calendar.

SECOND READING

HOUSE BILL NO. 1465, by Representatives Hunt, Taylor, McCoy, Appleton, Condotta, Miloscia and Dunshee

Modifying conditions and restrictions for liquor licenses.

The measure was read the second time.

MOTION

Senator Kohl-Welles moved that the following committee striking amendment by the Committee on Labor, Commerce & Consumer Protection be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 66.24.010 and 2009 c 271 s 6 are each amended to read as follows:

(1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, or the renewal of a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the board and a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. Subject to the provisions of this section, the board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (8)(d) and (12) of this section. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person doing business as a sole proprietor who has not resided in the state for at least one month prior to receiving a license, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW

74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by rules adopted by the board. All conditions and restrictions imposed by the board in the issuance of an individual license (~~shall~~) may be listed on the face of the individual license along with the trade name, address, and expiration date. Conditions and restrictions imposed by the board may also be included in official correspondence separate from the license.

(7) Every licensee shall post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(8)(a) Unless (b) of this subsection applies, before the board issues a new or renewal license to an applicant it shall give notice of such application to the chief executive officer of the incorporated

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) If the application for a special occasion license is for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on property owned by the county but located within an incorporated city or town, the county legislative authority shall be the entity notified by the board under (a) of this subsection. The board shall send a duplicate notice to the incorporated city or town within which the fair is located.

(c) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after the date of transmittal of such notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewal license is asked. The board may extend the time period for submitting written objections.

(d) The written objections shall include a statement of all facts upon which such objections are based, and in case written objections are filed, the city or town or county legislative authority may request and the liquor control board may in its discretion hold a hearing subject to the applicable provisions of Title 34 RCW. If the board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If such a hearing is held at the request of the applicant, liquor control board representatives shall present and defend the board's initial decision to deny a license or renewal.

(e) Upon the granting of a license under this title the board shall send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns. When the license is for a special occasion license for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on county-owned property but located within an incorporated city or town, the written notification shall be sent to both the incorporated city or town and the county legislative authority.

(9)(a) Before the board issues any license to any applicant, it shall give (i) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (ii) written notice, with receipt verification, of the application to public institutions identified by the board as appropriate to receive such notice, churches, and schools within five hundred feet of the premises to be licensed. The board shall not issue a liquor license for either on-premises or off-premises consumption covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the main entrance of the school to the nearest public entrance of the premises proposed for license, and if, after receipt by the school of the notice as provided in this subsection, the board receives written objection, within twenty days after receiving such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. The board may extend the time period for submitting objections. For the purpose of this section,

"church" means a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. For the purpose of this section, "public institution" means institutions of higher education, parks, community centers, libraries, and transit centers.

(b) No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies.

(c) It is the intent under this subsection (9) that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11)(a) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant to operate the retail or distributor premises during the period the application for the license is pending. The board may establish a fee for a temporary license by rule.

(b) A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for additional periods of sixty days upon payment of an additional fee and upon compliance with all conditions required in this section.

(c) Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 applies to temporary licenses.

(d) Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

(12) In determining whether to grant or deny a license or renewal of any license, the board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest.

Sec. 2. RCW 66.24.410 and 2007 c 370 s 18 are each amended to read as follows:

(1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.450, inclusive, means "liquor" as defined in RCW 66.04.010, except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to 66.24.450, inclusive, means an establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains: PROVIDED, That such establishments shall be approved by the board and that the board shall be satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. ~~(The service of only fry orders or such food and victuals as sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition.)~~ Requirements for complete meals shall be determined by the board in rules adopted pursuant to chapter 34.05 RCW.

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to 66.24.450, inclusive, with the meaning given in chapter 66.04 RCW.

Sec. 3. RCW 66.04.010 and 2009 c 373 s 1 and 2009 c 271 s 2 are each reenacted and amended to read as follows:

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced by a brewery or winery in the United States outside of the state of Washington; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a

licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Confection" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, dairy products, or flavorings, in the form of bars, drops, or pieces.

(10) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(11) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(12) "Craft distillery" means a distillery that pays the reduced licensing fee under RCW 66.24.140.

(13) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(14) "Distiller" means a person engaged in the business of distilling spirits.

(15) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(16) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(17) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(18) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(19) "Employee" means any person employed by the board.

(20) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(21) "Fund" means 'liquor revolving fund.'

(22) "Hotel" means buildings, structures, and grounds, having facilities for preparing, cooking, and serving food, that are kept, used, maintained, advertised, or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests. The buildings, structures, and grounds must be located on adjacent property either owned or leased by the same person or persons.

(23) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(24) "Imprisonment" means confinement in the county jail.

(25) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid,

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(26) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(27) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(28) "Nightclub" means an establishment that provides entertainment and has as its primary source of revenue (a) the sale of alcohol for consumption on the premises, (b) cover charges, or (c) both ~~(, and has an occupancy load of one hundred or more)~~.

(29) "Package" means any container or receptacle used for holding liquor.

(30) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

(31) "Permit" means a permit for the purchase of liquor under this title.

(32) "Person" means an individual, copartnership, association, or corporation.

(33) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(34) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(35) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(36) "Regulations" means regulations made by the board under the powers conferred by this title.

(37) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(38) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use

only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

(39) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(40) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

(41) "Store" means a state liquor store established under this title.

(42) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(43)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(44) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(45) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title.

(46) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

Sec. 4. RCW 66.24.371 and 2009 c 373 s 6 are each amended to read as follows:

(1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store. The sale of any container holding four gallons or more must comply with RCW 66.28.200 and 66.28.220.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) Upon approval by the board, the beer and/or wine specialty shop licensee that exceeds fifty percent beer and/or wine sales may also receive an endorsement to permit the sale of beer to a purchaser in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and fill at the tap by the licensee at the time of sale. If the beer and/or wine specialty shop licensee does not exceed fifty percent beer and/or wine sales, the board may waive the fifty percent beer and/or wine sale criteria if the beer and/or wine specialty shop maintains alcohol inventory that exceeds fifteen thousand dollars.

(4) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

~~((4))~~ (5) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine.

(6) The board may adopt rules to implement this section.

Sec. 5. RCW 66.24.244 and 2008 c 248 s 2 and 2008 c 41 s 9 are each reenacted and amended to read as follows:

(1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a microbrewery operating as a distributor may maintain a warehouse off the premises of the microbrewery for the distribution of beer provided that (a) the warehouse has been approved by the board under RCW 66.24.010 and (b) the number of warehouses off the premises of the microbrewery does not exceed one. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any microbrewery licensed under this section may also sell beer produced by another microbrewery or a domestic brewery for on and off-premises consumption from its premises as long as the other breweries' brands do not exceed twenty-five percent of the

microbrewery's on-tap offering of its own brands.

(4) The board may issue up to two retail licenses allowing a microbrewery to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant.

~~((4))~~ (5) A microbrewery that holds a tavern license, spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

~~((5))~~ (6)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection ~~((5))~~ (6) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection ~~((5))~~ (6) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection ~~((5))~~ (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection ~~((5))~~ (6):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

~~((6))~~ (7) Any microbrewery licensed under this section may contract-produce beer for another microbrewer. This contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

Sec. 6. RCW 66.24.240 and 2008 c 41 s 7 are each amended to read as follows:

(1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under RCW 66.04.010~~((6))~~ (7), licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A domestic brewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any domestic brewery licensed under this section may also sell beer produced by another domestic brewery or a microbrewery for on and off-premises consumption from its premises as long as the other breweries' brands do not exceed twenty-five percent of the domestic brewery's on-tap offering of its own brands.

(4) A domestic brewery may hold up to two retail licenses to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant. This retail license is separate from the brewery license. A brewery that holds a tavern license, a spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

~~((4))~~ (5) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under RCW 66.04.010~~((6))~~ (7), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

~~((5))~~ (6)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling

privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection ~~((5))~~ (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer."

Senator Kohl-Welles spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Labor, Commerce & Consumer Protection to House Bill No. 1465.

The motion by Senator Kohl-Welles carried and the committee 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 "licenses;" strike the remainder of the title and insert "amending RCW 66.24.010, 66.24.410, 66.24.371, and 66.24.240; and reenacting and amending RCW 66.04.010 and 66.24.244."

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, House Bill No. 1465 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 Kohl-Welles and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1465 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1465 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

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

Voting nay: Senators Hargrove and Haugen

HOUSE BILL NO. 1465 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1172, by House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Kenney, Hasegawa, Maxwell, Finn, Ryu, Reykdal and Upthegrove)

Concerning beer and wine tasting at farmers markets.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Substitute House Bill No. 1172 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kohl-Welles and Holmquist Newbry 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. 1172.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1172 and the bill passed the Senate by the following vote: Yeas, 37; Nays, 12; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Harper, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Pflug, Ranker, Regala, Rockefeller, Schoesler, Stevens, Tom, White and Zarelli

Voting nay: Senators Benton, Hargrove, Haugen, Kastama, Morton, Parlette, Prentice, Pridemore, Roach, Sheldon, Shin and Swecker

SUBSTITUTE HOUSE BILL NO. 1172, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1776, by House Committee on Education Appropriations & Oversight (originally sponsored by Representatives Frockt, Eddy, Dickerson, Carlyle, Maxwell, Fitzgibbon, Roberts, Pedersen, Hudgins, Ryu, Kenney and Stanford)

Regarding licensing requirements for child care centers located in publicly owned buildings. Revised for 2nd Substitute: Regarding licensing requirements for child care centers located in publicly owned or operated buildings.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Human Services & Corrections be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that some licensed child care centers seeking to operate in public schools incur substantial costs to renovate spaces that are considered safe for children to use for the purpose of education. Consequently, families are forced to seek before or after school child care outside of the school building, resulting in additional transitions for students.

(2) It is the legislature's intent to allow licensed child care centers that serve school-age children to operate in facilities that provide a safe and healthy environment for children to use for the purpose of education. With respect to section 2(2) of this act, the legislature intends that the development of any related child care licensing requirements shall:

- (a) Ensure safe and healthy environments for children;
- (b) Utilize existing rule-making processes and resources;
- (c) Utilize existing requirements as a starting point rather than create an entirely new set of requirements; and
- (d) Give due consideration to the burdens imposed by inconsistent licensing requirements.

Sec. 2. RCW 43.215.200 and 2007 c 415 s 3 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;

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

(2) In consultation with the state fire marshal's office and the Washington state building code council, the director shall use an interagency process to address health and safety requirements for child care programs that serve school-age children and are operated in buildings that contain public or private schools that safely serve children during times in which school is in session;

(3) 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;

~~((3))~~ (4) 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))~~ (5) 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;

~~((5))~~ (6) 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;

~~((6))~~ (7) To inspect agencies periodically to determine whether or not there is compliance with this chapter and the requirements adopted under this chapter;

~~((7))~~ (8) 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

~~((8))~~ (9) 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."

MOTION

Senator Holmquist Newbry moved that the following amendment by Senators Baxter and Hargrove to the committee striking amendment be adopted:

On page 2, line 4 of the striking amendment, after "office", strike all material through "council" on line 5.

Senator Holmquist Newbry spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Baxter and Hargrove on page 2, line 4 to the committee striking amendment to Engrossed Second Substitute House Bill No. 1776.

The motion by Senator Holmquist Newbry carried and the amendment to the committee striking amendment was adopted by voice vote.

Senator Hargrove spoke in favor of adoption of the committee striking amendment as amended.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections as amended to Engrossed Second Substitute House Bill No. 1776.

The motion by Senator Hargrove carried and the committee striking amendment as amended 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 "buildings;" strike the remainder of the title and insert "amending RCW 43.215.200; and creating a new section."

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Second Substitute House Bill No. 1776 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hargrove and Baxter spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1776 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1776 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

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

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1776, as amended by the Senate having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 5:02 p.m., on motion of Senator Eide, the Senate adjourned until 10:00 a.m. Wednesday, April 6, 2011.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

EIGHTY SIXTH DAY, APRIL 5, 2011

2011 REGULAR SESSION

1041-S	Other Action.....15	Second Reading.....13, 14	Third Reading Final Passage.....15	Second Reading.....48, 49	Third Reading Final Passage.....49
1053-S	Other Action.....12	Second Reading.....4, 11, 12	Third Reading Final Passage.....12	1826-S	Second Reading.....41
1145-S	Other Action.....32	Second Reading.....30	Third Reading Final Passage.....32	1939	Third Reading Final Passage.....41
1172-S	Second Reading.....48	Third Reading Final Passage.....48	5057	5057	Messages.....1
1179	Second Reading.....30	Third Reading Final Passage.....30	5152-S	5152-S	President Signed.....3
1186-S2	Other Action.....25, 29	Second Reading.....15, 16, 22, 25	Third Reading Final Passage.....29	5174	Messages.....1
1227	Second Reading.....32	Third Reading Final Passage.....33	1243-S	1243-S	President Signed.....3
1304-S	Second Reading.....40	Third Reading Final Passage.....40	1465	1465	Messages.....1
1492-S	Second Reading.....35	Third Reading Final Passage.....35	1519-S2	1519-S2	President Signed.....3
1547-S	Other Action.....4	Second Reading.....3	Third Reading Final Passage.....4	1547-S	Messages.....1
1625	Second Reading.....33	Third Reading Final Passage.....33	1710-S	1710-S	President Signed.....3
1719-S	Other Action.....34	Second Reading.....33	Third Reading Final Passage.....34	1719-S	Introduction & 1 st Reading.....1
1725-S	Other Action.....40	Second Reading.....35	Third Reading Final Passage.....40	5914	Introduction & 1 st Reading.....1
1776-S2	Other Action.....49			5915	Other Action.....2
				5916	Introduction & 1 st Reading.....2
				5917	Introduction & 1 st Reading.....2
				8647	Adopted.....2
				9079 David Mitchell	Introduced.....2
				9121 Brian Vance	Confirmed.....3
				9160 Stuart A. Halsan	Confirmed.....15
				MESSAGE FROM GOVERNOR	Introduced.....1
				Gubernatorial Appointments.....1	
				PRESIDENT OF THE SENATE	
				Intro. Special Guests, China Rail Transportation Delegation33
				Intro. Special Guests, Peace Corps Volunteers.....3	
				Reply by the President.....3	
				WASHINGTON STATE SENATE	
				Personal Privilege, Senator Hewitt.....1	
				Personal Privilege, Senator Shin.....3	
				Point of Order, Senator Hargrove.....41	