

NINETY NINTH DAY

MORNING SESSION

Senate Chamber, Olympia, Monday, April 22, 2013

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 with the exception of Senator Carrell.

The Sergeant at Arms Color Guard consisting of Pages Janet Kruschke and Peyton Wilson, presented the Colors. Colonel Gene “Chip” Fowler, retired, former U.S. Army Pacific Command Chaplain, of Lacey offered the prayer.

MOTION

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

MOTION

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

INTRODUCTION AND FIRST READING

SB 5918 by Senator Ericksen

AN ACT Relating to requesting and implementing a federal waiver to allow Washington to expand the medicaid program through private insurance markets; adding a new section to chapter 74.09 RCW; and creating a new section.

Referred to Committee on Ways & Means.

SB 5919 by Senator Ericksen

AN ACT Relating to requesting and implementing a federal waiver to ensure the ongoing sustainability and vitality of the commercial insurance market by seeking a waiver to offer multiple private health benefit exchanges; adding a new section to chapter 43.71 RCW; and creating a new section.

Referred to Committee on Ways & Means.

INTRODUCTION AND FIRST READING OF HOUSE BILLS

EHB 1287 by Representatives Appleton, Dahlquist, Hurst, McCoy, Ryu, Santos and Pollet

AN ACT Relating to subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe; amending RCW 82.29A.010, 82.29A.020, 84.36.010, 84.36.451, and 84.40.230; adding a new section to chapter 52.30 RCW; and providing an expiration date.

Referred to Committee on Ways & Means.

EHB 1421 by Representatives Tharinger and Nealey

AN ACT Relating to protecting the state's interest in collecting deferred property taxes; amending RCW 35.49.160, 36.35.110, 36.35.140, 36.35.190, 36.35.220,

36.35.250, 84.37.070, 84.38.100, 84.38.140, 84.60.010, and 84.64.050; and adding a new section to chapter 84.64 RCW.

Referred to Committee on Ways & Means.

E2SHB 1437 by House Committee on Finance (originally sponsored by Representatives Reykdal, Blake, Haigh, Orcutt, Lytton, Van De Wege and Zeiger)

AN ACT Relating to small farms under the current use property tax program for farm and agricultural lands; amending RCW 84.34.020; creating new sections; and providing an expiration date.

Referred to Committee on Ways & Means.

HB 1634 by Representatives Warnick and Manweller

AN ACT Relating to including the value of solar, biomass, and geothermal facilities in the property tax levy limit calculation; amending RCW 84.55.010, 84.55.015, 84.55.020, 84.55.030, and 84.55.120; and creating a new section.

Referred to Committee on Ways & Means.

ESHB 1957 by House Committee on Transportation (originally sponsored by Representatives Clibborn, Liias, Moscoso and Fey)

AN ACT Relating to department of transportation project delivery; amending RCW 47.01.300; adding a new section to chapter 47.04 RCW; adding a new section to chapter 47.01 RCW; providing a contingent effective date; and providing a contingent expiration date.

Referred to Committee on Transportation.

ESHB 1978 by House Committee on Transportation (originally sponsored by Representatives Zeiger, Clibborn, Orcutt, O'Ban, Hargrove, Liias, Fey, Moscoso and Morrell)

AN ACT Relating to permitting certain transportation projects; and adding a new chapter to Title 47 RCW.

Referred to Committee on Transportation.

SHB 1986 by House Committee on Transportation (originally sponsored by Representatives O'Ban, Rodne, Magendanz, Zeiger, Kristiansen, Klippert and Hayes)

AN ACT Relating to the reporting of highway construction project errors; and adding a new section to chapter 47.01 RCW.

Referred to Committee on Transportation.

HB 1988 by Representatives Rodne, Magendanz, Zeiger, Kristiansen, Hayes and O'Ban

AN ACT Relating to right-sizing transportation projects; and creating a new section.

Referred to Committee on Transportation.

MOTION

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

SUPPLEMENTAL INTRODUCTION AND FIRST READING

SB 5920 by Senators Eide and Conway

AN ACT Relating to transportation revenue; amending RCW 82.36.025, 82.38.030, 46.68.090, 46.10.530, 79A.25.070, 46.17.100, 46.17.200, 46.20.293, 46.29.050, 46.68.041, 46.70.061, 46.68.020, 46.68.280, 46.68.390, 46.17.355, 81.77.160, 47.60.322, 46.17.323, 36.73.065, 82.14.045, and 82.80.140; reenacting and amending RCW 43.84.092, 43.84.092, 46.09.520, and 46.52.130; adding a new section to chapter 46.68 RCW; adding a new section to chapter 46.17 RCW; adding a new section to chapter 82.80 RCW; adding a new section to chapter 82.14 RCW; creating new sections; repealing 2012 c 74 s 18 (uncodified); providing effective dates; providing a contingent effective date; and providing contingent expiration dates.

Referred to Committee on Transportation.

SB 5921 by Senator Eide

AN ACT Relating to additive transportation funding; creating new sections; and providing an effective date.

Referred to Committee on Transportation.

SB 5922 by Senator Eide

AN ACT Relating to authorizing bonds for transportation funding; adding new sections to chapter 47.10 RCW; and providing an effective date.

Referred to Committee on Transportation.

MOTION

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

MOTION

On motion of Senator Fain, Senator Carrell was excused.

MOTION

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

The Senate was called to order at 11:32 a.m. by President Owen.

MOTION

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

MESSAGE FROM THE HOUSE

April 15, 2013

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5045 with the following amendment(s): 5045-S AMH ENGR H2364.E

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 66.20 RCW to read as follows:

(1) There shall be a permit known as a day spa permit to allow the holder to offer or supply without charge wine or beer by the individual glass to a customer for consumption on the premises. The glass of beer may not exceed twelve ounces and the glass of wine may not exceed six ounces. The customer must be at least twenty-one years of age and may only be offered one glass of wine or beer, and wine or beer served or consumed shall be purchased from a Washington state licensed retailer. A day spa offering wine or beer without charge may not advertise the service of complimentary wine or beer and may not sell wine or beer in any manner. Any employee involved in the service of wine or beer must complete a board-approved alcohol server training program.

(2) For the purposes of this section, "day spa" means a business that offers at least three of the following types of beauty services:

(a) Hair care, including shampooing, cutting, styling, and dyeing hair;

(b) Skin care, such as facials or body wraps;

(c) Massages; or

(d) Body toning equipment.

(3) The initial annual fee for this permit is one hundred twenty-five dollars, and the legislature may thereafter adjust the fee in the omnibus operating appropriations act."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Holmquist Newbry moved that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 5045 and ask the House to recede therefrom.

Senator Conway spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Holmquist Newbry that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 5045 and ask the House to recede therefrom.

The motion by Senator Holmquist Newbry carried and the Senate refused to concur in the House amendment(s) to Substitute Senate Bill No. 5045 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

April 9, 2013

MR. PRESIDENT:

The House passed ENGROSSED SENATE BILL NO. 5221 with the following amendment(s): 5221.E AMH JUDI H2217.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 10.77.065 and 2012 c 256 s 4 are each amended to read as follows:

(1)(a)(i) The expert conducting the evaluation shall provide his or her report and recommendation to the court in which the criminal proceeding is pending. For a competency evaluation of a defendant

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who is released from custody, if the evaluation cannot be completed within twenty-one days due to a lack of cooperation by the defendant, the evaluator shall notify the court that he or she is unable to complete the evaluation because of such lack of cooperation.

(ii) A copy of the report and recommendation shall be provided to the designated mental health professional, the prosecuting attorney, the defense attorney, and the professional person at the local correctional facility where the defendant is being held, or if there is no professional person, to the person designated under (a)(iv) of this subsection. Upon request, the evaluator shall also provide copies of any source documents relevant to the evaluation to the designated mental health professional.

(iii) Any facility providing inpatient services related to competency shall discharge the defendant as soon as the facility determines that the defendant is competent to stand trial. Discharge shall not be postponed during the writing and distribution of the evaluation report. Distribution of an evaluation report by a facility providing inpatient services shall ordinarily be accomplished within two working days or less following the final evaluation of the defendant. If the defendant is discharged to the custody of a local correctional facility, the local correctional facility must continue the medication regimen prescribed by the facility, when clinically appropriate, unless the defendant refuses to cooperate with medication.

(iv) If there is no professional person at the local correctional facility, the local correctional facility shall designate a professional person as defined in RCW 71.05.020 or, in cooperation with the regional support network, a professional person at the regional support network to receive the report and recommendation.

(v) Upon commencement of a defendant's evaluation in the local correctional facility, the local correctional facility must notify the evaluator of the name of the professional person, or person designated under (a)(iv) of this subsection, to receive the report and recommendation.

(b) If the evaluator concludes, under RCW 10.77.060(3)(f), the person should be evaluated by a designated mental health professional under chapter 71.05 RCW, the court shall order such evaluation be conducted prior to release from confinement when the person is acquitted or convicted and sentenced to confinement for twenty-four months or less, or when charges are dismissed pursuant to a finding of incompetent to stand trial.

(2) The designated mental health professional shall provide written notification within twenty-four hours of the results of the determination whether to commence proceedings under chapter 71.05 RCW. The notification shall be provided to the persons identified in subsection (1)(a) of this section.

(3) The prosecuting attorney shall provide a copy of the results of any proceedings commenced by the designated mental health professional under subsection (2) of this section to the secretary.

(4) A facility conducting a civil commitment evaluation under RCW 10.77.086(4) or 10.77.088(1)(b)(ii) that makes a determination to release the person instead of filing a civil commitment petition must provide written notification to the prosecuting attorney and defense attorney. The notification must be provided on a business day and at least twenty-four hours prior to the person's release.

(5) The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services under this chapter may also be disclosed to the courts solely to prevent the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kohl-Welles moved that the Senate refuse to concur in the House amendment(s) to Engrossed Senate Bill No. 5221 and ask the House to recede therefrom.

The President declared the question before the Senate to be the motion by Senator Kohl-Welles that the Senate refuse to concur in the House amendment(s) to Engrossed Senate Bill No. 5221 and ask the House to recede therefrom.

The motion by Senator Kohl-Welles carried and the Senate refused to concur in the House amendment(s) to Engrossed Senate Bill No. 5221 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

April 9, 2013

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5227 with the following amendment(s): 5227-S AMH LWD H2319.1

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 50.12.070 and 2009 c 432 s 11 are each amended to read as follows:

(1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and compensation paid to the person or entity performing the work. In addition to the penalty in subsection (3) of this section, failure to obtain or maintain the record is subject to RCW 39.06.010.

(2)(a) Each employer shall register with the department and obtain an employment security account number. ~~((Registration must include the names and social security numbers of the owners, partners, members, or corporate officers of the business, as well as their mailing addresses and telephone numbers and other information the commissioner may by rule prescribe. Registration of corporations must also include the percentage of stock ownership for each corporate officer, delineated by zero percent, less than ten percent, or ten percent or more. Any changes in the owners, partners, members, or corporate officers of the business, and changes in percentage of ownership of the outstanding shares of stock of the corporation, must be reported to the department at intervals prescribed by the commissioner under (b) of this subsection.~~

~~(b))~~ Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the full names and social security numbers of all such workers, and the total hours worked by each worker and such other information as the commissioner may by regulation prescribe.

((=)) (b) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked, the total

wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. Benefits paid using computed hours are not considered an overpayment and are not subject to collections when the correction of computed hours results in an invalid or reduced claim; however:

(i) A contribution paying employer who fails to report the number of hours worked will have its experience rating account charged for all benefits paid that are based on hours computed under this subsection; and

(ii) An employer who reimburses the trust fund for benefits paid to workers and fails to report the number of hours worked shall reimburse the trust fund for all benefits paid that are based on hours computed under this subsection.

(3) Any employer who fails to keep and preserve records required by this section shall be subject to a penalty determined by the commissioner but not to exceed two hundred fifty dollars or two hundred percent of the quarterly tax for each offense, whichever is greater.

Sec. 2. RCW 50.04.165 and 2007 c 146 s 4 are each amended to read as follows:

~~((1)(a))~~ Services performed by a person appointed as an officer of a corporation under RCW 23B.08.400 ~~(are)~~, other than those covered by chapters 50.44 and 50.50 RCW, shall not be considered services in employment. However, a corporation ~~(, other than those covered by chapters 50.44 and 50.50 RCW,)~~ may elect to ~~(exempt from coverage under this title as provided in subsection (2) of this section, any bona fide officer of a public company as defined in RCW 23B.01.400 who:~~

~~(i) Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation;~~

~~(ii) Is a shareholder of the corporation;~~

~~(iii) Exercises substantial control in the daily management of the corporation; and~~

~~(iv) Whose primary responsibilities do not include the performance of manual labor.~~

~~(b) A corporation, other than those covered by chapters 50.44 and 50.50 RCW, that is not a public company as defined in RCW 23B.01.400 may exempt from coverage under this title as provided in subsection (2) of this section:~~

~~(i) Eight or fewer bona fide officers who: Voluntarily agree to be exempted from coverage; are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation; and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation; and~~

~~(ii) Any number of officers if all the exempted officers are related by blood within the third degree or marriage.~~

~~(c) Determinations with respect to the status of persons performing services for a corporation must be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance controls over form, and mandatory coverage under this title extends to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.~~

~~(2)(a) The corporation must notify the department when it elects to exempt one or more corporate officers from coverage. The notice must be in a format prescribed by the department and signed by the officer or officers being exempted and by another corporate~~

~~officer verifying the decision to be exempt from coverage.~~

~~(b) The election to exempt one or more corporate officers from coverage under this title may be made when the corporation registers as required under RCW 50.12.070. The corporation may also elect exemption at any time following registration; however, an exemption will be effective only as of the first day of a calendar year. A written notice from the corporation must be sent to the department by January 15th following the end of the last calendar year of coverage. Exemption from coverage will not be retroactive, and the corporation is not eligible for a refund or credit for contributions paid for corporate officers for periods before the effective date of the exemption.~~

~~(3) A corporation may elect to reinstate coverage for one or more officers previously exempted under this section, subject to the following:~~

~~(a) Coverage may be reinstated only at set intervals of five years beginning with the calendar year that begins five years after January 1, 2009.~~

~~(b) Coverage may only be reinstated effective the first day of the calendar year. A written notice from the corporation must be sent to the department by January 15th following the end of the last calendar year the exemption from coverage will apply.~~

~~(c) Coverage will not be reinstated if the corporation: Has committed fraud related to the payment of contributions within the previous five years; is delinquent in the payment of contributions; or is assigned the array calculation factor rate for nonqualified employers because of a failure to pay contributions when due as provided in RCW 50.29.025, or for related reasons as determined by the commissioner.~~

~~(d) Coverage will not be reinstated retroactively.~~

~~(4) Except for corporations covered by chapters 50.44 and 50.50 RCW, personal services performed by bona fide corporate officers for corporations described under RCW 50.04.080(3) and 50.04.090(2) are not considered services in employment, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. However, if the employer fails to provide notice, the individual's status as a corporate officer is unchanged and the person remains ineligible for unemployment benefits.~~

Sec. 3. RCW 50.04.080 and 2007 c 146 s 19 are each amended to read as follows:

~~((1))~~ "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title.

~~((2) For the purposes of collection remedies available under chapter 50.24 RCW, "employer," in the case of a corporation or limited liability company, includes persons found personally liable for any unpaid contributions and interest and penalties on those contributions under RCW 50.24.230.~~

~~(3) Except for corporations covered by chapters 50.44 and 50.50 RCW, "employer" does not include a corporation when all personal services are performed only by bona fide corporate officers, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160.)~~

Sec. 4. RCW 50.04.090 and 2007 c 146 s 20 are each amended to read as follows:

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((4)) "Employing unit" means any individual or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ or in its "employment" one or more individuals performing services within this state. The state and its political subdivisions shall be deemed employing units as to any transactions occurring on or after September 21, 1977, which would render an employing unit liable for contributions, interest, or penalties under RCW 50.24.130. "Employing unit" includes Indian tribes as defined in RCW 50.50.010.

~~((2) Except for corporations covered by chapters 50.44 and 50.50 RCW, "employing unit" does not include a corporation when all personal services are performed only by bona fide corporate officers, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160.))~~

NEW SECTION. Sec. 5. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 7. This act takes effect December 29, 2013."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

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

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

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

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5227, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 43; Nays, 5; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Frockt, Hargrove, Harper,

Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Padden, Parlette, Pearson, Rivers, Roach, Schlicher, Schoessler, Sheldon, Shin, Smith and Tom

Voting nay: Senators Fraser, Hasegawa, Nelson, Ranker and Rolfes

Excused: Senator Carrell

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

MESSAGE FROM THE HOUSE

April 9, 2013

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5282 with the following amendment(s): 5282-S AMH JUDI H2218.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The department of licensing, Washington state patrol, department of social and health services, administrative office of the courts, and representatives of regional support networks and superior courts shall participate in a work group convened by the department of licensing for the purpose of making a proposal for consolidation of statewide involuntary commitment information for the purpose of accurate and efficient verification of eligibility to possess a firearm. The work group shall also make recommendations with respect to how to maintain the privacy of commitment information and whether access to the database can legally be provided to designated mental health professionals or law enforcement officials for use in the official course of their duties. The work group shall report its recommendations to the governor and the appropriate committees of the legislature by December 1, 2013.

NEW SECTION. Sec. 2. A new section is added to chapter 71.05 RCW to read as follows:

By August 1, 2013, all regional support networks in the state of Washington must forward historical mental health involuntary commitment information retained by the organization including identifying information and dates of commitment to the department. As soon as feasible, the regional support networks must arrange to report new commitment data to the department within twenty-four hours. Commitment information under this section does not need to be resent if it is already in the possession of the department. Regional support networks and the department shall be immune from liability related to the sharing of commitment information under this section."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Pearson moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5282.

Senator Pearson spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Pearson that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5282.

The motion by Senator Pearson carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5282 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5282, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5282, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senator Carrell

SUBSTITUTE SENATE BILL NO. 5282, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 16, 2013

MR. PRESIDENT:

The House passed ENGROSSED SENATE BILL NO. 5305 with the following amendment(s): 5305.E AMH CODY BLAC 066

On page 2, line 33, after "If the" strike all material through "family" on page 3, line 4 and insert "patient states his or her injury is the result of domestic violence, the hospital shall follow its established processes to inform the patient of resources to assure the safety of the patient and his or her family" and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Becker moved that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 5305.

Senator Becker spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Becker that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 5305.

The motion by Senator Becker carried and the Senate concurred in the House amendment(s) to Engrossed Senate Bill No. 5305 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5305, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5305, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier,

Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senator Carrell

ENGROSSED SENATE BILL NO. 5305, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 15, 2013

MR. PRESIDENT:

The House passed SENATE BILL NO. 5344 with the following amendment(s): 5344 AMH JUDI H2220.2

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 11.36.010 and 1983 c 51 s 1 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), and (4) of this section, the following persons are not qualified to act as personal representatives: Corporations, limited liability companies, limited liability partnerships, minors, persons of unsound mind, or persons who have been convicted of (a) any felony or ((of a misdemeanor)) (b) any crime involving moral turpitude(:(= ~~PROVIDED, That~~)).

(2) Trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as the personal representative of ((~~decedents' or incompetents' estates~~)) an individual's estate or of the estate of an incapacitated person upon petition of any person having a right to such appointment and may act as ((~~executors~~)) personal representatives or guardians when so appointed by will(:(= ~~PROVIDED FURTHER, That professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys may act as personal representatives~~)). No trust company or national bank may qualify as such ((~~executor~~)) personal representative or guardian under any will hereafter drawn by it or its agents or employees, and no salaried attorney of any such company may be allowed any attorney fee for probating any such will or in relation to the administration or settlement of any such estate, and no part of any attorney fee may inure, directly or indirectly, to the benefit of any trust company or national bank.

(3) Professional service corporations, professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose shareholders, members, or partners, respectively, are exclusively attorneys, may act as personal representatives.

(4) Any nonprofit corporation may act as personal representative if the articles of incorporation or bylaws of that corporation permit the action and the corporation is in compliance with all applicable provisions of Title 24 RCW.

(5) When any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of (a) any felony or (b) any crime ((or misdemeanor)) involving moral turpitude, the court having jurisdiction ((~~shall~~)) must revoke his or her letters.

(6) A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided

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by RCW 11.28.185, such nonresident personal representative ~~((shall))~~ must file a bond to be approved by the court.

Sec. 2. RCW 11.36.021 and 1991 c 72 s 1 are each amended to read as follows:

(1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and if the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations ~~((regularly)),~~ professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose ~~((shareholder or))~~ shareholders, members, or partners, respectively, are exclusively attorneys; ~~((and))~~

(e) Any state or regional college or university, as those institutions are defined in RCW 28B.10.016;

(f) Any community or technical college, as those institutions are defined in RCW 28B.50.030; and

(g) Any other entity so authorized under the laws of the state of Washington.

(2) The following are disqualified to serve as trustees:

(a) Minors, persons of unsound mind, or persons who have been convicted of (i) any felony or ~~((a misdemeanor))~~ (ii) any crime involving moral turpitude; and

(b) A corporation organized under Title 23B RCW that is not authorized under the laws of the state of Washington to act as a fiduciary.

Sec. 3. RCW 11.96A.050 and 2011 c 327 s 6 are each amended to read as follows:

(1) Venue for proceedings pertaining to trusts ~~((shall be))~~ is:

(a) For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where the probate of the will is being administered or was completed or, in the alternative, the superior court of the county where any qualified beneficiary of the trust ~~((entitled to notice under RCW 11.97.010))~~ as defined in section 8 of this act resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located; and

(b) For all other trusts, in the superior court of the county where any qualified beneficiary of the trust ~~((entitled to notice under RCW 11.97.010))~~ as defined in section 8 of this act resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located. If no county has venue for proceedings pertaining to a trust under the preceding sentence, then in any county.

(2) A party to a proceeding pertaining to a trust may request that venue be changed. If the request is made within four months of the giving of the first notice of a proceeding pertaining to the trust, except for good cause shown, venue must be moved to the county with the strongest connection to the trust as determined by the court, considering such factors as the residence of a qualified beneficiary of the trust ~~((entitled to notice under RCW 11.97.010))~~ as defined in section 8 of this act, the residence or place of business of a trustee, and the location of any real property that is an asset of the trust.

(3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW ~~((shall))~~ must be determined under the provisions of those chapters.

(4) Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including nonprobate assets, and any other matter not identified in subsection (1), (2), or (3) of this section, ~~((shall))~~ must be in any county in the state of Washington that the petitioner selects. A party to a

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proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency of probate required by RCW 11.28.237, and except for good cause shown, venue must be moved as follows:

(a) If the decedent was a resident of the state of Washington at the time of death, to the county of the decedent's residence; or

(b) If the decedent was not a resident of the state of Washington at the time of death, to any of the following:

(i) Any county in which any part of the probate estate might be;

(ii) If there are no probate assets, any county where any nonprobate asset might be; or

(iii) The county in which the decedent died.

(5) Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title ~~((shall))~~ must be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection (4) of this section.

(6) Venue for proceedings pertaining to powers of attorney ~~((shall))~~ must be in the superior court of the county of the principal's residence, except for good cause shown.

(7) If venue is moved, an action taken before venue is changed is not invalid because of the venue.

(8) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court.

Sec. 4. RCW 11.96A.070 and 2011 c 327 s 7 are each amended to read as follows:

(1)(a) A beneficiary of an express trust may not commence a proceeding against a trustee for breach of trust more than three years after the date a report was delivered in the manner provided in RCW 11.96A.110 to the beneficiary or to a representative of the beneficiary ~~((was sent a report that))~~ if the report adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows or should have known of the potential claim ~~((or should have inquired into its existence))~~. A report that includes ~~((the following information))~~ all of the items described in this subsection (b) that are relevant for the reporting period is presumed to have provided such sufficient information regarding the existence of potential claims for breach of trust for such period:

(i) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;

(ii) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;

(iii) The trustee's compensation for the period;

(iv) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;

(v) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;

(vi) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

(vii) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and

(viii) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the

date the ~~((beneficiary receives the statement))~~ trustee delivers the report in the manner provided in RCW 11.96A.110.

(c) If (a) of this subsection does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

- (i) The removal, resignation, or death of the trustee;
- (ii) The termination of the beneficiary's interest in the trust; or
- (iii) The termination of the trust.

(d) For purposes of this section, "express trust" does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter 30.22 RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.

(2) Except as provided in RCW 11.96A.250 with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.

(3) The legislature hereby confirms the long standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to:

(a) Encourage and facilitate the participation of qualified individuals as special representatives;

(b) Serve the public's interest in having a prompt and efficient resolution of matters involving trusts or estates; and

(c) Promote complete and final resolution of proceedings involving trusts and estates.

(i) Actions against a special representative must be brought before the earlier of:

(A) Three years from the discharge of the special representative as provided in RCW 11.96A.250; or

(B) The entry of an order by a court of competent jurisdiction under RCW 11.96A.240 approving the written agreement executed by all interested parties in accord with the provisions of RCW 11.96A.220.

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by reason of the special representative's duties or actions as special representative, the special representative ~~((shall))~~ must be indemnified: (A) From the assets held in the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third from the other assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual who had a guardian ad litem, limited or general guardian of the estate, or a special representative

to represent the person during the probate or dispute resolution proceeding.

Sec. 5. RCW 11.96A.120 and 2011 c 327 s 9 are each amended to read as follows:

~~(1) ((With respect to a particular matter that affects a trust, probate estate, guardianship estate, or property subject to a power of attorney, in which the interests of such fiduciary estate and the beneficiaries are not in conflict:))~~ Notice to a person who may represent and bind another person under this section has the same effect as if notice were given directly to the other person.

~~(2) The consent of a person who may represent and bind another person under this section is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.~~

~~(3) The following limitations on the ability to serve as a virtual representative apply:~~

~~(a) A trustor may not represent and bind a beneficiary under this section with respect to the termination and modification of an irrevocable trust; and~~

~~(b) Representation of an incapacitated trustor with respect to his or her powers over a trust is subject to the provisions of RCW 11.103.030, and chapters 11.96A, 11.88, and 11.92 RCW.~~

~~(4) To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to the particular question or dispute:~~

~~(a) A guardian may represent and bind the estate that the guardian controls, subject to chapters 11.96A, 11.88, and 11.92 RCW;~~

~~(b) A guardian of the person may represent and bind the incapacitated person if a guardian of the incapacitated person's estate has not been appointed;~~

~~(c) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;~~

~~((and)) (d) A trustee may represent and bind the beneficiaries of the trust; ((and~~

~~((d))) (e) A personal representative of a decedent's estate may represent and bind persons interested in the estate((-~~

~~(2) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and shall not be construed as limiting the application of that common law doctrine.~~

~~(3) Any notice requirement in this title is satisfied if:~~

~~(a)); and~~

~~(f) A parent may represent and bind the parent's minor or unborn child or children if a guardian for the child or children has not been appointed.~~

~~(5) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with regard to the particular question or dispute.~~

~~(6) Where an interest ((in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney)) has been given to persons who comprise a certain class upon the happening of a certain event, ((notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice, and the persons shall virtually represent all other members of the class;~~

~~(b))) the living persons who would constitute the class as of the date the representation is to be determined may virtually represent all other members of the class as of that date, but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.~~

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~~(7) Where an interest ((in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney)) has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or surviving domestic partner or to persons who are, or might be, the ((distributees,)) heirs, issue, or other kindred of that living person ((upon the happening of a future event, notice may be given to that living person, and the living person shall virtually represent the surviving spouse or surviving domestic partner, distributees, heirs, issue, or other kindred of the person;~~

~~—(e)) or the distributees of the estate of that living person upon the happening of a future event, that living person may virtually represent the surviving spouse or surviving domestic partner, heirs, issue, or other kindred of the person, and the distributees of the estate of the person, but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.~~

~~(8) Except as otherwise provided in ((this)) subsection (7) of this section, where an interest ((in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney)) has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, ((notice may be given to)) the living person or persons who would take the interest upon the happening of the first event((and the living person or persons shall)) may virtually represent the persons and classes of persons who might take on the happening of the additional future event((; and~~

~~(d) The holder of a general power of appointment, exercisable either during the power holder's life or by will, or a limited power of appointment, exercisable either during the power holder's life or by will, that excludes as possible appointees only the power holder, his or her estate, his or her creditors, and the creditors of his or her estate, may accept notice and virtually represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power, to the extent there is no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute.~~

~~(4) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party)), but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.~~

~~((5)) (9) To the extent there is no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute, the holder of a lifetime or testamentary power of appointment may virtually represent and bind persons who are permissible appointees or takers in default (but only to the extent that they are permissible appointees in the case of a limited power of appointment) under the power, and who are not permissible distributees as defined in section 8 of this act.~~

~~(10) The attorney general may virtually represent and bind a charitable organization if:~~

~~(a) The charitable organization is not a qualified beneficiary as defined in section 8 of this act specified in the trust instrument or acting as trustee; or~~

~~(b) The charitable organization is a qualified beneficiary, but is not a permissible distributee, as those terms are defined in section 8 of this act, and its beneficial interest in the trust is subject to change by the trustor or by a person designated by the trustor.~~

~~(11) An action taken by the court is conclusive and binding~~

upon each person receiving actual or constructive notice or who is otherwise represented under this section.

(12) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and may not be construed as limiting the application of that common law doctrine.

Sec. 6. RCW 11.96A.125 and 2011 c 327 s 11 are each amended to read as follows:

The terms of a will or trust, even if unambiguous, may be reformed by judicial proceedings ~~((or binding nonjudicial procedure))~~ under this chapter to conform the terms to the intention of the testator or trustor if it is proved by clear, cogent, and convincing evidence ~~((or the parties to a binding nonjudicial agreement agree that there is clear, cogent, and convincing evidence.))~~ that both the intent of the testator or trustor and the terms of the will or trust were affected by a mistake of fact or law, whether in expression or inducement. This does not limit the ability to reform the will or trust using the binding nonjudicial procedures of RCW 11.96A.220.

Sec. 7. RCW 11.97.010 and 2011 c 327 s 12 are each amended to read as follows:

~~((4))~~ The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 6.32.250, 11.96A.190, 19.36.020, section 8 of this act, 11.98.200 through 11.98.240, section 16(1) of this act, 11.95.100 through 11.95.150, and chapter 11.103 RCW. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment ~~((or the duty to provide information to beneficiaries as required in this section)).~~ Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee ~~((shall))~~ must exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

~~((2) Within sixty days after the date of acceptance of the position of trustee of an irrevocable trust, or the date the trustee of a formerly revocable trust acquires knowledge that the trust has become irrevocable, whether by the death of the trustor or otherwise, the trustee shall give notice of: (a) The existence of the trust, (b) the identity of the trustor or trustors, (c) the trustee's name, address, and telephone number, and (d) the right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust, to all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust. If any such person is a minor and no guardian has been appointed for such person by any court, then such notice may be given to a parent of the person. If a person otherwise entitled to notice under this section is a charitable organization, and the charitable organization's only interest in the trust is a future interest that may be revoked, then such notice shall instead be given to the attorney general. A trustee who gives notice pursuant to this section satisfies the duty to inform the beneficiaries of the existence of the trust. The notice required under this subsection (2) applies only to irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011, provided that all common law~~

duties of a trustee to notify beneficiaries applicable to trusts created or that became irrevocable before such date are not affected.

~~— (3) A trustee shall keep all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A report that contains the following is presumed to satisfy the trustee's duty to keep such persons reasonably informed for the relevant period of trust administration:~~

~~— (a) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;~~

~~— (b) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;~~

~~— (c) The trustee's compensation for the period;~~

~~— (d) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;~~

~~— (e) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;~~

~~— (f) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;~~

~~— (g) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and~~

~~— (h) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.~~

~~— (4) Unless unreasonable under the circumstances, a trustee shall promptly respond to any beneficiary's request for information related to the administration of the trust.~~

~~— (5) If a person entitled to notice under this section requests information reasonably necessary to enable the notified person to enforce his or her rights under the trust, then the trustee must provide such information within sixty days of receipt of such request. Delivery of the entire trust instrument to the persons entitled to notice under this section who request information concerning the terms of the trust reasonably necessary to enable the notified person to enforce his or her rights under the trust is deemed to satisfy the trustee's obligations under this subsection.)~~

NEW SECTION. Sec. 8. A new section is added to chapter 11.98 RCW to be codified before RCW 11.98.005 to read as follows:

The definitions in this section apply throughout this chapter, and throughout this title where specifically referenced, unless the context clearly requires otherwise.

(1) "Permissible distributee" means a trust beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

(2) "Qualified beneficiary" means a trust beneficiary who, on the date that such beneficiary's qualification is determined:

(a) Is a permissible distributee;

(b) Would be a permissible distributee if the interests of the distributees described in (a) of this subsection terminated on that date; or

(c) Would be a permissible distributee if the trust terminated on that date.

Sec. 9. RCW 11.98.005 and 2011 c 327 s 22 are each amended to read as follows:

(1) If provisions of a trust instrument designate Washington as the situs of the trust or designate Washington law to govern the trust

or any of its terms, then the situs of the trust is Washington provided that one of the following conditions is met:

(a) A trustee has a place of business in or a trustee is a resident of Washington; or

(b) More than an insignificant part of the trust administration occurs in Washington; or

(c) The trustor resides in Washington at the time situs is being established, or resided in Washington at the time the trust became irrevocable; or

(d) One or more of the qualified beneficiaries resides in Washington; or

(e) An interest in real property located in Washington is an asset of the trust.

(2)(a) Unless the trust instrument designates a state other than Washington as the situs of the trust and does not expressly authorize transfer of situs, the trustee may register the trust as a Washington trust if any of the factors in subsection (1)(a) through (e) of this section are present. The trustee ~~((shall))~~ must register the trust by filing with the clerk of the court in any county where venue lies for the trust under RCW 11.96A.050, a statement including the following information:

(i) The name and address of the trustee;

(ii) The date of the trust, name of the trustor, and name of the trust, if any;

(iii) The factor or factors listed in subsection (1)(a) through (e) of this section that are present for the trust and which qualify the trust for registration.

(b) Within five days of filing the registration with the court, the trustee ~~((shall))~~ must mail a copy of the registration to each ~~((person who would be entitled to notice under RCW 11.97.010 and))~~ qualified beneficiary who has not waived notice of the registration, in writing, filed in the cause, together with a notice that must be in substantially the same form as set forth in this section. Persons receiving such notice ~~((shall))~~ have thirty days from the date of filing the registration to file a petition in the court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and to serve a copy of such petition upon the trustee or the trustee's lawyer. If a petition objecting to the registration is filed within thirty days of the date of filing the registration, the trustee must request the court to fix a time and place for the hearing of the petition and notify by mail, personal service or electronic transmission, if a valid consent to electronic transmission is in effect under the terms of RCW 11.96A.110, all ~~((persons who were entitled to notice of the registration))~~ qualified beneficiaries of the time and place of the hearing, not less than ten days before the hearing on the petition.

(c) Unless a person receiving notice of the registration files a petition with the court objecting to the registration within thirty days of the date of filing the registration, the registration ~~((shall))~~ will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington. After expiration of the thirty-day period following filing of the registration, the trustee may obtain a certificate of registration signed by the clerk, and issued under the seal of the court, which may be in the form specified in (d) of this subsection.

(d) Notice of registration and certificates of registration may be in the following form:

(i) Notice form:

NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A WASHINGTON TRUST

NOTICE IS GIVEN that the attached Registration of Trust was filed by the undersigned in the above-entitled court on the day of, 20. . .; unless you file a petition in the above-entitled court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and serve a

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copy thereof upon the trustee or the trustee's lawyer, within thirty days after the date of the filing, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington.

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 thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

(ii) Certificate of Registration:

State of Washington, County of

In the superior court of the county of

Whereas, the attached Registration of Trust was filed with this court on , the attached Notice of Filing Registration of Trust and Affidavit of Mailing Notice of Filing Registration of Trust were filed with this court on , and no objections to such Registration have been filed with this court, the trust known as , under trust agreement dated , between as Trustor and as Trustee, is hereby registered as a Washington trust.

Witness my hand and the seal of said court this . . . day of, 20

(3) If the instrument establishing a trust does not designate ~~((Washington as the situs or designate Washington))~~ any jurisdiction as the situs or designate any jurisdiction's governing law to apply to the trust, and the trustee of the trust has not registered the trust as allowed in subsection (2) of this section, the situs of the trust is Washington if ~~((the))~~ situs has not previously been established by any court proceeding and the additional conditions specified in this subsection (3) are met.

(a) For a testamentary trust, the situs of the trust is Washington if:

- (i) The will was admitted to probate in Washington; or
- (ii) The will has not been admitted to probate in Washington, but any trustee of the trust resides or has a place of business in Washington, any qualified beneficiary ~~((entitled to notice under RCW 11.97.010))~~ resides in Washington, or any real property that is an asset of the trust is located in Washington.

(b) For an inter vivos trust ~~((where the trustor is domiciled in Washington either when the trust becomes irrevocable or, in the case of a revocable trust, when judicial proceedings under chapter 11.96A RCW are commenced))~~, the situs of the trust is Washington if:

- (i) The trustor is living and Washington is the trustor's domicile or any of the trustees reside in or have a place of business in Washington; or
- (ii) The trustor is deceased ~~((situs has not previously been established by any court proceeding))~~; and
 - (A) The trustor's will was admitted to probate in Washington; or
 - (B) The trustor's will was not admitted to probate in Washington, but any ~~((person entitled to notice under RCW 11.97.010))~~ qualified beneficiary resides in Washington, any trustee resides or has a place of business in Washington, or any real property that is an asset of the trust is located in Washington.

(c) If the situs of the trust is not determined under (a) or (b) of this subsection, the determination regarding the situs of the trust is a matter for purposes of RCW 11.96A.030. Whether Washington is the situs ~~((shall))~~ must be determined by a court in a judicial proceeding conducted under RCW 11.96A.080 if:

- (i) A trustee has a place of business in or a trustee is a resident of Washington; or
- (ii) More than an insignificant part of the trust administration occurs in Washington; or

- (iii) One or more of the qualified beneficiaries resides in Washington; or
- (iv) An interest in real property located in Washington is an asset of the trust.

(d) Determination of situs under (c) of this subsection (3) cannot be made by nonjudicial agreement under RCW 11.96A.220.

NEW SECTION. Sec. 10. A new section is added to chapter 11.98 RCW to be codified between RCW 11.98.016 and 11.98.019 to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, a person designated as trustee accepts the trusteeship:

(a) By substantially complying with a method of acceptance provided in the terms of the trust; or

(b) If the terms of the trust do not provide a method of acceptance or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship by delivering a written declination of the trusteeship to the trustor or, if the trustor is deceased or is incapacitated, to a successor trustee, if any, and if none, to a qualified beneficiary.

(3) A person designated as trustee, without accepting the trusteeship, may:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a written declination of the trusteeship to the trustor or, if the trustor is dead or is incapacitated, to a successor trustee, if any, and if none, to a qualified beneficiary; and

(b) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

Sec. 11. RCW 11.98.019 and 1985 c 30 s 42 are each amended to read as follows:

Any trustee may, by written instrument delivered to any then acting co-trustee and to the ~~((current adult income beneficiaries))~~ permissible distributees of the trust, relinquish to any extent and upon any terms any or all of the trustee's powers, rights, authorities, or discretions that are or may be tax sensitive in that they cause or may cause adverse tax consequences to the trustee or the trust. Any trustee not relinquishing such a power, right, authority, or discretion and upon whom it is conferred continues to have full power to exercise it.

Sec. 12. RCW 11.98.039 and 2011 c 327 s 21 are each amended to read as follows:

(1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, ~~((shall))~~ must give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to each ~~((adult distributee or permissible distributee of trust income or of trust principal or of both trust income and trust principal. If there are no such adults, no notice need be given))~~ permissible distributee. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument ~~((shall be))~~ is entitled to act as trustee except for good cause or disqualification. The successor trustee ~~((shall serve))~~ is deemed to have accepted the trusteeship as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing

instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, then all parties with an interest in the trust may agree to a nonjudicial change of the trustee under RCW 11.96A.220. The successor trustee (~~shall serve~~) is deemed to have accepted the trusteeship as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) When there is a desire to name one or more cotrustees to serve with the existing trustee, then all parties with an interest in the trust may agree to the nonjudicial addition of one or more cotrustees under RCW 11.96A.220. The additional cotrustee (~~shall serve~~) is deemed to have accepted the trusteeship as of the effective date of the cotrustee's appointment.

(4) Unless subsection (1), (2), or (3) of this section applies, any beneficiary of a trust, the trustor, if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee or cotrustee under the procedures provided in RCW 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) for any other reasonable cause.

(5) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

(6) A change of trustee to a foreign trustee does not change the situs of the trust. Transfer of situs of a trust to another jurisdiction requires compliance with RCW 11.98.005 and RCW 11.98.045 through 11.98.055.

Sec. 13. RCW 11.98.041 and 1985 c 30 s 141 are each amended to read as follows:

Where a vacancy occurs in the office of trustee under the circumstances described in RCW 11.98.039 (1) or (2), the outgoing trustee (~~shall be~~) is discharged upon the agreement of all parties entitled to notice or upon the expiration of thirty days after notice is given of such vacancy as required by the applicable subsection of RCW 11.98.039, whichever occurs first, or if no notice is required under RCW 11.98.039(1), upon the date the vacancy occurs, unless before the effective date of such discharge a petition is filed under RCW 11.98.039(~~(3)~~) (4) regarding the appointment or change of a trustee of the trust. Where a petition is filed under RCW 11.98.039(~~(3)~~) (4) regarding the appointment or change of a trustee, the superior court having jurisdiction may discharge the trustee from the trust and may appoint a successor trustee upon such terms as the court may require.

Sec. 14. RCW 11.98.045 and 2011 c 327 s 23 are each amended to read as follows:

(1) If a trust is a Washington trust under RCW 11.98.005, a trustee may transfer the situs of the trust to a jurisdiction other than Washington if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the qualified beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust;

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust; and

(e) The trust meets at least one condition for situs listed in RCW 11.98.005(1) with respect to the new jurisdiction.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section or RCW 11.98.051 or 11.98.055 (~~shall~~) may not be construed to be doing a "trust business" as described in RCW 30.08.150(9).

Sec. 15. RCW 11.98.051 and 2011 c 327 s 24 are each amended to read as follows:

(1) The trustee may transfer trust situs (a) in accordance with RCW 11.96A.220; or (b) by giving written notice to (~~those persons entitled to notice as provided for under RCW 11.96A.110 and to~~) the attorney general in the case of a charitable trust subject to chapter 11.110 RCW and to the qualified beneficiaries not less than sixty days before initiating the transfer. The notice must:

(a) State the name and mailing address of the trustee;

(b) Include a copy of the governing instrument of the trust;

(c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;

(d) State the name and mailing address of the trustee to whom the trust will be transferred together with evidence that the trustee has agreed to accept the trust in the manner provided by law of the new situs. The notice must also contain a statement of the trustee's qualifications and the name of the court, if any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;

(e) State the facts supporting the requirements of RCW 11.98.045(2);

(f) Advise the (~~beneficiaries~~) recipients of the notice of the date, not less than sixty days after the giving of the notice, by which (~~the beneficiary~~) such recipients must notify the trustee of an objection to the proposed transfer; and

(g) Include a form on which the recipient may (~~indicate consent or objection~~) object to the proposed transfer.

(2) If the date upon which the (~~beneficiaries~~) right to object to the transfer expires without receipt by the trustee of any objection, the trustee may transfer the trust situs as provided in the notice. If the trust was registered under RCW 11.98.045(2), the trustee must file a notice of transfer of situs and termination of registration with the court of the county where the trust was registered.

(3) The authority of a trustee under this section to transfer a trust's situs terminates if a (~~beneficiary~~) recipient of the notice notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(4) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039.

NEW SECTION. Sec. 16. A new section is added to chapter 11.98 RCW between RCW 11.98.070 and 11.98.080 to read as follows:

(1) A trustee must keep all qualified beneficiaries of a trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee must promptly respond to any beneficiary's request for information related to the

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administration of the trust. The trustee is deemed to have satisfied the request of a qualified beneficiary who requests information concerning the terms of the trust reasonably necessary to enable such beneficiary to enforce his or her rights under the trust if the trustee provides a copy of the entire trust instrument. If a qualified beneficiary must compel production of information from the trustee by order of the court, then the court may order costs, including reasonable attorneys' fees, to be awarded to such beneficiary pursuant to RCW 11.96A.150.

(2)(a) Except to the extent waived or modified as provided in subsection (5) of this section, within sixty days after the date of acceptance of the position of trustee, the trustee must give notice to the qualified beneficiaries of the trust of:

- (i) The existence of the trust;
- (ii) The identity of the trustor or trustors;
- (iii) The trustee's name, address, and telephone number; and
- (iv) The right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust.

(b) The notice required under this subsection (2) applies only to irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011.

(3) Despite any other provision of this section, and except to the extent waived or modified as provided in subsection (5) of this section, the trustee may not be required to provide any information described in subsection (1) or (2) of this section to any beneficiary of a trust other than the trustor's spouse or domestic partner if:

- (a) Such spouse or domestic partner has capacity;
- (b) Such spouse or domestic partner is the only permissible distributee of the trust; and
- (c) All of the other qualified beneficiaries of the trust are the descendants of the trustor and the trustor's spouse or domestic partner.

(4) While the trustor of a revocable trust is living, no beneficiary other than the trustor is entitled to receive any information under this section.

(5) The trustor may waive or modify the notification requirements of subsections (2) and (3) of this section in the trust document or in a separate writing, made at any time, that is delivered to the trustee.

Sec. 17. RCW 11.98.080 and 1999 c 42 s 621 are each amended to read as follows:

(1)(a) Two or more trusts may be consolidated if:

- ~~((a))~~ (i) The trusts so provide; or
- ~~((b))~~ (ii) Whether provided in the trusts or not, ~~(in accordance with subsection (2) of this section, if all interested persons consent as provided in subsection (2)(b) of this section and the requirements of subsection (1)(d) of this section are satisfied; or~~

~~(c) Whether provided in the trusts or not, in accordance with subsection (3) of this section if the requirements of subsection (1)(d) of this section are satisfied;~~

~~(d)) the requirements of subsection (2), (3), or (4) of this section are satisfied.~~

~~(b) Consolidation under subsection (2) ((a)), (3), or (4) of this section is permitted only if:~~

- (i) The dispositive provisions of each trust to be consolidated are substantially similar;
- (ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and
- (iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries(~~(c) —(e))~~.)

~~(c) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different~~

trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

~~(2) ((The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96A.220.))~~

~~(a) ((The trustee shall give written notice of proposed consolidation by personal service or by certified mail to the))~~ A trustee must deliver sixty days in advance written notice of a proposed consolidation in the manner provided in RCW 11.96A.110 to the qualified beneficiaries of every trust affected by the consolidation ((as provided in RCW 11.96A.110)) and to any trustee of such trusts who does not join in the notice. The notice ((shall)) must: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)((~~(a)~~)) (b) of this section. The notice ((shall)) must advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection ((~~(3)~~)) (4) of this section((. The notice shall include a form on which consent or objection to the proposed consolidation may be indicated.

~~(b) If the trustee receives written consent to the proposed consolidation from all persons entitled to notice as provided in RCW 11.96A.110 or from their representatives, the trustee may consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.~~

~~(3)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the principal place of administration of a trust is located for an order consolidating two or more trusts under RCW 11.96A.080 through 11.96A.200. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business), and must indicate that the recipient has thirty days to object to the proposed consolidation.~~

(b) If the trustee receives written objection to the proposed consolidation from any trustee or beneficiary entitled to notice or from their representatives within the objection period provided in subsection (a) of this section, the trustee(s) may not consolidate the trusts as provided in the notice, though an objection does not preclude the trustee or a beneficiary's right to petition for a judicial determination of the proposed consolidation as provided in subsection (4) of this section. If the trustee does not receive any objection within the objection period provided above, then the trustee may consolidate the trusts, and such will be deemed the equivalent of an order entered by the court declaring that the trusts were combined in the manner provided in the initial notice.

(3) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96A.220.

(4)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the situs of a trust is located for an order consolidating two or more trusts under RCW 11.96A.080 through 11.96A.200.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection (1)((~~(a)~~)) (b) of this section have been satisfied, it may direct consolidation of two or more trusts on such terms and conditions as appropriate. The court in its discretion may

provide for payment from one or more of the trusts of reasonable fees and expenses for any party to the proceeding.

~~((4))~~ (5) This section applies to all trusts whenever created. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

~~((5))~~ (6) For powers of fiduciaries to divide trusts, see RCW 11.108.025.

NEW SECTION. Sec. 18. RCW 11.98.090 (Nonliability of third persons without knowledge of breach) and 1985 c 30 s 52 are each repealed.

Sec. 19. RCW 11.103.040 and 2011 c 327 s 37 are each amended to read as follows:

While ~~((a trust is revocable by the trustor,))~~ the trustor of a revocable trust is living, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the trustor. If a revocable trust has more than one trustor, the duties of the trustee are owed to all of the living trustors having the right to revoke the trust.

Sec. 20. RCW 11.103.050 and 2011 c 327 s 38 are each amended to read as follows:

(1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the trustor's death within the earlier of:

(a) Twenty-four months after the trustor's death; or

(b) Four months after the trustee sent to the person by personal service, mail, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, a notice ~~((with the information required in RCW 11.97.010, and))~~ including:

(i) The name and date of the trust;

(ii) The identity of the trustor or trustors;

(iii) The trustee's name, address, and telephone number; and

(iv) Notice of the time allowed for commencing a proceeding.

(2) Upon the death of the trustor of a trust that was revocable at the trustor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust, unless:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

Sec. 21. RCW 11.96A.250 and 2001 c 14 s 3 are each amended to read as follows:

(1)(a) ~~((The personal representative or trustee may petition the court having jurisdiction over the matter for the appointment of a special representative to represent a person who is interested in the estate or trust and))~~ Any party or the parent of a minor or unborn party may petition the court for the appointment of a special representative to represent a party: (i) Who is a minor; (ii) who is ~~((incompetent or disabled))~~ incapacitated without an appointed guardian of his or her estate; (iii) who is yet unborn or unascertained; or (iv) whose identity or address is unknown. The petition may be heard by the court without notice.

(b) In appointing the special representative the court shall give due consideration and deference to any nomination(s) made in the petition, the special skills required in the representation, and the need for a representative who will act independently and prudently. The nomination of a person as special representative by the ~~((personal representative or trustee))~~ petitioner and the person's willingness to serve as special representative are not grounds by themselves for finding a lack of independence, however, the court

may consider any interests that the nominating ~~((fiduciary))~~ party may have in the estate or trust in making the determination.

(c) The special representative may enter into a binding agreement on behalf of the person or beneficiary. The special representative may be appointed for more than one person or class of persons if the interests of such persons or class are not in conflict. The petition ~~((shall))~~ must be verified. The petition and order appointing the special representative may be in the following form:

CAPTION

PETITION FOR APPOINTMENT OF CASE OF SPECIAL REPRESENTATIVE

UNDER

RCW 11.96A.250

The undersigned petitioner petitions the court for the appointment of a special representative in accordance with RCW 11.96A.250 and shows the court as follows:

1. Petitioner. Petitioner . . . [is the qualified and presently acting (personal representative) (trustee) of the above (estate) (trust) having been named (personal representative) (trustee) under (describe will and reference probate order or describe trust instrument)] or [is the (describe relationship of the petitioner to the party to be represented or to the matter at issue).]

2. ~~((Issue Concerning (Estate) (Trust) Administration))~~ Matter. A question concerning ~~((administration of the (estate) (trust)))~~ . . . has arisen as to (describe issue, for example: Related to interpretation, construction, administration, distribution). The ~~((issues are appropriate for determination under RCW 11.96A.250.~~

~~— 3. Beneficiaries. The beneficiaries of the (estate) (trust) include persons who are unborn, unknown, or unascertained persons, or who are under eighteen years of age))~~ issue is a matter as defined in RCW 11.96A.030 and is appropriate for determination under RCW 11.96A.210 through 11.96A.250.

~~— 3. Party/Parties to be Represented. This matter involves (include description of asset(s) and related beneficiaries and/or interested parties). Resolution of this matter will require the involvement of (name of person or class of persons), who is/are (minors), (incapacitated and without an appointed guardian), (unborn or unascertained) (whose identity or address is unknown).~~

4. Special Representative. The nominated special representative . . . is a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The nominated special representative does not have an interest in the ~~((affected estate or trust))~~ matter and is not related to any person interested in the ~~((estate or trust))~~ matter. The nominated special representative is willing to serve. The petitioner has no reason to believe that the nominated special representative will not act in an independent and prudent manner and in the best interests of the represented parties. (It is recommended that the petitioner also include information specifying the particular skills of the nominated special representative that relate to the matter in issue.)

5. Resolution. Petitioner desires to achieve a resolution of the questions that have arisen ~~((concerning the (estate) (trust)))~~ in this matter. Petitioner believes that proceeding in accordance with the procedures permitted under RCW 11.96A.210 through 11.96A.250 would be in the best interests of the ~~((estate) (trust) and the beneficiaries))~~ parties, including the party requiring a special representative.

6. Request of Court. Petitioner requests that . . . ~~((?))~~ . . . an attorney licensed to practice in the State of Washington ~~((?))~~.

(OR)

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... an individual with special skill or training in the administration of estates or trusts

be appointed special representative for ~~((those beneficiaries who are not yet adults, as well as for the unborn, unknown, and unascertained beneficiaries))~~ ... (describe party or parties being represented), who is/are (minors), (incapacitated and without an appointed guardian), (unborn or unascertained) (whose identity or address is unknown), as provided under RCW 11.96A.250.

DATED this ... day of,

..... (Petitioner
(~~or petitioner's~~ legal
representative))

VERIFICATION

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED, ~~((2000))~~ 20.., at, Washington.

..... (Petitioner or
other person
having
knowledge)

CAPTION

ORDER FOR APPOINTMENT
OF CASE
OF SPECIAL REPRESENTATIVE

THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the ~~((estate trust))~~ parties related to the matter described in the Petition to appoint a special representative to address the issues that have arisen ~~((concerning the (estate) (trust)))~~ in the matter and the Court finding that the facts stated in the Petition are true, now, therefore,

IT IS ORDERED that ... is appointed under RCW 11.96A.250 as special representative ~~((for the (estate) (trust) beneficiaries who are not yet adult age, and for unborn, unknown, or unascertained beneficiaries to represent their respective interests in the (estate) (trust))~~ (describe party or parties being represented) who is/are (minors), (incapacitated and without an appointed guardian), (unborn or unascertained) (whose identity or address is unknown), to represent their respective interests in the matter as provided in RCW 11.96A.250. The special representative shall be discharged of responsibility with respect to the matter as provided in RCW 11.96A.250. The special representative ~~((shall be))~~ is discharged of responsibility with respect to the ~~((estate) (trust))~~ matter at such time as a written agreement is executed resolving the present issues, all as provided in that statute, or if an agreement is not reached within six months from entry of this Order, the special representative appointed under this Order ~~((shall be))~~ is discharged of responsibility, subject to subsequent reappointment under RCW 11.96A.250.

DONE IN OPEN COURT this ... day of,

JUDGE/COURT COMMISSIONER

(2) Upon appointment by the court, the special representative ~~((shall))~~ must file a certification made under penalty of perjury in accordance with RCW 9A.72.085 that he or she (a) is not interested in the ~~((estate or trust))~~ matter; (b) is not related to any person interested in the ~~((estate or trust))~~ matter; (c) is willing to serve; and (d) will act independently, prudently, and in the best interests of the represented parties.

(3) The special representative must be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative may not have an interest in the ~~((affected estate or trust))~~ matter, and may not be related to a person interested in the ~~((estate or trust))~~ matter. The special representative is entitled to reasonable compensation for services that must be paid from the principal of ~~((the estate or trust whose beneficiaries are represented))~~ an asset involved in the matter.

(4) The special representative ~~((shall be))~~ is discharged from any responsibility and ~~((shall))~~ will have no further duties with respect to the ~~((estate or trust))~~ matter or with respect to any ~~((person interested in the estate or trust))~~ party, on the earlier of: (a) The expiration of six months from the date the special representative was appointed unless the order appointing the special representative provides otherwise, or (b) the execution of the written agreement by all parties or their virtual representatives. Any action against a special representative must be brought within the time limits provided by RCW 11.96A.070(3)(c)(i).

Sec. 22. RCW 11.98.015 and 2011 c 327 s 20 are each amended to read as follows:

Except as otherwise provided in chapter 11.118 RCW or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for longer than the time period specified in RCW 11.98.130 as the period during which a trust cannot be deemed to violate the rule against perpetuities;

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. Such person is considered to be a permissible distributee of the trust; and

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the trustor, if then living, otherwise to the trustor's successors in interest. Successors in interest include the beneficiaries under the trustor's will, if the trustor has a will, or, in the absence of an effective will provision, the trustor's heirs.

Sec. 23. RCW 11.98.078 and 2011 c 327 s 32 are each amended to read as follows:

(1) A trustee ~~((shall))~~ must administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in RCW ~~((11.98.090))~~ 11.98.105, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (a) The transaction was authorized by the terms of the trust;
 - (b) The transaction was approved by the court or approved in a nonjudicial binding agreement in compliance with RCW 11.96A.210 through 11.96A.250;
 - (c) The beneficiary did not commence a judicial proceeding within the time allowed by RCW 11.96A.070;
 - (d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with RCW 11.98.108; or
 - (e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.
- (3)(a) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be "otherwise affected" by a conflict between fiduciary and personal interests under this section if it is entered into by the trustee with:
- (i) The trustee's spouse or registered domestic partner;
 - (ii) The trustee's descendants, siblings, parents, or their spouses or registered domestic partners;
 - (iii) An agent or attorney of the trustee; or
 - (iv) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.
- (b) The presumption is rebutted if the trustee establishes that the conflict did not adversely affect the interests of the beneficiaries.
- (4) A sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account that is voidable under subsection (2) of this section may be voided by a beneficiary without further proof.
- (5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 11.100 RCW. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the ~~((persons entitled under RCW 11.106.020 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined))~~ permissible distributees of the rate and method by which that compensation was determined. The obligation of the trustee to provide the notice described in this section may be waived or modified by the trustor in the trust document or in a separate writing, made at any time, that is delivered to the trustee.
- (6) The following transactions, if fair to the beneficiaries, cannot be voided under this section:
- (a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
 - (b) Payment of reasonable compensation to the trustee and any affiliate providing services to the trust, provided total compensation is reasonable;
 - (c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;
 - (d) A deposit of trust money in a regulated financial-service institution operated by the trustee or its affiliate;
 - (e) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or
 - (f) Any loan from the trustee or its affiliate.

(7) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

(8) If a trust has two or more beneficiaries, the trustee ~~((shall))~~ must act impartially in administering the trust and distributing the trust property, giving due regard to the beneficiaries' respective interests.

Sec. 24. RCW 11.103.030 and 2011 c 327 s 36 are each amended to read as follows:

(1) Unless the terms of a trust expressly provide that the trust is revocable, the trustor may not revoke or amend the trust.

(2) If a revocable trust is created or funded by more than one trustor and unless the trust agreement provides otherwise:

(a) To the extent the trust consists of community property, the trust may be revoked by either spouse or either domestic partner acting alone but may be amended only by joint action of both spouses or both domestic partners;

(b) To the extent the trust consists of property other than community property, each trustor may revoke or amend the trust with regard to the portion of the trust property attributable to that trustor's contribution;

(c) The character of community property or separate property is unaffected by its transfer to and from a revocable trust; and

(d) Upon the revocation or amendment of the trust by fewer than all of the trustors, the trustee ~~((shall))~~ must promptly notify the other trustors of the revocation or amendment.

(3) The trustor may revoke or amend a revocable trust:

(a) By substantial compliance with a method provided in the terms of the trust; or

(b)(i) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) A written instrument signed by the trustor evidencing intent to revoke or amend.

(ii) The requirements of chapter 11.11 RCW do not apply to revocation or amendment of a revocable trust under (b)(i) of this subsection.

(4) Upon revocation of a revocable trust, the trustee ~~((shall))~~ must deliver the trust property as the trustor directs.

(5) A trustor's powers with respect to ~~((revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the power))~~ the revocation or amendment of a trust or distribution of the property of a trust, may be exercised by the trustor's agent under a power of attorney only to the extent specified in the power of attorney document, as provided in RCW 11.94.050(1) and to the extent consistent with or expressly authorized by the trust agreement.

(6) A guardian of the trustor may exercise a trustor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship pursuant to RCW 11.92.140.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the trustor or trustor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

(8) This section does not limit or affect operation of RCW 11.96A.220 through 11.96A.240.

Sec. 25. RCW 11.106.010 and 1985 c 30 s 95 are each amended to read as follows:

This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of

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mortgages or pledges (~~(trusts created by judgment or decree of a federal court or of the superior court when not sitting in probate)~~), liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor does this chapter apply to personal representatives.

Sec. 26. RCW 11.106.020 and 1985 c 30 s 96 are each amended to read as follows:

The trustee or trustees appointed by any will, deed, or agreement executed (~~(shall)~~ must mail or deliver at least annually to each (~~(adult income trust beneficiary)~~) permissible distributee, as defined in section 8 of this act, a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary (~~(shall)~~ must furnish the beneficiary an itemized statement of all property then held by that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides.

Sec. 27. RCW 11.118.050 and 2001 c 327 s 6 are each amended to read as follows:

The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument, by the person having custody of an animal that is a beneficiary of the trust, or by a person appointed by a court upon application to it by any person. Such person is considered to be a permissible distributee, as defined in section 8 of this act, of the trust. A person with an interest in the welfare of the animal may petition for an order appointing or removing a person designated or appointed to enforce the trust.

NEW SECTION. Sec. 28. Except as otherwise provided in this act:

- (1) This act applies to all trusts created before, on, or after January 1, 2013;
- (2) This act applies to all judicial proceedings concerning trusts commenced on or after January 1, 2013;
- (3) An action taken before January 1, 2013, is not affected by this act; and
- (4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2013, that statute continues to apply to the right even if it has been repealed or superseded."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Mullet moved that the Senate concur in the House amendment(s) to Senate Bill No. 5344.

The President declared the question before the Senate to be the motion by Senator Mullet that the Senate concur in the House amendment(s) to Senate Bill No. 5344.

The motion by Senator Mullet carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5344 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5344, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5344, as amended by the House, and the bill passed the

Senate by the following vote: Yeas, 45; Nays, 3; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Voting nay: Senators Baumgartner, Ericksen and Holmquist Newbry

Excused: Senator Carrell

SENATE BILL NO. 5344, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 17, 2013

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5437 with the following amendment(s): 5437-S AMH APPG H2348.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 79A.60.040 and 1998 c 213 s 7 are each amended to read as follows:

- (1) It (~~(shall be)~~) is unlawful for any person to operate a vessel in a reckless manner.
- (2) It (~~(shall be a violation)~~) is unlawful for a person to operate a vessel while under the influence of intoxicating liquor, marijuana, or any drug. A person is considered to be under the influence of intoxicating liquor, marijuana, or any drug if, within two hours of operating a vessel:
 - (a) The person has an alcohol concentration of 0.08 (~~(grams)~~) or (~~(more of alcohol per two hundred ten liters of breath)~~) higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or
 - (b) The person has (~~(0.08 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's blood made under RCW 46.61.506)~~) a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or
 - (c) The person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or
 - (d) The person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

(3) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. (~~(A person cited under this subsection may upon request be given a breath test for breath alcohol or may request to have a blood sample taken for blood alcohol analysis. An arresting officer shall administer field sobriety tests when circumstances permit.~~

~~(3))~~ (4) Any person who operates a vessel within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of the person's breath or blood for the purpose of determining the alcohol concentration, THC concentration, or presence of any drug in the person's breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person was operating a vessel while under the influence of intoxicating liquor, marijuana, or any drug. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood. An arresting officer may administer field sobriety tests

when circumstances permit.

(5) The test or tests of breath must be administered pursuant to RCW 46.20.308. Where the officer has reasonable grounds to believe that the person is under the influence of a drug, or where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample, or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility, a blood test must be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall warn the person that if the person refuses to take the test, the person will be issued a class 1 civil infraction under RCW 7.80.120.

(6) A violation of subsection (1) of this section is a misdemeanor (~~punishable as provided under RCW 9.92.030~~). A violation of subsection (2) of this section is a gross misdemeanor. In addition to the statutory penalties imposed, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.

NEW SECTION. Sec. 2. A new section is added to chapter 79A.60 RCW to read as follows:

(1) The refusal of a person to submit to a test of the alcohol concentration, THC concentration, or presence of any drug in the person's blood or breath is not admissible into evidence at a subsequent criminal trial.

(2) A person's refusal to submit to a test or tests pursuant to RCW 79A.60.040 constitutes a class 1 civil infraction under RCW 7.80.120.

Sec. 3. RCW 7.80.120 and 2003 c 365 s 3 and 2003 c 337 s 4 are each reenacted and amended to read as follows:

(1) A person found to have committed a civil infraction shall be assessed a monetary penalty.

(a) The maximum penalty and the default amount for a class 1 civil infraction shall be two hundred fifty dollars, not including statutory assessments, except for an infraction of state law involving (i) potentially dangerous litter as specified in RCW 70.93.060(4) (~~and an infraction of state law involving~~) or violent video or computer games under RCW 9.91.180, in which case the maximum penalty and default amount is five hundred dollars; or (ii) a person's refusal to submit to a test or tests pursuant to RCW 79A.60.040 and section 2 of this act, in which case the maximum penalty and default amount is one thousand dollars;

(b) The maximum penalty and the default amount for a class 2 civil infraction shall be one hundred twenty-five dollars, not including statutory assessments;

(c) The maximum penalty and the default amount for a class 3 civil infraction shall be fifty dollars, not including statutory assessments; and

(d) The maximum penalty and the default amount for a class 4 civil infraction shall be twenty-five dollars, not including statutory assessments.

(2) The supreme court shall prescribe by rule the conditions under which local courts may exercise discretion in assessing fines for civil infractions.

(3) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting authority of the failure to pay.

(4) The court may also order a person found to have committed a civil infraction to make restitution.

Sec. 4. RCW 10.31.100 and 2010 c 274 s 201 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to

arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through ~~((4))~~ (11) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

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(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5)(a) A law enforcement officer investigating at the scene of a motor vessel accident may arrest the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a criminal violation of chapter 79A.60 RCW.

(b) A law enforcement officer investigating at the scene of a motor vessel accident may issue a citation for an infraction to the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a violation of any boating safety law of chapter 79A.60 RCW.

(6) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

~~((6))~~ (7) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

~~((7))~~ (8) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

~~((8))~~ (9) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

~~((9))~~ (10) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

~~((10))~~ (11) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

~~((11))~~ (12) Except as specifically provided in subsections (2), (3), (4), and ~~((6))~~ (7) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

~~((12))~~ (13) No police officer may be held criminally or civilly liable for making an arrest pursuant to subsection (2) or ~~((8))~~ (9) of this section if the police officer acts in good faith and without malice.

NEW SECTION. Sec. 5. A new section is added to chapter 79A.60 RCW to read as follows:

(1) No person who has vessels for hire, or the agent or employee thereof, shall rent, lease, charter, or otherwise permit the use of a vessel, unless the person:

(a) Displays the vessel registration numbers and a valid decal on the vessel hull as required by RCW 88.02.550(1);

(b) Keeps a copy of the vessel registration certificate aboard the vessel, in compliance with RCW 88.02.340;

(c) Displays a carbon monoxide decal on the vessel as required by RCW 88.02.390(2) if the vessel is motor-driven and is not a personal watercraft;

(d) Provides a copy of the rental agreement to be kept aboard during the rental, lease, charter, or use period for vessels required under chapter 88.02 RCW to be registered;

(e) Ensures that the vessel, if motor-propelled, meets the muffler or underwater exhaust system requirement in RCW 79A.60.130;

(f) Outfits the vessel with the quantity and type of personal flotation devices required by RCW 79A.60.140 and 79A.60.160 for the number and ages of the people who will use the vessel;

(g) Explains the personal flotation device requirements to the person renting, leasing, chartering, or otherwise using the vessel;

(h) Equips the vessel with a skier-down flag, and explains observer and personal flotation requirements of RCW 79A.60.170, if the persons renting, leasing, chartering, or otherwise using the vessel will be waterskiing;

(i) If the vessel is a personal watercraft, provides a personal flotation device and a lanyard attached to an engine cutoff switch for the operator to wear at all times when operating the personal watercraft, as required by RCW 79A.60.190;

(j) Reviews with the person operating the vessel, and all other persons who the operator may permit to operate the vessel, all the information contained in the motor vessel safety operating and equipment checklist prescribed by the Washington state parks and recreation commission and required under RCW 79A.60.640(6); and

(k) Provides all other safety equipment required by RCW 79A.60.110 and referenced in the motor vessel safety operating and equipment checklist prescribed by the Washington state parks and recreation commission and required under RCW 79A.60.640(6).

(2) This section does not apply to fishing guides and charter boat operators who have a United States coast guard operator's license and are operating on navigable waters, and people who act in the capacity of a paid whitewater river outfitter or guide, or who operate a vessel carrying passengers for hire on whitewater rivers in this state.

(3) As provided in RCW 79A.60.020, a violation of this section is a civil infraction punishable under chapter 7.84 RCW, unless:

(a) The violation is a violation of RCW 88.02.550, which is punished as a class 2 civil infraction; or

(b) The current violation is the person's third violation of the same provision of this chapter during the past three hundred sixty-five days. If it is the person's third violation, then it must be punished as a misdemeanor under RCW 9.92.030.

Sec. 6. RCW 79A.60.150 and 1993 c 244 s 13 are each amended to read as follows:

If ~~((an infraction is issued under this chapter because a vessel does not contain the required equipment and if the operator is not the owner of the vessel, but is operating the vessel with the express or implied permission of the owner, then either or both operator or owner may be cited for the infraction)) a vessel does not contain the safety equipment required under this chapter and the rules of the commission, and the operator is not the owner of the vessel but is operating the vessel with the express or implied permission of the owner, then either the owner or the operator, or both, may be cited for the applicable infraction or charged with the applicable crime.~~

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Padden moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5437.

Senator Padden spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Padden that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5437.

The motion by Senator Padden carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5437 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5437, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5437, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 2; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Voting nay: Senators Holmquist Newbry and Roach

Excused: Senator Carrell

SUBSTITUTE SENATE BILL NO. 5437, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

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

SECOND READING

SENATE BILL NO. 5905, by Senators Hill and Hargrove

Establishing state employee eligibility for insurance benefits consistent with the employer shared responsibility provisions of the patient protection and affordable care act.

MOTION

On motion of Senator Hill, Substitute Senate Bill No. 5905 was substituted for Senate Bill No. 5905 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Hargrove moved that the following amendment by Senators Hargrove and Hill be adopted:

Beginning on page 3, line 24, strike all of section 3 and insert the following:

"Sec. 3. RCW 41.05.065 and 2011 1st sp.s. c 8 s 1 are each amended to read as follows:

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits; and

(f) Minimum standards for insuring entities.

(3) To maintain the comprehensive nature of employee health care benefits, benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan in effect on January 1, 1993. Nothing in this subsection shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits or the administration of a high deductible health plan in conjunction with a health savings account. ~~((The board may establish employee eligibility criteria which are not substantially equivalent to employee eligibility criteria in effect on January 1, 1993.))~~

(4) The eligibility provisions of this subsection have effect through December 31, 2013. Except if bargained for under chapter 41.80 RCW, the board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria subject to the requirements of this chapter. Employer groups obtaining benefits through contractual agreement with the authority for employees defined in RCW 41.05.011(6) (a) through (d) may contractually agree with the authority to benefits eligibility criteria which differs from that determined by the board. The eligibility criteria established by the board shall be no more restrictive than the following:

(a) Except as provided in (b) through (e) of this subsection, an employee is eligible for benefits from the date of employment if the employing agency anticipates he or she will work an average of at least eighty hours per month and for at least eight hours in each month for more than six consecutive months. An employee determined ineligible for benefits at the beginning of his or her employment shall become eligible in the following circumstances:

(i) An employee who works an average of at least eighty hours per month and for at least eight hours in each month and whose anticipated duration of employment is revised from less than or equal to six consecutive months to more than six consecutive months becomes eligible when the revision is made.

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(ii) An employee who works an average of at least eighty hours per month over a period of six consecutive months and for at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period.

(b) A seasonal employee is eligible for benefits from the date of employment if the employing agency anticipates that he or she will work an average of at least eighty hours per month and for at least eight hours in each month of the season. A seasonal employee determined ineligible at the beginning of his or her employment who works an average of at least half-time, as defined by the board, per month over a period of six consecutive months and at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period. A benefits-eligible seasonal employee who works a season of less than nine months shall not be eligible for the employer contribution during the off season, but may continue enrollment in benefits during the off season by self-paying for the benefits. A benefits-eligible seasonal employee who works a season of nine months or more is eligible for the employer contribution through the off season following each season worked.

(c) Faculty are eligible as follows:

(i) Faculty who the employing agency anticipates will work half-time or more for the entire instructional year or equivalent nine-month period are eligible for benefits from the date of employment. Eligibility shall continue until the beginning of the first full month of the next instructional year, unless the employment relationship is terminated, in which case eligibility shall cease the first month following the notice of termination or the effective date of the termination, whichever is later.

(ii) Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period are eligible for benefits at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Such an employee shall continue to receive uninterrupted employer contributions for benefits if the employee works at least half-time in a quarter or semester. Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period, but who actually work half-time or more throughout the entire instructional year, are eligible for summer or off-quarter coverage. Faculty who have met the criteria of this subsection (4)(c)(ii), who work at least two quarters of the academic year with an average academic year workload of half-time or more for three quarters of the academic year, and who have worked an average of half-time or more in each of the two preceding academic years shall continue to receive uninterrupted employer contributions for benefits if he or she works at least half-time in a quarter or semester or works two quarters of the academic year with an average academic workload each academic year of half-time or more for three quarters. Eligibility under this section ceases immediately if this criteria is not met.

(iii) Faculty may establish or maintain eligibility for benefits by working for more than one institution of higher education. When faculty work for more than one institution of higher education, those institutions shall prorate the employer contribution costs, or if eligibility is reached through one institution, that institution will pay the full employer contribution. Faculty working for more than one institution must alert his or her employers to his or her potential eligibility in order to establish eligibility.

(iv) The employing agency must provide written notice to faculty who are potentially eligible for benefits under this subsection (4)(c) of their potential eligibility.

(v) To be eligible for maintenance of benefits through averaging under (c)(ii) of this subsection, faculty must provide written

notification to his or her employing agency or agencies of his or her potential eligibility.

(d) A legislator is eligible for benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible for benefits on the date his or her term begins or they take the oath of office, whichever occurs first.

(e) A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for benefits on the date he or she takes the oath of office.

(f) Except as provided in (c)(i) and (ii) of this subsection, eligibility ceases for any employee the first of the month following termination of the employment relationship.

(g) In determining eligibility under this section, the employing agency may disregard training hours, standby hours, or temporary changes in work hours as determined by the authority under this section.

(h) Insurance coverage for all eligible employees begins on the first day of the month following the date when eligibility for benefits is established. If the date eligibility is established is the first working day of a month, insurance coverage begins on that date.

(i) Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in (a) through (e) of this subsection shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

(j) Except for an employee eligible for benefits under (b) or (c)(ii) of this subsection, an employee who has established eligibility for benefits under this section shall remain eligible for benefits each month in which he or she is in pay status for eight or more hours, if (i) he or she remains in a benefits-eligible position and (ii) leave from the benefits-eligible position is approved by the employing agency. A benefits-eligible seasonal employee is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. Eligibility ends if these conditions are not met, the employment relationship is terminated, or the employee voluntarily transfers to a noneligible position.

(k) For the purposes of this subsection:

(i) "Academic year" means summer, fall, winter, and spring quarters or semesters;

(ii) "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees shall have the same meaning as "part-time" under RCW 28B.50.489;

(iii) "Benefits-eligible position" shall be defined by the board.

(5) Beginning January 1, 2014, eligibility for health care benefits is as provided under this subsection. Except if bargained for under chapter 41.80 RCW, the board must design benefits and determine the terms and conditions of employee and retired employee participation and coverage. The terms and conditions must be consistent with the provisions of this subsection. Employer groups obtaining benefits through contractual agreement with the authority for employees defined in RCW 41.05.011(6) (a), (b), (c), and (d) may contractually agree with the authority to benefits eligibility criteria which differs from the criteria contained in this section. The eligibility criteria for health care benefits is:

(a) Each employee who is a full-time employee as defined by section 1513 of the patient protection and affordable care act and related regulations, as administered by the authority, is eligible for benefits. Except if bargained for pursuant to (a)(i) of this subsection, or if authorized by the office of financial management pursuant to (a)(ii) of this subsection, employees who are not full-time employees as defined by section 1513 of the patient protection and affordable care act and related regulations, as

administered by the authority, are not eligible for benefits.

(i) The employer and exclusive bargaining representative, pursuant to chapter 41.80 RCW, may bargain part-time employee eligibility criteria that does not exceed the criteria under subsection (4) of this section for up to ten percent of the half-time or greater part-time positions covered under a collective bargaining agreement.

(ii) The office of financial management may approve part-time employee eligibility criteria that does not exceed the criteria under subsection (4) of this section for up to ten percent of the half-time or greater part-time state positions not covered under any collective bargaining agreement.

(b) A legislator is eligible for benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible for benefits on the date their term begins or they take the oath of office, whichever occurs first.

(c) Justices of the supreme court and judges of the court of appeals and the superior courts become eligible for benefits on the date they take the oath of office.

(d) Except as provided by section 1513 of the patient protection and affordable care act and related regulations, as administered by the authority, eligibility ceases for any employee the first day of the month following termination of the employment relationship.

(e) Insurance coverage for all eligible employees begins on the first day of the month following the date when eligibility for benefits is established. If the date eligibility is established is the first working day of a month, insurance coverage begins on that date.

(f) From funding provided in the omnibus appropriations act, the authority must establish and administer a compensation arrangement to reimburse a portion of the premium or out-of-pocket costs of part-time state agency and higher education institution employees who obtain health insurance coverage through the Washington health benefit exchange. Only persons who are employed for at least eighty hours per month for at least six consecutive months are eligible for the exchange premium reimbursement benefit provided under this section, and only for months in which they work at least eighty hours. The exchange premium reimbursement benefit may not exceed two dollars per hour for the number of hours worked by the part-time employee in a month, and in no case may exceed two hundred sixty dollars per month. Reimbursement may only be provided for coverage of the employee and the employee's spouse and dependent children. The authority may adopt rules that are consistent with the goals in section 1 of this act to implement the benefit.

(6) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems.

~~(6)~~ (7)(a) For any open enrollment period following August 24, 2011, the board shall offer a health savings account option for employees that conforms to section 223, Part VII of subchapter B of chapter 1 of the internal revenue code of 1986. The board shall comply with all applicable federal standards related to the establishment of health savings accounts.

(b) By November 30, 2015, and each year thereafter, the authority shall submit a report to the relevant legislative policy and fiscal committees that includes the following:

(i) Public employees' benefits board health plan cost and service utilization trends for the previous three years, in total and for each health plan offered to employees;

(ii) For each health plan offered to employees, the number and percentage of employees and dependents enrolled in the plan, and the age and gender demographics of enrollees in each plan;

(iii) Any impact of enrollment in alternatives to the most comprehensive plan, including the high deductible health plan with a health savings account, upon the cost of health benefits for those

employees who have chosen to remain enrolled in the most comprehensive plan.

~~(7)~~ (8) Notwithstanding any other provision of this chapter, for any open enrollment period following August 24, 2011, the board shall offer a high deductible health plan in conjunction with a health savings account developed under subsection ~~((6))~~ (7) of this section.

~~(8)~~ (9) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

~~(9)~~ (10) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall adopt rules setting forth criteria by which it shall evaluate the plans.

~~((4))~~ (11) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments, political subdivisions, and tribal governments not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers

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appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

~~((11))~~ (12) The board may establish penalties to be imposed by the authority when the eligibility determinations of an employing agency fail to comply with the criteria under ~~((this chapter))~~ section 1513 of the patient protection and affordable care act and related regulations, as administered by the authority."

WITHDRAWAL OF AMENDMENT

On motion of Senator Hargrove, the amendment by Senators Hargrove and Hill on page 3, line 24 to Substitute Senate Bill No. 5905 was withdrawn.

MOTION

Senator Hargrove moved that the following amendment by Senators Hargrove and Hill be adopted:

Beginning on page 3, line 24, strike all of section 3 and insert the following:

"**Sec. 3.** RCW 41.05.065 and 2011 1st sp.s. c 8 s 1 are each amended to read as follows:

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits; and

(f) Minimum standards for insuring entities.

(3) To maintain the comprehensive nature of employee health care benefits, benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan in effect on January 1, 1993. Nothing in this subsection shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits or the administration of a high deductible health plan in conjunction with a health savings account. ~~((The board may establish employee eligibility criteria which are not substantially equivalent to employee eligibility criteria in effect on January 1, 1993.))~~

(4) The eligibility provisions of this subsection have effect through December 31, 2013. Except if bargained for under chapter 41.80 RCW, the board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria subject to the requirements of this chapter. Employer groups obtaining benefits through contractual agreement with the authority for employees defined in RCW 41.05.011(6) (a) through (d) may contractually agree with the authority to benefits eligibility criteria which differs from that determined by the board. The eligibility criteria established by the board shall be no more restrictive than the following:

(a) Except as provided in (b) through (e) of this subsection, an employee is eligible for benefits from the date of employment if the employing agency anticipates he or she will work an average of at least eighty hours per month and for at least eight hours in each month for more than six consecutive months. An employee determined ineligible for benefits at the beginning of his or her employment shall become eligible in the following circumstances:

(i) An employee who works an average of at least eighty hours per month and for at least eight hours in each month and whose anticipated duration of employment is revised from less than or equal to six consecutive months to more than six consecutive months becomes eligible when the revision is made.

(ii) An employee who works an average of at least eighty hours per month over a period of six consecutive months and for at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period.

(b) A seasonal employee is eligible for benefits from the date of employment if the employing agency anticipates that he or she will work an average of at least eighty hours per month and for at least eight hours in each month of the season. A seasonal employee determined ineligible at the beginning of his or her employment who works an average of at least half-time, as defined by the board, per month over a period of six consecutive months and at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period. A benefits-eligible seasonal employee who works a season of less than nine months shall not be eligible for the employer contribution during the off season, but may continue enrollment in benefits during the off season by self-paying for the benefits. A benefits-eligible seasonal employee who works a season of nine months or more is eligible for the employer contribution through the off season following each season worked.

(c) Faculty are eligible as follows:

(i) Faculty who the employing agency anticipates will work half-time or more for the entire instructional year or equivalent nine-month period are eligible for benefits from the date of employment. Eligibility shall continue until the beginning of the first full month of the next instructional year, unless the employment relationship is terminated, in which case eligibility shall cease the first month following the notice of termination or the effective date of the termination, whichever is later.

(ii) Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period are eligible for benefits at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Such an employee shall continue to receive uninterrupted employer contributions for benefits if the employee works at least half-time in a quarter or semester. Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period, but who actually work half-time or more throughout the entire instructional year, are eligible for summer or off-quarter coverage. Faculty who have met the criteria of this subsection (4)(c)(ii), who work at least two quarters of the academic year with an average academic year workload of half-time or more for three quarters of the academic year, and who have worked an average of half-time or more in each of the two preceding academic years shall continue to receive uninterrupted employer contributions for benefits if he or she works at least half-time in a quarter or semester or works two quarters of the academic year with an average academic workload each academic year of half-time or more for three quarters. Eligibility under this section ceases immediately if this criteria is not met.

(iii) Faculty may establish or maintain eligibility for benefits by working for more than one institution of higher education. When faculty work for more than one institution of higher education, those institutions shall prorate the employer contribution costs, or if eligibility is reached through one institution, that institution will pay the full employer contribution. Faculty working for more than one institution must alert his or her employers to his or her potential eligibility in order to establish eligibility.

(iv) The employing agency must provide written notice to faculty who are potentially eligible for benefits under this subsection (4)(c) of their potential eligibility.

(v) To be eligible for maintenance of benefits through averaging under (c)(ii) of this subsection, faculty must provide written notification to his or her employing agency or agencies of his or her potential eligibility.

(d) A legislator is eligible for benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible for benefits on the date his or her term begins or they take the oath of office, whichever occurs first.

(e) A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for benefits on the date he or she takes the oath of office.

(f) Except as provided in (c)(i) and (ii) of this subsection, eligibility ceases for any employee the first of the month following termination of the employment relationship.

(g) In determining eligibility under this section, the employing agency may disregard training hours, standby hours, or temporary changes in work hours as determined by the authority under this section.

(h) Insurance coverage for all eligible employees begins on the first day of the month following the date when eligibility for benefits is established. If the date eligibility is established is the first working day of a month, insurance coverage begins on that date.

(i) Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in (a) through (e) of this subsection shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

(j) Except for an employee eligible for benefits under (b) or (c)(ii) of this subsection, an employee who has established eligibility for benefits under this section shall remain eligible for benefits each month in which he or she is in pay status for eight or more hours, if (i) he or she remains in a benefits-eligible position and (ii) leave

from the benefits-eligible position is approved by the employing agency. A benefits-eligible seasonal employee is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. Eligibility ends if these conditions are not met, the employment relationship is terminated, or the employee voluntarily transfers to a noneligible position.

(k) For the purposes of this subsection:

(i) "Academic year" means summer, fall, winter, and spring quarters or semesters;

(ii) "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees shall have the same meaning as "part-time" under RCW 28B.50.489;

(iii) "Benefits-eligible position" shall be defined by the board.

(5) Beginning January 1, 2014, eligibility for health care benefits is as provided under this subsection. Except if bargained for under chapter 41.80 RCW, the board must design benefits and determine the terms and conditions of employee and retired employee participation and coverage. The terms and conditions must be consistent with the provisions of this subsection. Employer groups obtaining benefits through contractual agreement with the authority for employees defined in RCW 41.05.011(6) (a), (b), (c), and (d) may contractually agree with the authority to benefits eligibility criteria which differs from the criteria contained in this section. The eligibility criteria for health care benefits is:

(a) Each employee who is a full-time employee as defined by section 1513 of the patient protection and affordable care act and related regulations, as administered by the authority, is eligible for benefits. Except if bargained for pursuant to (a)(i) of this subsection, or if authorized by the office of financial management pursuant to (a)(ii) of this subsection, employees who are not full-time employees as defined by section 1513 of the patient protection and affordable care act and related regulations, as administered by the authority, are not eligible for benefits.

(i) The employer and exclusive bargaining representative, pursuant to chapter 41.80 RCW, may bargain part-time employee eligibility criteria that does not exceed the criteria under subsection (4) of this section.

(ii) The office of financial management may approve part-time employee eligibility criteria that does not exceed the criteria under subsection (4) of this section for part-time state positions not covered under any collective bargaining agreement.

(b) A legislator is eligible for benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible for benefits on the date their term begins or they take the oath of office, whichever occurs first.

(c) Justices of the supreme court and judges of the court of appeals and the superior courts become eligible for benefits on the date they take the oath of office.

(d) Except as provided by section 1513 of the patient protection and affordable care act and related regulations, as administered by the authority, eligibility ceases for any employee the first day of the month following termination of the employment relationship.

(e) Insurance coverage for all eligible employees begins on the first day of the month following the date when eligibility for benefits is established. If the date eligibility is established is the first working day of a month, insurance coverage begins on that date.

(f) From funding provided in the omnibus appropriations act, the authority must establish and administer a compensation arrangement to reimburse a portion of the premium or out-of-pocket costs of part-time state agency and higher education institution employees who obtain health insurance coverage through the Washington health benefit exchange. Only persons who are expected to be employed for at least eighty hours per month for at

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least six consecutive months are eligible for the exchange premium reimbursement benefit provided under this section, and only for months in which they work at least eighty hours. The exchange premium reimbursement benefit may not exceed two dollars per hour for the number of hours worked by the part-time employee in a month, and in no case may exceed two hundred sixty dollars per month. Reimbursement may only be provided for coverage of the employee and the employee's spouse and dependent children. The authority may adopt rules that are consistent with the goals in section 1 of this act to implement the benefit.

(6) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems.

~~((6))~~ (7)(a) For any open enrollment period following August 24, 2011, the board shall offer a health savings account option for employees that conforms to section 223, Part VII of subchapter B of chapter 1 of the internal revenue code of 1986. The board shall comply with all applicable federal standards related to the establishment of health savings accounts.

(b) By November 30, 2015, and each year thereafter, the authority shall submit a report to the relevant legislative policy and fiscal committees that includes the following:

(i) Public employees' benefits board health plan cost and service utilization trends for the previous three years, in total and for each health plan offered to employees;

(ii) For each health plan offered to employees, the number and percentage of employees and dependents enrolled in the plan, and the age and gender demographics of enrollees in each plan;

(iii) Any impact of enrollment in alternatives to the most comprehensive plan, including the high deductible health plan with a health savings account, upon the cost of health benefits for those employees who have chosen to remain enrolled in the most comprehensive plan.

~~((7))~~ (8) Notwithstanding any other provision of this chapter, for any open enrollment period following August 24, 2011, the board shall offer a high deductible health plan in conjunction with a health savings account developed under subsection ~~((6))~~ (7) of this section.

~~((8))~~ (9) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

~~((9))~~ (10) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall adopt rules setting forth criteria by which it shall evaluate the plans.

~~((10))~~ (11) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments, political subdivisions, and tribal governments not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

~~((11))~~ (12) The board may establish penalties to be imposed by the authority when the eligibility determinations of an employing agency fail to comply with the criteria under ~~((this chapter))~~ section 1513 of the patient protection and affordable care act and related regulations, as administered by the authority."

Senators Hargrove, Hill and Becker spoke in favor of adoption of the amendment.

Senators Fraser and Conway spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Hargrove and Hill on page 3, line 24 to Substitute Senate Bill No. 5905.

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

MOTION

On motion of Senator Hill, the rules were suspended, Engrossed Substitute Senate Bill No. 5905 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hill, Hargrove and Hobbs spoke in favor of passage of the bill.

Senators Fraser, Keiser, Frockt and Conway spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5905.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5905 and the bill passed the Senate by the following vote: Yeas, 25; Nays, 23; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Ericksen, Fain, Hargrove, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, King, Litzow, Padden, Parlette, Pearson, Rivers, Schoesler, Sheldon, Smith and Tom

Voting nay: Senators Billig, Chase, Cleveland, Conway, Darneille, Eide, Fraser, Frockt, Harper, Hasegawa, Hatfield, Keiser, Kline, Kohl-Welles, McAuliffe, Mullet, Murray, Nelson, Ranker, Roach, Rolfes, Schlicher and Shin

Excused: Senator Carrell

ENGROSSED SUBSTITUTE SENATE BILL NO. 5905, 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 12:17 p.m., on motion of Senator Fain, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 1:39 p.m. by President Owen.

SIGNED BY THE PRESIDENT

Pursuant to Article 2, Section 32 of the State Constitution and Senate Rule 1(5), the President announced the signing of and thereupon did sign in open session:

The President has signed:

SUBSTITUTE SENATE BILL NO. 5002,

SUBSTITUTE SENATE BILL NO. 5022,

SENATE BILL NO. 5050,

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5078,

SENATE BILL NO. 5161,

SECOND SUBSTITUTE SENATE BILL NO. 5197,

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5329,

SENATE BILL NO. 5355,

SENATE BILL NO. 5359,

SUBSTITUTE SENATE BILL NO. 5434,

SUBSTITUTE SENATE BILL NO. 5565,

SUBSTITUTE SENATE BILL NO. 5591,

SENATE BILL NO. 5809.

SECOND READING

SENATE BILL NO. 5296, by Senators Ericksen, Baumgartner, Rivers, Bailey, Delvin and Honeyford

Concerning the model toxics control act.

MOTION

On motion of Senator Ericksen, Second Substitute Senate Bill No. 5296 was substituted for Senate Bill No. 5296 and the second substitute bill was placed on the second reading and read the second time.

MOTION

Senator Ranker moved that the following striking amendment by Senator Ranker be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that there are a large number of toxic waste sites that have been identified in the department of ecology's priority list as ready for immediate cleanup. The legislature further finds that addressing the cleanup of these toxic waste sites will provide needed jobs to citizens of Washington state, will improve public health, will restore ecological functions, and will protect future generations from being exposed to toxic waste and hazardous substances. It is the intent of the legislature to prioritize the spending of revenues under chapter 70.105D RCW, the model toxics control act, on cleaning up the most toxic sites, while also providing jobs in communities around the state, and also upon funding activities that prevent the creation of toxic sites in the future.

Sec. 2. RCW 70.105D.020 and 2007 c 104 s 18 are each amended to read as follows:

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

(1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person or prospective purchaser receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)((+)) (b)(xi) and (xii).

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology or the director's designee.

(4) "Environmental covenant" has the same meaning as defined in RCW 64.70.020.

(5) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(6) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(7)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator;

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custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (17)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(8) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(9) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(10) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (~~((5) and (6))~~) (1) and (7), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(~~((44))~~) (10) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(11) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(12) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(13) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(14) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(15) "Institutional controls" means measures undertaken to limit or prohibit activities that may interfere with the integrity of a remedial action or result in exposure to or migration of hazardous substances at a site. "Institutional controls" include environmental covenants.

(16) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(17) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (18)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (17)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (17)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (17)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (17)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the groundwater from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated groundwater that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of groundwater does not disqualify a person from the exemption in this subsection (17)(b)(iv).

(18) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to

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protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(19) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(20) "Policing activities" means actions the holder takes to ensure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(21) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(22) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to cleanup releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (17)(b)(ii) of this section.

(23) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(24) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(25) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(26) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(27) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(28) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(29) "Areawide groundwater contamination" means groundwater contamination on multiple adjacent properties with different ownerships consisting of hazardous substances from multiple sources that have resulted in commingled plumes of contaminated groundwater that are not practicable to address separately.

(30) "Brownfield property" means previously developed and currently abandoned or underutilized real property and adjacent surface waters and sediment where environmental, economic, or community reuse objectives are hindered by the release or threatened release of hazardous substances that the department has determined requires remedial action under this chapter or that the United States environmental protection agency has determined requires remedial action under the federal cleanup law.

(31) "Local government" means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation, including brownfield renewal authority created under section 5 of this act.

(32) "Model remedy" or "model remedial action" means a set of technologies, procedures, and monitoring protocols identified by the department for use in routine types of clean-up projects at facilities that have common features and lower risk to human health and the environment.

(33) "Prospective purchaser" means a person who is not currently liable for remedial action at a facility and who proposes to purchase, redevelop, or reuse the facility.

(34) "Redevelopment opportunity zone" means a geographic area designated under section 4 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 70.105D RCW to read as follows:

(1) The brownfield redevelopment trust fund account is created in the state treasury. All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.

(2) The following receipts must be deposited into the brownfield redevelopment trust fund account:

(a) Moneys appropriated by the legislature to the account for a specific redevelopment opportunity zone established under section 4 of this act or a specific brownfield renewal authority established under section 5 of this act;

(b) Moneys voluntarily deposited in the account for a specific redevelopment opportunity zone or a specific brownfield renewal authority; and

(c) Receipts from settlements or court orders that direct payment to the account for a specific redevelopment opportunity zone to resolve a person's liability or potential liability under this chapter.

(3) If a settlement or court order does not direct payment of receipts described in subsection (2)(c) of this section into the brownfield redevelopment trust fund account, then the receipts from any payment to the state must be deposited into the state toxics control account established under RCW 70.105D.070.

(4) Expenditures from the brownfield redevelopment trust fund account may only be used for the purposes of remediation and cleanup at the specific redevelopment opportunity zone or specific brownfield renewal authority for which the moneys were deposited in the account.

(5) The department shall track moneys received, interest earned, and moneys expended separately for each facility.

(6) The account must retain its interest earnings in accordance with RCW 43.84.092.

(7) The local government designating the redevelopment opportunity zone under section 4 of this act or the associated brownfield renewal authority created under section 5 of this act must be the beneficiary of the deposited moneys.

(8) All expenditures must be used to conduct remediation and cleanup consistent with a plan for the remediation and cleanup of the properties or facilities approved by the department under this chapter. All expenditures must meet the eligibility requirements for the use by local governments under the rules for remedial action grants adopted by the department under this chapter, including requirements for the expenditure of nonstate match funding.

(9) Beginning October 31, 2015, the department must provide a biennial report to the office of financial management and the legislature regarding the activity for each specific redevelopment opportunity zone or specific brownfield renewal authority for which specific legislative appropriation was provided in the previous two fiscal years.

(10) After the department determines that all remedial actions within the redevelopment opportunity zone identified in the plan approved under subsection (8) of this section are completed, including payment of all cost reasonably attributable to the remedial actions and cleanup, any remaining moneys must be transferred to the state toxics control account established under RCW 70.105D.070.

(11) If the department determines that substantial progress has not been made on the plan approved under subsection (8) of this section for a redevelopment opportunity zone or specific brownfield renewal authority for which moneys were deposited in the account within six years, or that the brownfield renewal authority is no longer a viable entity, then all remaining moneys must be transferred to the state toxics control account established under RCW 70.105D.070.

(12) The department is authorized to adopt rules to implement this section.

NEW SECTION. Sec. 4. A new section is added to chapter 70.105D RCW to read as follows:

(1) A city or county may designate a geographic area within its jurisdiction as a redevelopment opportunity zone if the zone meets the criteria in this subsection and the city or county adopts a resolution that includes the following determinations and commitments:

(a) At least fifty percent of the upland properties in the zone are brownfield properties whether or not the properties are contiguous;

(b) The upland portions of the zone are comprised entirely of parcels of property either owned by the city or county or whose owner has provided consent in writing to have their property included within the zone;

(c) The cleanup of brownfield properties will be integrated with planning for the future uses of the properties and is consistent with the comprehensive land use plan for the zone; and

(d) The proposed properties lie within the incorporated area of a city or within an urban growth area designated under RCW 36.70A.110.

(2) A port district may designate a redevelopment opportunity zone when:

(a) The port district adopts a resolution that includes the determinations and commitments required under subsection (1)(a), (c), and (d) of this section and (c) of this subsection;

(b) The zone meets the criteria in subsection (1)(a), (c), and (d) of this section; and

(c) The port district either:

(i) Owns in fee all of the upland properties within the zone; or

(ii) Owns in fee at least fifty percent of the upland property in the zone, the owners of other parcels of upland property in the zone have provided consent in writing to have their property included in the zone, and the governing body of the city and county in which the zone lies approves of the designation by resolution.

NEW SECTION. Sec. 5. A new section is added to chapter 70.105D RCW to read as follows:

(1) A city, county, or port district may establish by resolution a brownfield renewal authority for the purpose of guiding and implementing the cleanup and reuse of properties within a designated redevelopment opportunity zone. Any combination of cities, counties, and port districts may establish a brownfield renewal authority through an interlocal agreement under chapter 39.34 RCW, and the brownfield renewal authority may exercise those powers as are authorized under chapter 39.34 RCW and under this chapter.

(2) A brownfield renewal authority must be governed by a board of directors selected as determined by the resolution or interlocal agreement establishing the authority.

(3) A brownfield renewal authority must be a separate legal entity and be deemed a municipal corporation. It has the power to: Sue and be sued; receive, account for, and disburse funds; employ personnel; and acquire or dispose of any interest in real or personal property within a redevelopment opportunity zone in the furtherance of the authority purposes. A brownfield renewal authority has the power to contract indebtedness and to issue and sell general obligation bonds pursuant to and in the manner provided for general county bonds in chapters 36.67 and 39.46 RCW and other applicable statutes, and to issue revenue bonds pursuant to and in the manner provided for revenue bonds in chapter 36.67 RCW and other applicable statutes.

(4) If the department determines that substantial progress has not been made on the plan approved under section 3 of this act by the brownfield renewal authority within six years of a city, county, or port district establishing a brownfield renewal authority, the department may require dissolution of the brownfield renewal

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authority. Upon dissolution of the brownfield renewal authority, except as provided in section 3 of this act, all assets and liabilities transfer to the city, town, or port district establishing the brownfield renewal authority.

Sec. 6. RCW 70.105D.030 and 2009 c 560 s 10 are each amended to read as follows:

(1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or willful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020 and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, environmental covenants where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department shall consult with and seek comment from a city or county department with land use planning authority for real property subject to the environmental covenant;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70.105D.110, and impose penalties for violations of that section consistent with RCW 70.105D.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(17)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding

on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. Nothing in this chapter may be construed to preclude the department from issuing a written opinion on whether further remedial action is necessary at any portion of the real property located within a facility, even if further remedial action is still necessary elsewhere at the same facility. Such a written opinion on a portion of a facility must also provide an opinion on the status of the facility as a whole. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance. The department must track the number of requests for reviews of planned or completed independent remedial actions and establish performance measures to track how quickly the department is able to respond to those requests. By November 1, 2015, the department must submit to the governor and the appropriate legislative fiscal and policy committees a report on achieving the performance measures and provide recommendations for improving performance, including staffing needs; ((and))

(j) In fulfilling the objectives of this chapter, the department shall allocate staffing and financial assistance in a manner that considers both the reduction of human and environmental risks and the land reuse potential and planning for the facilities to be cleaned up. This does not preclude the department from allocating resources to a facility based solely on human or environmental risks;

(k) Establish model remedies for common categories of facilities, types of hazardous substances, types of media, or geographic areas to streamline and accelerate the selection of remedies for routine types of cleanups at facilities.

(i) When establishing a model remedy, the department shall:

(A) Identify the requirements for characterizing a facility to select a model remedy, the applicability of the model remedy for use at a facility, and monitoring requirements;

(B) Describe how the model remedy meets clean-up standards and the requirements for selecting a remedy established by the department under this chapter; and

(C) Provide public notice and an opportunity to comment on the proposed model remedy and the conditions under which it may be used at a facility.

(ii) When developing model remedies, the department shall solicit and consider proposals from qualified persons. The proposals must, in addition to describing the model remedy, provide the information required under (k)(i)(A) and (B) of this subsection.

(iii) If a facility meets the requirements for use of a model remedy, an analysis of the feasibility of alternative remedies is not required under this chapter. For department-conducted and department-supervised remedial actions, the department must provide public notice and consider public comments on the proposed use of a model remedy at a facility. The department shall waive collection of its costs for providing a written opinion under (i) of this subsection on a cleanup that qualifies for and appropriately uses a model remedy; and

(l) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum clean-up standards for remedial actions at least as stringent as the clean-up standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) To achieve and protect the state's long-term ecological health, the department shall ~~((prioritize sufficient funding))~~ plan to clean up hazardous waste sites and prevent the creation of future hazards due to improper disposal of toxic wastes ~~((and create financing tools to clean up large scale hazardous waste sites requiring multiyear commitments))~~ at a pace that matches the estimated cash resources in the state and local toxics control accounts. Estimated cash resources must consider the annual cash flow requirements of major projects that receive appropriations expected to cross multiple biennia. To effectively monitor toxic accounts expenditures, the department shall develop a comprehensive ten-year financing report that identifies long-term remedial action project costs, tracks expenses, and projects future needs.

(4) By November 1, 2016, the department must submit to the governor and the appropriate legislative committees a report on the status of developing model remedies and their use under this chapter. The report must include: The number and types of model remedies identified by the department under subsection (1)(k) of this section; the number and types of model remedy proposals prepared by qualified private sector engineers, consultants, or contractors that were accepted or rejected under subsection (1)(k) of this section and the reasons for rejection; and the success of model remedies in accelerating the cleanup as measured by the number of jobs created by the cleanup, where such information is available to the department, acres of land restored, and the number and types of

hazardous waste sites successfully remediated using model remedies.

~~___(5)~~ Before ((December)) September 20th of each even-numbered year, the department shall:

(a) Develop a comprehensive ten-year financing report in coordination with all local governments with clean-up responsibilities that identifies the projected biennial hazardous waste site remedial action needs that are eligible for funding from the state and local toxics control accounts;

(b) Work with local governments to develop working capital reserves to be incorporated in the ten-year financing report;

(c) Identify the projected remedial action needs for orphaned, abandoned, and other clean-up sites that are eligible for funding from the state toxics control account;

(d) Project the remedial action need, cost, revenue, and any recommended working capital reserve estimate to the next biennium's long-term remedial action needs from both the local ~~((toxics control account))~~ and ~~((the))~~ state toxics control accounts, and submit this information to the appropriate standing fiscal and environmental committees of the senate and house of representatives. This submittal must also include a ranked list of such remedial action projects for both accounts~~((and~~

~~___(e))~~. The submittal must also identify separate budget estimates for large, multibiennia clean-up projects that exceed ten million dollars. The department shall prepare its ten-year capital budget plan that is submitted to the office of financial management to reflect the separate budget estimates for these large clean-up projects and include information on the projected private and public funding obligations for completion of the projects.

(6) By December 1st of each odd-numbered year, the department must provide the legislature and the public ~~((each year with an accounting))~~ a report of the department's activities supported by appropriations from the state and local toxics control accounts~~((and including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its waste management priorities under RCW 70.105.150, and all funds expended under this chapter))~~. The report must be prepared and displayed in a manner that allows the legislature and the public to easily determine the statewide and local progress made in cleaning up hazardous waste sites under this chapter. The report must include, at a minimum:

(a) The name, location, hazardous waste ranking, and a short description of each site on the hazardous sites list, and the date the site was placed on the hazardous waste sites list; and

(b) For hazardous waste sites with a grant, loan, or direct investment in remedial actions by the state:

(i) The amount of money from the state and local toxics control accounts used to conduct remedial actions at the site and the amount of that money recovered from potentially liable persons;

(ii) The actual or estimated start and end dates and the actual or estimated expenditures of funds authorized under this chapter for the following project phases:

(A) Emergency or interim actions, if needed;

(B) Remedial investigation;

(C) Feasibility study and selection of a remedy;

(D) Engineering design and construction of the selected remedy;

(E) Operation and maintenance or monitoring of the constructed remedy; and

(F) The final completion date.

~~___((5))~~ (7) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

~~___((6))~~ (8) For all facilities where an environmental covenant has been required under subsection (1)(f) of this section, including all facilities where the department has required an environmental

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covenant under an order, agreed order, or consent decree, or as a condition of a written opinion issued under the authority of subsection (1)(i) of this section, the department shall periodically review the environmental covenant for effectiveness. Except as otherwise provided in (c) of this subsection, the department shall conduct a review at least once every five years after an environmental covenant is recorded.

(a) The review shall consist of, at a minimum:

(i) A review of the title of the real property subject to the environmental covenant to determine whether the environmental covenant was properly recorded and, if applicable, amended or terminated;

(ii) A physical inspection of the real property subject to the environmental covenant to determine compliance with the environmental covenant, including whether any development or redevelopment of the real property has violated the terms of the environmental covenant; and

(iii) A review of the effectiveness of the environmental covenant in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances. This shall include a review of available monitoring data.

(b) If an environmental covenant has been amended or terminated without proper authority, or if the terms of an environmental covenant have been violated, or if the environmental covenant is no longer effective in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances, then the department shall take any and all appropriate actions necessary to ensure compliance with the environmental covenant and the policies and requirements of this chapter.

(c) For facilities where an environmental covenant required by the department under subsection (1)(f) of this section was required before July 1, 2007, the department shall:

(i) Enter all required information about the environmental covenant into the registry established under RCW 64.70.120 by June 30, 2008;

(ii) For those facilities where more than five years has elapsed since the environmental covenant was required and the department has yet to conduct a review, conduct an initial review according to the following schedule:

(A) By December 30, 2008, fifty facilities;

(B) By June 30, 2009, fifty additional facilities; and

(C) By June 30, 2010, the remainder of the facilities;

(iii) Once this initial review has been completed, conduct subsequent reviews at least once every five years.

Sec. 7. RCW 70.105D.040 and 1997 c 406 s 4 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to

such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(i) An act of God;

(ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (3)(b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (3)(b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (3)(b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (3)(b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with clean-up standards under RCW 70.105D.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a ~~((person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility))~~ prospective purchaser, provided that:

(i) The settlement will yield substantial new resources to facilitate cleanup;

(ii) The settlement will expedite remedial action at the facility consistent with the rules adopted under this chapter; and

(iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with

remedial actions that may be needed at the ~~((site))~~ facility, or increase health risks to persons at or in the vicinity of the ~~((site))~~ facility.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of ~~((vacant or abandoned commercial or industrial contaminated))~~ brownfield property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit ~~((including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the development of a facility by a governmental entity to address an important public purpose))~~ in addition to cleanup.

(c) A settlement entered under this subsection is governed by subsection (4) of this section.

(6) As an alternative to a settlement under subsection (5) of this section, the department may enter into an agreed order with a prospective purchaser of a property within a designated redevelopment opportunity zone. The agreed order is subject to the limitations in RCW 70.105D.020(1), but stays enforcement by the department under this chapter regarding remedial actions required by the agreed order as long as the prospective purchaser complies with the requirements of the agreed order.

(7) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes.

Sec. 8. RCW 70.105D.050 and 2005 c 211 s 2 are each amended to read as follows:

(1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person, or prospective purchaser who has entered into an agreed order under RCW 70.105D.040(6), who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply. The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists.

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The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70.105D.110 or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.

(7) Any person who owns real property or lender holding a mortgage on real property that is subject to a lien filed under RCW 70.105D.055 may petition the department to have the lien removed or the amount of the lien reduced. If, after consideration of the petition and the information supporting the petition, the department decides to deny the request, the person may, within ninety days after receipt of the department's denial, file suit for removal or reduction of the lien. The person is entitled to removal of a lien filed under RCW 70.105D.055(2)(a) if they can prove by a preponderance of the evidence that the person is not a liable party under RCW 70.105D.040. The person is entitled to a reduction of the amount of the lien if they can prove by a preponderance of the evidence:

(a) For liens filed under RCW 70.105D.055(2)(a), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property; and

(b) For liens filed under RCW 70.105D.055(2)(c), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property or exceeds the increase of the fair market value of the real property solely attributable to the remedial action conducted by the department.

Sec. 9. RCW 70.105D.070 and 2012 2nd sp.s. c 7 s 920 and 2012 2nd sp.s. c 2 s 6005 are each reenacted and amended to read as follows:

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2)(a) The following moneys shall be deposited into the state toxics control account: ~~((a))~~ (i) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; ~~((b))~~ (ii) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; ~~((c))~~ (iii) penalties collected or recovered under this chapter; and ~~((d))~~ (iv) any other money appropriated or transferred to the account by the legislature.

(b) Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapters 70.105 and 70.95M RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapters 70.95, 70.95D, 70.95M, 70.138, and 70.280 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response ~~((training))~~ activities;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program ~~((including regional citizen advisory committees));~~

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when:

~~(A) The amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4); and ((when))~~

~~(B) The director has found that the funding will achieve both ((A)) (I) a substantially more expeditious or enhanced cleanup than would otherwise occur((:)); and ((B)) (II) the prevention or mitigation of unfair economic hardship;~~

(xii) Public funding to assist prospective purchasers to pay for the costs of remedial action in compliance with clean-up standards under RCW 70.105D.030(2)(e) if:

(A) The facility is located within a redevelopment opportunity zone designated under section 4 of this act;

(B) The amount and terms of the funding are established under a settlement agreement under RCW 70.105D.040(5); and

(C) The director has found the funding meets any additional criteria established in rule by the department, will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur, and will provide a public benefit in addition to cleanup commensurate with the scope of the public funding;

~~((xiii) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150;~~

~~((xiii) During the 2009 2011 and 2011 2013 fiscal biennia, shoreline update technical assistance;))~~

~~((xiv) ((During the 2009 2011 fiscal biennium, multijurisdictional permitting teams;~~

~~((xv) During the 2011 2013 fiscal biennium, actions for reducing public exposure to toxic air pollution, and actions taken through the family forest fish passage program to correct barriers to fish passage on privately owned small forest lands; and~~

~~((xvi) During the 2011 2013 fiscal biennium, the department of ecology's water quality, shorelands and environmental assessment, hazardous waste, waste to resources, nuclear waste, and air quality programs)) State agriculture and health programs for the safe use, reduction, recycling, or disposal of pesticides;~~

~~((xv) Storm water pollution control programs and projects. This includes, but is not limited to, projects that:~~

~~(A) Work in conjunction with remedial actions;~~

~~(B) Protect completed remedial actions against recontamination; or~~

~~(C) Prevent the creation of hazardous waste sites;~~

~~((xvi) Funding requirements to maintain receipt of federal funds under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et seq.);~~

~~((xvii) Air quality programs and actions for reducing public exposure to toxic air pollution;~~

~~((xviii) Programs regulating the use of hazardous substances in products or other high priority chemicals, as defined in RCW 70.240.010; and~~

~~((xix) Public information and education programs related to hazardous substances and materials under chapter 70.102 RCW.~~

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority:

(i) Extended grant agreements entered into under (c)(i) of this subsection;

(ii) Remedial actions, including planning for adaptive reuse of properties as provided for under (c)(iv) of this subsection (3);

~~((#))~~ (iii) Storm water pollution control programs and projects where the purpose of the project is limited exclusively to the treatment, detention, prevention, or monitoring of storm water pollution and no portion of the funding is provided for enhancing other uses of project properties. These projects may include competitive grants to local governments that apply criteria to identify the best green infrastructure retrofits and other projects with high water quality and environmental benefits;

(iv) Hazardous waste plans and programs under chapter 70.105 RCW;

~~((##))~~ (v) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

~~((#))~~ (vi) Funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and

~~((#))~~ (vii) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment.

(b) Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that is a Puget Sound partner, as defined in RCW 90.71.010, along with any project that is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, shall, except as conditioned by RCW 70.105D.120, receive priority for any available funding for any grant or funding programs or sources that use a competitive bidding process. ~~((During the 2007-2009 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.))~~

(c) ~~To expedite cleanups throughout the state, the department ((shall partner with local communities and liable parties for cleanups. The department is authorized to use the following additional strategies in order to ensure a healthful environment for future generations)) may use the following strategies when providing grants and loans to local governments under this subsection:~~

(i) Enter into an extended grant agreement with a local government conducting remedial actions at a facility where those actions extend over multiple biennia and the total eligible cost of those actions exceeds twenty million dollars. The agreement is subject to the following limitations:

(A) The initial duration of such an agreement may not exceed ten years. The department may extend the duration of such an agreement upon finding substantial progress has been made on remedial actions at the facility;

(B) Extended grant agreements may not exceed fifty percent of the total eligible remedial action costs at the facility; and

(C) The department may not allocate future funding to an extended grant agreement unless the local government has demonstrated to the department that funds awarded under the agreement during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds;

(ii) Enter into a grant or loan agreement with a local government conducting a remedial action that provides for periodic reimbursement of remedial action costs as they are incurred as established in the agreement;

(iii) Enter into a grant or loan agreement with a local government prior to it acquiring a property or obtaining necessary access to conduct remedial actions, provided the agreement is conditioned upon the local government acquiring the property or obtaining the access in accordance with a schedule specified in the agreement;

(iv) Provide integrated planning grants or loans to local governments to fund studies necessary to facilitate remedial actions at brownfield properties and adaptive reuse of properties following remediation. Eligible activities include, but are not limited to: Environmental site assessments; remedial investigations; health assessments; feasibility studies; site planning; community involvement; land use and regulatory analyses; building and infrastructure assessments; economic and fiscal analyses; and any environmental analyses under chapter 43.21C RCW;

(v) Provide grants or loans to local governments for remedial actions related to areawide groundwater contamination. To receive the funding, the local government does not need to be a potentially liable person or be required to seek reimbursement of grant funds from a potentially liable person;

(vi) The director may alter ~~((grant matching))~~ grant or loan matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of ~~((vacant, orphaned, or abandoned))~~ brownfield property under RCW 70.105D.040(5) that would not otherwise occur; and

~~((ii) The use of outside contracts to conduct necessary studies;~~

~~((iii) The purchase of remedial action cost cap insurance, when necessary to expedite multiparty clean-up efforts))~~ (vii) When pending grant and loan applications under (c)(iv) and (v) of this subsection (3) exceed the amount of funds available, designated redevelopment opportunity zones must receive priority for distribution of available funds.

~~(d) To ((facilitate and expedite cleanups using funds from the local toxics control account, during the 2009-2011 fiscal biennium the director may establish grant-funded accounts to hold and disperse local toxics control account funds and funds from local governments to be used for remedial actions)) expedite multiparty clean-up efforts, the department may purchase remedial action cost-cap insurance.~~

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) Except during the 2011-2013 fiscal biennium, one percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended

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at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation, or, after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) The department shall adopt rules for grant or loan issuance and performance. To accelerate both remedial action and economic recovery, the department may expedite the adoption of rules necessary to implement this act using the expedited procedures in RCW 34.05.353. The department shall initiate the award of financial assistance by August 1, 2013. To ensure the adoption of rules will not delay financial assistance, the department may administer the award of financial assistance through interpretive guidance pending the adoption of rules through July 1, 2014.

(8) During the 2011-2013 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as reflect excess fund balance in the account.

(9) During the 2011-2013 fiscal biennium, the local toxics control account may also be used for local government shoreline update grants and actions for reducing public exposure to toxic air pollution; funding to local governments for flood levee improvements; and grants to local governments for brownfield redevelopment.

Sec. 10. RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c 187 s 14, and 2012 c 83 s 4 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and

fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety ~~((account~~ fund)) fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental

pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Sec. 11. RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c 187 s 14, 2012 c 83 s 4, and 2012 c 36 s 5 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for

the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the Columbia river crossing project account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety ~~((account~~ fund)) fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional

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mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 12. A new section is added to chapter 70.105 RCW to read as follows:

The radioactive mixed waste account is created within the state treasury. All receipts received from facilities assessed service charges established under RCW 70.105.280 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for carrying out the department's powers and duties under this chapter related to the regulation of facilities that treat, store, or dispose of mixed waste or mixed waste facilities that are undergoing closure.

NEW SECTION. Sec. 13. By October 1, 2013, the state treasurer must transfer the fund balance of the mixed waste fees within the state toxics control account to the radioactive mixed waste account created in section 12 of this act. The department of

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ecology shall report the fund balance amount to the state treasurer for transfer into the radioactive mixed waste account.

Sec. 14. RCW 70.105.280 and 1989 c 376 s 2 are each amended to read as follows:

(1) The department may assess reasonable service charges against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component or which are undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. Service charges may not exceed the costs to the department in carrying out the duties of this section.

(2) Program elements or activities for which service charges may be assessed include:

(a) Office, staff, and staff support for the purposes of facility or unit permit development, review, and issuance; and

(b) Actions taken to determine and ensure compliance with the state's hazardous waste management act.

(3) Moneys collected through the imposition of such service charges shall be deposited in the ~~((state toxics control))~~ radioactive mixed waste account created in section 12 of this act.

(4) The department shall adopt rules necessary to implement this section. Facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component shall not be subject to service charges prior to such rule making. Facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal shall not be subject to service charges prior to such rule making.

NEW SECTION. Sec. 15. (1) The department of ecology shall convene a model toxics control act investment work group. The work group shall:

(a) Review past and current use of moneys in the state and local toxics control accounts;

(b) Determine what investments are needed to accomplish the goals and objectives of chapter 70.105D RCW, including pollution prevention, waste management, and cleanup;

(c) Determine the extent to which state and local toxics control accounts funds should be used for storm water remediation and prevention and oil spill prevention, preparedness, training, and response activities; and

(d) Develop a long-term investment strategy for funds allocated from the state and local toxics control accounts.

(2) The members of the work group include:

(a) One member from each of the two major caucuses in the senate appointed by the president of the senate and one member from each of the two major caucuses in the house of representatives, appointed by the speaker of the house of representatives;

(b) Local government representatives, including port directors, environmental health directors, and solid waste managers;

(c) Business representatives, including large and small businesses with interests in implementation of chapter 70.105D RCW;

(d) Representatives of environmental and community groups;

(e) Representatives from state agencies that currently use money from the state and local toxics control accounts; and

(f) A representative of the office of financial management.

(3) Except as otherwise provided in subsection (2)(a) of this section, the director of the department of ecology shall select the work group members.

(4) The director of the department of ecology shall chair the work group.

(5) The work group must report its findings and recommendations to the governor and appropriate policy and fiscal committees of the house of representatives and senate by December 1, 2014.

NEW SECTION. Sec. 16. Section 10 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

NEW SECTION. Sec. 17. Section 11 of this act takes effect on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

NEW SECTION. Sec. 18. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

On page 1, beginning on line 1 of the title, after "act;" strike the remainder of the title and insert "amending RCW 70.105D.020, 70.105D.030, 70.105D.040, 70.105D.050, and 70.105.280; reenacting and amending RCW 70.105D.070, 43.84.092, and 43.84.092; adding new sections to chapter 70.105D RCW; adding a new section to chapter 70.105 RCW; creating new sections; providing a contingent effective date; and providing a contingent expiration date."

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

Senator Ericksen spoke against adoption of the striking amendment.

Senator Ranker demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Ranker to Second Substitute Senate Bill No. 5296.

ROLL CALL

The Secretary called the roll on the adoption of the striking amendment by Senator Ranker and the striking amendment was not adopted by the following vote: Yeas, 22; Nays, 26; Absent, 0; Excused, 1.

Voting yea: Senators Billig, Chase, Cleveland, Conway, Darneille, Eide, Fraser, Froctt, Hargrove, Harper, Hasegawa, Keiser, Kline, Kohl-Welles, McAuliffe, Mullet, Murray, Nelson, Ranker, Rolfes, Schlicher and Shin

Voting nay: Senators Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Ericksen, Fain, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, King, Litzow, Padden, Parlette, Pearson, Rivers, Roach, Schoesler, Sheldon, Smith and Tom

Excused: Senator Carrell

MOTION

Senator Ericksen moved that the following striking amendment by Senators Ericksen and Honeyford be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that there are a large number of toxic waste sites that have been identified in the department of ecology's priority list as ready for immediate cleanup.

The legislature further finds that addressing the cleanup of these toxic waste sites will provide needed jobs to citizens of Washington state. It is the intent of the legislature to prioritize the spending of revenues under chapter 70.105D RCW, the model toxics control act, on cleaning up the most toxic sites, while also providing jobs in communities around the state.

Sec. 2. RCW 70.105D.020 and 2007 c 104 s 18 are each amended to read as follows:

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

(1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person or prospective purchaser receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070 (2)((~~d~~)(~~xi~~)) (a)(xv) and (b)(iii) and (3)(b)(iii).

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology or the director's designee.

(4) "Environmental covenant" has the same meaning as defined in RCW 64.70.020.

(5) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(6) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(7)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (17)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable

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compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(8) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(9) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(10) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 ~~((5) and (6))~~ (1) and (7), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010 ~~((44))~~ (10) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(11) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(12) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(13) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held

pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(14) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(15) "Institutional controls" means measures undertaken to limit or prohibit activities that may interfere with the integrity of a remedial action or result in exposure to or migration of hazardous substances at a site. "Institutional controls" include environmental covenants.

(16) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(17) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (18)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the

department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (17)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (17)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (17)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (17)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the groundwater from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated groundwater that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of groundwater does not disqualify a person from the exemption in this subsection (17)(b)(iv).

(18) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(19) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(20) "Policing activities" means actions the holder takes to ensure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(21) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such

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person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(22) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to cleanup releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (17)(b)(ii) of this section.

(23) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(24) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(25) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(26) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(27) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(28) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the

terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(29) "Areawide groundwater contamination" means groundwater contamination on multiple adjacent properties with different ownerships consisting of hazardous substances from multiple sources that have resulted in commingled plumes of contaminated groundwater that are not practicable to address separately.

(30) "Brownfield property" means previously developed and currently abandoned or underutilized real property and adjacent surface waters and sediment where environmental, economic, or community reuse objectives are hindered by the release or threatened release of hazardous substances that the department has determined requires remedial action under this chapter or that the United States environmental protection agency has determined requires remedial action under the federal cleanup law.

(31) "City" means a city or town.

(32) "Local government" means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation, including brownfield renewal authority created under section 5 of this act.

(33) "Model remedy" or "model remedial action" means a set of technologies, procedures, and monitoring protocols identified by the department for use in routine types of clean-up projects at facilities that have common features and lower risk to human health and the environment.

(34) "Prospective purchaser" means a person who is not currently liable for remedial action at a facility and who proposes to purchase, redevelop, or reuse the facility.

(35) "Redevelopment opportunity zone" means a geographic area designated under section 4 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 70.105D RCW to read as follows:

(1) The brownfield redevelopment trust fund account is created in the state treasury. All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.

(2) The following receipts must be deposited into the brownfield redevelopment trust fund account:

(a) Moneys appropriated by the legislature to the account for a specific redevelopment opportunity zone established under section 4 of this act or a specific brownfield renewal authority established under section 5 of this act;

(b) Moneys voluntarily deposited in the account for a specific redevelopment opportunity zone or a specific brownfield renewal authority; and

(c) Receipts from settlements or court orders that direct payment to the account for a specific redevelopment opportunity zone to resolve a person's liability or potential liability under this chapter.

(3) If a settlement or court order does not direct payment of receipts described in subsection (2)(c) of this section into the brownfield redevelopment trust fund account, then the receipts from any payment to the state must be deposited into the state toxics control account established under RCW 70.105D.070.

(4) Expenditures from the brownfield redevelopment trust fund account may only be used for the purposes of remediation and cleanup at the specific redevelopment opportunity zone or specific

brownfield renewal authority for which the moneys were deposited in the account.

(5) The department shall track moneys received, interest earned, and moneys expended separately for each facility.

(6) The account must retain its interest earnings in accordance with RCW 43.84.092.

(7) The local government designating the redevelopment opportunity zone under section 4 of this act or the associated brownfield renewal authority created under section 5 of this act must be the beneficiary of the deposited moneys.

(8) All expenditures must be used to conduct remediation and cleanup consistent with a plan for the remediation and cleanup of the properties or facilities approved by the department under this chapter. All expenditures must meet the eligibility requirements for the use by local governments under the rules for remedial action grants adopted by the department under this chapter, including requirements for the expenditure of nonstate match funding.

(9) Beginning October 31, 2015, the department must provide a biennial report to the office of financial management and the legislature regarding the activity for each specific redevelopment opportunity zone or specific brownfield renewal authority for which specific legislative appropriation was provided in the previous two fiscal years.

(10) After the department determines that all remedial actions within the redevelopment opportunity zone identified in the plan approved under subsection (8) of this section are completed, including payment of all cost reasonably attributable to the remedial actions and cleanup, any remaining moneys must be transferred to the state toxics control account established under RCW 70.105D.070.

(11) If the department determines that substantial progress has not been made on the plan approved under subsection (8) of this section for a redevelopment opportunity zone or specific brownfield renewal authority for which moneys were deposited in the account within six years, or that the brownfield renewal authority is no longer a viable entity, then all remaining moneys must be transferred to the state toxics control account established under RCW 70.105D.070.

(12) The department is authorized to adopt rules to implement this section.

NEW SECTION. Sec. 4. A new section is added to chapter 70.105D RCW to read as follows:

(1) A city or county may designate a geographic area within its jurisdiction as a redevelopment opportunity zone if the zone meets the criteria in this subsection and the city or county adopts a resolution that includes the following determinations and commitments:

(a) At least fifty percent of the upland properties in the zone are brownfield properties whether or not the properties are contiguous;

(b) The upland portions of the zone are comprised entirely of parcels of property either owned by the city or county or whose owner has provided consent in writing to have their property included within the zone;

(c) The cleanup of brownfield properties will be integrated with planning for the future uses of the properties and is consistent with the comprehensive land use plan for the zone; and

(d) The proposed properties lie within the incorporated area of a city or within an urban growth area designated under RCW 36.70A.110.

(2) A port district may designate a redevelopment opportunity zone when:

(a) The port district adopts a resolution that includes the determinations and commitments required under subsection (1)(a), (c), and (d) of this section and (c) of this subsection;

(b) The zone meets the criteria in subsection (1)(a), (c), and (d) of this section; and

(c) The port district either:

(i) Owns in fee all of the upland properties within the zone; or

(ii) Owns in fee at least fifty percent of the upland property in the zone, the owners of other parcels of upland property in the zone have provided consent in writing to have their property included in the zone, and the governing body of the city and county in which the zone lies approves of the designation by resolution.

NEW SECTION. Sec. 5. A new section is added to chapter 70.105D RCW to read as follows:

(1) A city, county, or port district may establish by resolution a brownfield renewal authority for the purpose of guiding and implementing the cleanup and reuse of properties within a designated redevelopment opportunity zone. Any combination of cities, counties, and port districts may establish a brownfield renewal authority through an interlocal agreement under chapter 39.34 RCW, and the brownfield renewal authority may exercise those powers as are authorized under chapter 39.34 RCW and under this chapter.

(2) A brownfield renewal authority must be governed by a board of directors selected as determined by the resolution or interlocal agreement establishing the authority.

(3) A brownfield renewal authority must be a separate legal entity and be deemed a municipal corporation. It has the power to: Sue and be sued; receive, account for, and disburse funds; employ personnel; and acquire or dispose of any interest in real or personal property within a redevelopment opportunity zone in the furtherance of the authority purposes. A brownfield renewal authority has the power to contract indebtedness and to issue and sell general obligation bonds pursuant to and in the manner provided for general county bonds in chapters 36.67 and 39.46 RCW and other applicable statutes, and to issue revenue bonds pursuant to and in the manner provided for revenue bonds in chapter 36.67 RCW and other applicable statutes.

(4) If the department determines that substantial progress has not been made on the plan approved under section 3 of this act by the brownfield renewal authority within six years of a city, county, or port district establishing a brownfield renewal authority, the department may require dissolution of the brownfield renewal authority. Upon dissolution of the brownfield renewal authority, except as provided in section 3 of this act, all assets and liabilities transfer to the city, town, or port district establishing the brownfield renewal authority.

Sec. 6. RCW 70.105D.030 and 2009 c 560 s 10 are each amended to read as follows:

(1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In

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conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or willful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020 and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, environmental covenants where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department shall consult with and seek comment from a city or county department with land use planning authority for real property subject to the environmental covenant;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70.105D.110, and impose penalties for violations of that section consistent with RCW 70.105D.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(17)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. Nothing in this chapter may be construed to preclude the department from issuing a written opinion on whether further remedial action is necessary at any portion of the real property located within a facility, even if further remedial action is still necessary elsewhere at the same facility. Such a written opinion on a portion of a facility must also provide an opinion on the status of the facility as a whole. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance. The department must track the number of requests for reviews of planned or completed independent remedial actions and establish performance measures to track how quickly the department is able to respond to those requests. By November 1, 2015, the department must submit to the governor and the appropriate legislative fiscal and policy committees a report on achieving the

performance measures and provide recommendations for improving performance, including staffing needs; ((and))

(j) In fulfilling the objectives of this chapter, the department shall allocate staffing and financial assistance in a manner that considers both the reduction of human and environmental risks and the land reuse potential and planning for the facilities to be cleaned up. This does not preclude the department from allocating resources to a facility based solely on human or environmental risks;

(k) Establish model remedies for common categories of facilities, types of hazardous substances, types of media, or geographic areas to streamline and accelerate the selection of remedies for routine types of cleanups at facilities;

(i) When establishing a model remedy, the department shall:

(A) Identify the requirements for characterizing a facility to select a model remedy, the applicability of the model remedy for use at a facility, and monitoring requirements;

(B) Describe how the model remedy meets clean-up standards and the requirements for selecting a remedy established by the department under this chapter; and

(C) Provide public notice and an opportunity to comment on the proposed model remedy and the conditions under which it may be used at a facility;

(ii) When developing model remedies, the department shall solicit and consider proposals from qualified persons. The proposals must, in addition to describing the model remedy, provide the information required under (k)(i)(A) and (B) of this subsection;

(iii) If a facility meets the requirements for use of a model remedy, an analysis of the feasibility of alternative remedies is not required under this chapter. For department-conducted and department-supervised remedial actions, the department must provide public notice and consider public comments on the proposed use of a model remedy at a facility. The department shall waive collection of its costs for providing a written opinion under (i) of this subsection on a cleanup that qualifies for and appropriately uses a model remedy; and

(l) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum clean-up standards for remedial actions at least as stringent as the clean-up standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal

laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) To achieve and protect the state's long-term ecological health, the department shall ~~((prioritize sufficient funding))~~ plan to clean up hazardous waste sites and prevent the creation of future hazards due to improper disposal of toxic wastes~~((and create financing tools to clean up large-scale hazardous waste sites requiring multiyear commitments))~~ at a pace that matches the estimated cash resources in the state and local toxics control accounts and the environmental legacy stewardship account created in section 10 of this act. Estimated cash resources must consider the annual cash flow requirements of major projects that receive appropriations expected to cross multiple biennia. To effectively monitor toxic accounts expenditures, the department shall develop a comprehensive ten-year financing report that identifies long-term remedial action project costs, tracks expenses, and projects future needs.

(4) ~~By November 1, 2016, the department must submit to the governor and the appropriate legislative committees a report on the status of developing model remedies and their use under this chapter. The report must include: The number and types of model remedies identified by the department under subsection (1)(k) of this section; the number and types of model remedy proposals prepared by qualified private sector engineers, consultants, or contractors that were accepted or rejected under subsection (1)(k) of this section and the reasons for rejection; and the success of model remedies in accelerating the cleanup as measured by the number of jobs created by the cleanup, where this information is available to the department, acres of land restored, and the number and types of hazardous waste sites successfully remediated using model remedies.~~

~~(5) Before ((December)) September 20th of each even-numbered year, the department shall:~~

(a) Develop a comprehensive ten-year financing report in coordination with all local governments with clean-up responsibilities that identifies the projected biennial hazardous waste site remedial action needs that are eligible for funding from the state and local toxics control account and the environmental legacy stewardship account;

(b) Work with local governments to develop working capital reserves to be incorporated in the ten-year financing report;

(c) Identify the projected remedial action needs for orphaned, abandoned, and other clean-up sites that are eligible for funding from the state toxics control account;

(d) Project the remedial action need, cost, revenue, and any recommended working capital reserve estimate to the next biennium's long-term remedial action needs from both the local ~~((toxics control account))~~ and ~~((the))~~ state toxics control account and the environmental legacy stewardship account, and submit this information to the appropriate standing fiscal and environmental committees of the senate and house of representatives. This submittal must also include a ranked list of such remedial action projects for both accounts~~((and~~ ~~((e)))~~. The submittal must also identify separate budget estimates for large, multiyear clean-up projects that exceed ten

million dollars. The department shall prepare its ten-year capital budget plan that is submitted to the office of financial management to reflect the separate budget estimates for these large clean-up projects and include information on the anticipated private and public funding obligations for completion of the relevant projects.

~~(6) By December 1st of each odd-numbered year, the department must provide the legislature and the public ((each year with an accounting)) a report of the department's activities supported by appropriations from the state and local toxics control accounts ((including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its waste management priorities under RCW 70.105.150, and all funds expended under this chapter)) and the environmental legacy stewardship account. The report must be prepared and displayed in a manner that allows the legislature and the public to easily determine the statewide and local progress made in cleaning up hazardous waste sites under this chapter. The report must include, at a minimum:~~

~~(a) The name, location, hazardous waste ranking, and a short description of each site on the hazardous sites list, and the date the site was placed on the hazardous waste sites list; and~~

~~(b) For sites where there are state contracts, grants, loans, or direct investments by the state:~~

~~(i) The amount of money from the state and local toxics control accounts and the environmental legacy stewardship account used to conduct remedial actions at the site and the amount of that money recovered from potentially liable persons;~~

~~(ii) The actual or estimated start and end dates and the actual or estimated expenditures of funds authorized under this chapter for the following project phases:~~

~~(A) Emergency or interim actions, if needed;~~

~~(B) Remedial investigation;~~

~~(C) Feasibility study and selection of a remedy;~~

~~(D) Engineering design and construction of the selected remedy;~~

~~(E) Operation and maintenance or monitoring of the constructed remedy; and~~

~~(F) The final completion date.~~

~~((5)) (7) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.~~

~~((6)) (8) For all facilities where an environmental covenant has been required under subsection (1)(f) of this section, including all facilities where the department has required an environmental covenant under an order, agreed order, or consent decree, or as a condition of a written opinion issued under the authority of subsection (1)(i) of this section, the department shall periodically review the environmental covenant for effectiveness. Except as otherwise provided in (c) of this subsection, the department shall conduct a review at least once every five years after an environmental covenant is recorded.~~

~~(a) The review shall consist of, at a minimum:~~

~~(i) A review of the title of the real property subject to the environmental covenant to determine whether the environmental covenant was properly recorded and, if applicable, amended or terminated;~~

~~(ii) A physical inspection of the real property subject to the environmental covenant to determine compliance with the environmental covenant, including whether any development or redevelopment of the real property has violated the terms of the environmental covenant; and~~

~~(iii) A review of the effectiveness of the environmental covenant in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances. This shall include a review of available monitoring data.~~

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(b) If an environmental covenant has been amended or terminated without proper authority, or if the terms of an environmental covenant have been violated, or if the environmental covenant is no longer effective in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances, then the department shall take any and all appropriate actions necessary to ensure compliance with the environmental covenant and the policies and requirements of this chapter.

(c) For facilities where an environmental covenant required by the department under subsection (1)(f) of this section was required before July 1, 2007, the department shall:

(i) Enter all required information about the environmental covenant into the registry established under RCW 64.70.120 by June 30, 2008;

(ii) For those facilities where more than five years has elapsed since the environmental covenant was required and the department has yet to conduct a review, conduct an initial review according to the following schedule:

(A) By December 30, 2008, fifty facilities;

(B) By June 30, 2009, fifty additional facilities; and

(C) By June 30, 2010, the remainder of the facilities;

(iii) Once this initial review has been completed, conduct subsequent reviews at least once every five years.

Sec. 7. RCW 70.105D.040 and 1997 c 406 s 4 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(i) An act of God;

(ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship

existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (3)(b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (3)(b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (3)(b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (3)(b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with clean-up standards under RCW 70.105D.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not

to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a ~~((person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility))~~ prospective purchaser, provided that:

(i) The settlement will yield substantial new resources to facilitate cleanup;

(ii) The settlement will expedite remedial action at the facility consistent with the rules adopted under this chapter; and

(iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the ~~((site))~~ facility, or increase health risks to persons at or in the vicinity of the ~~((site))~~ facility.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of ~~((vacant or abandoned commercial or industrial contaminated))~~ brownfield property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit ~~((including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the development of a facility by a governmental entity to address an important public purpose))~~ in addition to cleanup.

(c) A settlement entered under this subsection is governed by subsection (4) of this section.

(6) As an alternative to a settlement under subsection (5) of this section, the department may enter into an agreed order with a prospective purchaser of a property within a designated redevelopment opportunity zone. The agreed order is subject to the limitations in RCW 70.105D.020(1), but stays enforcement by the department under this chapter regarding remedial actions required by the agreed order as long as the prospective purchaser complies with the requirements of the agreed order.

(7) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes.

Sec. 8. RCW 70.105D.050 and 2005 c 211 s 2 are each amended to read as follows:

(1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person, or prospective purchaser who has entered into an agreed order under RCW 70.105D.040(6), who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70.105D.110 or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.

(7) Any person who owns real property or lender holding a mortgage on real property that is subject to a lien filed under RCW 70.105D.055 may petition the department to have the lien removed or the amount of the lien reduced. If, after consideration of the petition and the information supporting the petition, the department decides to deny the request, the person may, within ninety days after receipt of the department's denial, file suit for removal or reduction of the lien. The person is entitled to removal of a lien filed under RCW 70.105D.055(2)(a) if they can prove by a preponderance of the evidence that the person is not a liable party under RCW 70.105D.040. The person is entitled to a reduction of the amount of the lien if they can prove by a preponderance of the evidence:

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(a) For liens filed under RCW 70.105D.055(2)(a), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property; and

(b) For liens filed under RCW 70.105D.055(2)(c), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property or exceeds the increase of the fair market value of the real property solely attributable to the remedial action conducted by the department.

Sec. 9. RCW 70.105D.070 and 2012 2nd sp.s. c 7 s 920 and 2012 2nd sp.s. c 2 s 6005 are each reenacted and amended to read as follows:

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

~~((2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty three one hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:~~

~~—(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;~~

~~—(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;~~

~~—(iii) The hazardous waste cleanup program required under this chapter;~~

~~—(iv) State matching funds required under the federal cleanup law;~~

~~—(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;~~

~~—(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;~~

~~—(vii) Hazardous materials emergency response training;~~

~~—(viii) Water and environmental health protection and monitoring programs;~~

~~—(ix) Programs authorized under chapter 70.146 RCW;~~

~~—(x) A public participation program, including regional citizen advisory committees;~~

~~—(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship;~~

~~—(xii) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150;~~

~~—(xiii) During the 2009-2011 and 2011-2013 fiscal biennia, shoreline update technical assistance;~~

~~—(xiv) During the 2009-2011 fiscal biennium, multijurisdictional permitting teams;~~

~~—(xv) During the 2011-2013 fiscal biennium, actions for reducing public exposure to toxic air pollution, and actions taken through the family forest fish passage program to correct barriers to fish passage on privately owned small forest lands; and~~

~~—(xvi) During the 2011-2013 fiscal biennium, the department of ecology's water quality, shorelands and environmental assessment,~~

~~hazardous waste, waste to resources, nuclear waste, and air quality programs.~~

~~—(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty seven one hundredths of one percent.~~

~~—(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority:~~

~~—(i) Remedial actions;~~

~~—(ii) Hazardous waste plans and programs under chapter 70.105 RCW;~~

~~—(iii) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;~~

~~—(iv) Funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and~~

~~—(v) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment.~~

~~—(b) Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that is a Puget Sound partner, as defined in RCW 90.71.010, along with any project that is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, shall, except as conditioned by RCW 70.105D.120, receive priority for any available funding for any grant or funding programs or sources that use a competitive bidding process. During the 2007-2009 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.~~

~~—(c) To expedite cleanups throughout the state, the department shall partner with local communities and liable parties for cleanups. The department is authorized to use the following additional strategies in order to ensure a healthful environment for future generations:~~

~~—(i) The director may alter grant matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:~~

~~—(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean up liability;~~

~~—(B) Funding would create new substantial economic development, public recreational, or habitat restoration opportunities that would not otherwise occur; or~~

~~—(C) Funding would create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property under RCW 70.105D.040(5) that would not otherwise occur;~~

~~—(ii) The use of outside contracts to conduct necessary studies;~~

~~—(iii) The purchase of remedial action cost cap insurance, when necessary to expedite multiparty clean up efforts.~~

~~—(d) To facilitate and expedite cleanups using funds from the local toxics control account, during the 2009-2011 fiscal biennium the director may establish grant funded accounts to hold and disperse local toxics control account funds and funds from local governments to be used for remedial actions.~~

~~(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.~~

~~—(5) Except during the 2011-2013 fiscal biennium, one percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not for profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.~~

~~—(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation, or, after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.~~

~~—(7) The department shall adopt rules for grant or loan issuance and performance.~~

~~—(8) During the 2011-2013 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as reflect excess fund balance in the account.~~

~~—(9) During the 2011-2013 fiscal biennium, the local toxics control account may also be used for local government shoreline update grants and actions for reducing public exposure to toxic air pollution; funding to local governments for flood levee improvements; and grants to local governments for brownfield redevelopment.)~~ (a) Moneys collected under RCW 82.21.030 must be deposited as follows: Fifty-six percent to the state toxics control account under subsection (2) of this section and forty-four percent to the local toxics control account under subsection (3) of this section. When the cumulative amount of deposits made to the state and local toxics control accounts under this section reaches the limit during a fiscal year as established in (b) of this subsection, the remainder of the moneys collected under RCW 82.21.030 during that fiscal year must be deposited into the environmental legacy stewardship account created in section 10 of this act.

(b) The limit on distributions of moneys collected under RCW 82.21.030 to the state and local toxics control accounts for the fiscal year beginning July 1, 2013, is one hundred fifteen million dollars. This limit for each succeeding fiscal year must be increased by a percentage rate that equals the fiscal growth factor as defined in RCW 43.135.025.

(c) In addition to the funds required under (a) of this subsection, the following moneys must be deposited into the state toxics control account: (i) The costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (ii) penalties collected or recovered under this chapter; and (iii) any other money appropriated or transferred to the account by the legislature.

(2) Moneys in the state toxics control account must be used only to carry out the purposes of this chapter and must be expended for the following:

(a)(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste clean-up program required under this chapter;

(iv) State matching funds required under federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of paint and hazardous wastes from households, small businesses, and agriculture;

(vii) Oil and hazardous materials spill prevention, preparedness, training, and response activities;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150;

(xi) State agriculture and health programs for the safe use, reduction, recycling, or disposal of pesticides;

(xii) Storm water pollution control projects and activities that protect or preserve existing remedial actions or prevent hazardous clean-up sites;

(xiii) Funding requirements to maintain receipt of federal funds under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et seq.);

(xiv) Air quality programs and actions for reducing public exposure to toxic air pollution;

(xv) Public funding to assist prospective purchasers to pay for the costs of remedial action in compliance with clean-up standards under RCW 70.105D.030(2)(e) if:

(A) The facility is located within a redevelopment opportunity zone designated under section 4 of this act;

(B) The amount and terms of the funding are established under a settlement agreement under RCW 70.105D.040(5); and

(C) The director has found the funding meets any additional criteria established in rule by the department, will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur, and will provide a public benefit in addition to cleanup commensurate with the scope of the public funding; and

(xvi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with clean-up standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both: (A) A substantially more expeditious or enhanced cleanup than would otherwise occur; and (B) the prevention or mitigation of unfair economic hardship.

(b) Priority for use of the funds is given to:

(i) Cleanup of high priority sites on the department's hazardous sites list that have a draft or preliminary remedial investigation or feasibility study on file with the department, a completed remedial investigation or feasibility study, or a finalized clean-up action plan, and are prepared to begin the clean-up action;

(ii) Cleanup of brownfield properties to make land available for economic and job development opportunities that would not otherwise occur; and

(iii) Cleanup of hazardous waste sites where public funding to assist potentially liable persons is authorized under (a)(xvi) of this subsection and when the potentially liable persons have a draft or preliminary remedial investigation or feasibility study on file with the department, a completed remedial investigation or feasibility study, or a finalized clean-up action plan, and are prepared to begin the clean-up action.

(3)(a) The department shall use moneys deposited in the local toxics control account for grants to local governments for the following purposes:

(i) Remedial actions, including planning for adaptive reuse of properties as provided for under (c)(iv) of this subsection;

(ii) Extended grant agreements entered into under (c)(i) of this subsection;

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(iii) Storm water pollution source projects that: (A) Work in conjunction with a remedial action; (B) protect completed remedial actions against recontamination; or (C) prevent hazardous clean-up sites;

(iv) Hazardous waste plans and programs under chapter 70.105 RCW;

(v) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; and

(vi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with clean-up standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both: (A) A substantially more expeditious or enhanced cleanup than would otherwise occur; and (B) the prevention or mitigation of unfair economic hardship.

(b) To expedite clean-up projects throughout the state, funding is prioritized for:

(i) High priority sites identified on the department's hazardous site list, that have a draft or preliminary remedial investigation or feasibility study on file with the department, a completed remedial investigation or feasibility study, or a finalized clean-up action plan, and are prepared to begin the clean-up action;

(ii) Brownfield properties that are available for economic and job development opportunities that would not otherwise occur; and

(iii) Public funding to assist potentially liable persons meeting the requirements under (a)(vi) of this subsection when the potentially liable persons have a draft or preliminary remedial investigation or feasibility study on file with the department, a completed remedial investigation or feasibility study, or a finalized clean-up action plan.

(c) To expedite cleanups throughout the state, the department may use the following strategies when providing grants to local governments under this subsection:

(i) Enter into an extended grant agreement with a local government conducting remedial actions at a facility where those actions extend over multiple biennia and the total eligible cost of those actions exceeds twenty million dollars. The agreement is subject to the following limitations:

(A) The initial duration of such an agreement may not exceed ten years. The department may extend the duration of such an agreement upon finding substantial progress has been made on remedial actions at the facility;

(B) Extended grant agreements may not exceed fifty percent of the total eligible remedial action costs at the facility; and

(C) The department may not allocate future funding to an extended grant agreement unless the local government has demonstrated to the department that funds awarded under the agreement during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds;

(ii) Enter into a grant agreement with a local government conducting a remedial action that provides for periodic reimbursement of remedial action costs as they are incurred as established in the agreement;

(iii) Enter into a grant agreement with a local government prior to it acquiring a property or obtaining necessary access to conduct remedial actions, provided the agreement is conditioned upon the local government acquiring the property or obtaining the access in accordance with a schedule specified in the agreement;

(iv) Provide integrated planning grants to local governments to fund studies necessary to facilitate remedial actions at brownfield properties and adaptive reuse of properties following remediation. Eligible activities include, but are not limited to: Environmental site assessments; remedial investigations; health assessments;

feasibility studies; site planning; community involvement; land use and regulatory analyses; building and infrastructure assessments; economic and fiscal analyses; and any environmental analyses under chapter 43.21C RCW;

(v) Provide grants to local governments for remedial actions related to areawide groundwater contamination. To receive the funding, the local government does not need to be a potentially liable person or be required to seek reimbursement of grant funds from a potentially liable person;

(vi) The director may alter grant matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of brownfield property under RCW 70.105D.040(5) that would not otherwise occur;

(vii) When pending grant applications under (c)(iv) and (v) of this subsection (3) exceed the amount of funds available, designated redevelopment opportunity zones must receive priority for distribution of available funds.

(d) To expedite multiparty clean-up efforts, the department may purchase remedial action cost-cap insurance.

(4) Funds for plans and programs must be allocated consistent with matching requirements established in chapters 70.95, 70.95C, 70.95I, and 70.105 RCW.

(5) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(6) No moneys deposited into either the state or local toxics control account may be used for: Natural disasters where there is no hazardous substance contamination; high performance buildings; solid waste incinerator and organic composting facility feasibility studies, construction, maintenance, or operation; or after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. However, this subsection does not prevent an appropriation from the state toxics control account to the department of revenue to enforce compliance with the hazardous substance tax imposed in chapter 82.21 RCW.

(7) Except during the 2011-2013 fiscal biennium, one percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account that are not expended at the close of any biennium revert to the state toxics control account.

(8) The department shall adopt rules for grant issuance and performance. To accelerate both remedial action and economic recovery, the department may expedite the adoption of rules necessary to implement this act using the expedited procedures in RCW 34.05.353. The department shall initiate the award of financial assistance by August 1, 2013. To ensure the adoption of rules will not delay financial assistance, the department may

administer the award of financial assistance through interpretive guidance pending the adoption of rules through July 1, 2014.

NEW SECTION. Sec. 10. A new section is added to chapter 70.105D RCW to read as follows:

(1) The environmental legacy stewardship account is created in the state treasury. Beginning July 1, 2013, and every fiscal year thereafter, the annual amount received from the tax imposed by RCW 82.21.030 that exceeds one hundred fifteen million dollars, plus the fiscal growth factor under chapter 43.135 RCW, must be deposited into the environmental legacy stewardship account. The state treasurer may make periodic deposits into the environmental legacy stewardship account based on forecasted revenue. Moneys in the account may only be spent after appropriation.

(2) Moneys in the environmental legacy stewardship account may be spent on:

(a) Performance and outcome based projects, activities, programs, and services that support the clean-up, monitoring, and prevention of releases of hazardous substances, water protection and monitoring, water pollution prevention, monitoring and cleanup, and environmental health protection and monitoring;

(b) Clean-up projects using model remedies, technologies, procedures, contracts, and project management and oversight that result in significant reductions in the time to complete clean-up projects compared to baseline averages for comparable clean-up projects;

(c) Storm water projects;

(d) Remedial action grants;

(e) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment;

(f) Appropriations to the state and local toxics control accounts created in RCW 70.105D.070 if the legislature determines that priorities for spending exceed available funds in those accounts.

NEW SECTION. Sec. 11. (1) For the biennium ending June 30, 2015, the state treasurer must transfer forty-five million dollars from the state toxics control account to the environmental legacy stewardship account created in section 10 of this act.

(2) For the biennium ending June 30, 2015, the state treasurer must transfer forty-five million dollars from the local toxics control account to the environmental legacy stewardship account.

NEW SECTION. Sec. 12. A new section is added to chapter 70.105 RCW to read as follows:

The radioactive mixed waste account is created within the state treasury. All receipts received from facilities assessed service charges established under RCW 70.105.280 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for carrying out the department's powers and duties under this chapter related to the regulation of facilities that treat, store, or dispose of mixed waste or mixed waste facilities that are undergoing closure.

NEW SECTION. Sec. 13. By October 1, 2013, the state treasurer must transfer the fund balance of the mixed waste fees within the state toxics control account to the radioactive mixed waste account created in section 12 of this act. The department of ecology shall report the fund balance amount to the state treasurer for transfer into the radioactive mixed waste account.

Sec. 14. RCW 70.105.280 and 1989 c 376 s 2 are each amended to read as follows:

(1) The department may assess reasonable service charges against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component or which are undergoing closure under this chapter in those

instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. Service charges may not exceed the costs to the department in carrying out the duties of this section.

(2) Program elements or activities for which service charges may be assessed include:

(a) Office, staff, and staff support for the purposes of facility or unit permit development, review, and issuance; and

(b) Actions taken to determine and ensure compliance with the state's hazardous waste management act.

(3) Moneys collected through the imposition of such service charges shall be deposited in the ~~((state toxics control))~~ radioactive mixed waste account created in section 12 of this act.

(4) The department shall adopt rules necessary to implement this section. Facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component shall not be subject to service charges prior to such rule making. Facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal shall not be subject to service charges prior to such rule making.

Sec. 15. RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c 187 s 14, and 2012 c 83 s 4 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way

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viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety ~~((account fund))~~ fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement

system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Sec. 16. RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c 187 s 14, 2012 c 83 s 4, and 2012 c 36 s 5 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income

account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the Columbia river crossing project account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety ~~((account fund))~~ fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost

account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. **Sec. 17.** Section 15 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

NEW SECTION. **Sec. 18.** Section 16 of this act takes effect on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

NEW SECTION. **Sec. 19.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 20.** 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 July 1, 2013."

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The President declared the question before the Senate to be the adoption of the striking amendment by Senators Ericksen and Honeyford to Second Substitute Senate Bill No. 5296.

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

MOTION

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

On page 1, beginning on line 1 of the title, after "act;" strike the remainder of the title and insert "amending RCW 70.105D.020, 70.105D.030, 70.105D.040, 70.105D.050, and 70.105.280; reenacting and amending RCW 70.105D.070, 43.84.092, and 43.84.092; adding new sections to chapter 70.105D RCW; adding a new section to chapter 70.105 RCW; creating new sections; providing an effective date; providing a contingent effective date; providing a contingent expiration date; and declaring an emergency."

MOTION

On motion of Senator Ericksen, the rules were suspended, Engrossed Second Substitute Senate Bill No. 5296 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Ericksen, Brown, Parlette, Sheldon and Baumgartner spoke in favor of passage of the bill.

Senator Ranker spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 5296.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 5296 and the bill passed the Senate by the following vote: Yeas, 25; Nays, 23; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Ericksen, Fain, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, King, Padden, Parlette, Pearson, Rivers, Roach, Schoesler, Sheldon, Smith and Tom

Voting nay: Senators Billig, Chase, Cleveland, Conway, Darneille, Eide, Fraser, Frockt, Hargrove, Harper, Hasegawa, Keiser, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Ranker, Rolfes, Schlicher and Shin

Excused: Senator Carrell

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5296, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

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

MESSAGE FROM THE HOUSE

April 16, 2013

MR. PRESIDENT:

The House passed SECOND SUBSTITUTE SENATE BILL NO. 5213 with the following amendment(s): 5213-S2 AMH ENGR H2368.E

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 74.09 RCW to read as follows:

The legislature finds that chronic care management, including comprehensive medication management services, provided by licensed pharmacists and qualified providers is a critical component of a collaborative, multidisciplinary, inter-professional approach to the treatment of chronic diseases for targeted individuals, to improve the quality of care and reduce overall cost in the treatment of such diseases.

Sec. 2. RCW 74.09.522 and 2011 1st sp.s. c 15 s 29, 2011 1st sp.s. c 9 s 2, and 2011 c 316 s 4 are each reenacted and amended to read as follows:

(1) For the purposes of this section:

(a) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(b) "Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that does not have a written contract to participate in a managed health care system's provider network, but provides health care services to enrollees of programs authorized under this chapter whose health care services are provided by the managed health care system.

(2) The authority shall enter into agreements with managed health care systems to provide health care services to recipients of temporary assistance for needy families under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of temporary assistance for needy families;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the authority may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the authority shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the authority by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the authority under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e)(i) In negotiating with managed health care systems the authority shall adopt a uniform procedure to enter into contractual arrangements, to be included in contracts issued or renewed on or after January 1, (~~2012~~) 2015, including:

(A) Standards regarding the quality of services to be provided;
 (B) The financial integrity of the responding system;

(C) Provider reimbursement methods that incentivize chronic care management within health homes, including comprehensive medication management services for patients with multiple chronic conditions in alignment with medication management services as described in section 3503(c) and (d) of P.L. 111-148 of 2010, as amended;

(D) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; ~~((and))~~

(E) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training, unless the managed care system is an integrated health delivery system that has programs in place for chronic care management;

(F) Provider reimbursement methods within the medical billing processes that incentivize pharmacists or other qualified providers licensed in Washington state to provide comprehensive medication management services consistent with the findings and goals established in section 1 of this act and in alignment with section 3503(c) and (d) of P.L. 111-148 of 2010, as amended;

(G) Evaluation and reporting on the impact of comprehensive medication management services on patient clinical outcomes and total health care costs, including reductions in emergency department utilization, hospitalization, and drug costs.

(ii)(A) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(B) Contracts that include the items in (e)(i)(C) through ~~((E))~~ (G) of this subsection must not exceed the rates that would be paid in the absence of these provisions;

(f) The authority shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The authority shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the authority may enter into prepaid capitation contracts that do not include inpatient care;

(h) The authority shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services;

(i) Nothing in this section prevents the authority from entering into similar agreements for other groups of people eligible to receive services under this chapter; and

(j) The ~~((department))~~ authority must consult with the federal center for medicare and medicaid innovation and seek funding opportunities to support health homes.

(3) The authority shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The authority shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The authority shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized.

To help ensure these goals are met, the following principles shall guide the authority in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the authority to the extent that minimum contracting requirements defined by the authority are met, at payment rates that enable the authority to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

(i) Demonstrated commitment to or experience in serving low-income populations;

(ii) Quality of services provided to enrollees;

(iii) Accessibility, including appropriate utilization, of services offered to enrollees;

(iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;

(v) Payment rates; and

(vi) The ability to meet other specifically defined contract requirements established by the authority, including consideration of past and current performance and participation in other state or federal health programs as a contractor.

(c) Consideration should be given to using multiple year contracting periods.

(d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.

(e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The authority shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the Washington state health care authority to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.

(f) Procedures for resolution of disputes between the authority and contract bidders or the authority and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document.

(6) The authority may apply the principles set forth in subsection (5) of this section to its managed health care purchasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate.

(7) A managed health care system shall pay a nonparticipating provider that provides a service covered under this chapter to the system's enrollee no more than the lowest amount paid for that service under the managed health care system's contracts with similar providers in the state.

(8) For services covered under this chapter to medical assistance or medical care services enrollees and provided on or after August 24, 2011, nonparticipating providers must accept as payment in full the amount paid by the managed health care system under subsection (7) of this section in addition to any deductible, coinsurance, or copayment that is due from the enrollee for the service provided. An enrollee is not liable to any nonparticipating provider for covered services, except for amounts due for any deductible, coinsurance, or copayment under the terms and conditions set forth in the managed health care system contract to provide services under this section.

(9) Pursuant to federal managed care access standards, 42 C.F.R. Sec. 438, managed health care systems must maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the ~~((department))~~ authority.

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including hospital-based physician services. The ~~((department))~~ authority will monitor and periodically report on the proportion of services provided by contracted providers and nonparticipating providers, by county, for each managed health care system to ensure that managed health care systems are meeting network adequacy requirements. No later than January 1st of each year, the ~~((department))~~ authority will review and report its findings to the appropriate policy and fiscal committees of the legislature for the preceding state fiscal year.

(10) Subsections (7) through (9) of this section expire July 1, 2016."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Becker moved that the Senate refuse to concur in the House amendment(s) to Second Substitute Senate Bill No. 5213 and ask the House to recede therefrom.

The President declared the question before the Senate to be the motion by Senator Becker that the Senate refuse to concur in the House amendment(s) to Second Substitute Senate Bill No. 5213 and ask the House to recede therefrom.

The motion by Senator Becker carried and the Senate refused to concur in the House amendment(s) to Second Substitute Senate Bill No. 5213 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

April 15, 2013

MR. PRESIDENT:

The House passed ENGROSSED SENATE BILL NO. 5607 with the following amendment(s): 5607.E AMH MOEL TANG 051

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 66.24 RCW to read as follows:

(1) There is a theater license to sell spirits, beer, including strong beer, or wine, or all, at retail, for consumption on theater premises. A spirits, beer, and wine theater license may be issued only to theaters that have no more than one hundred twenty seats per screen and that are maintained in a substantial manner as a place for preparing, cooking, and serving complete meals and providing tabletop accommodations for in-theater dining. Requirements for complete meals are the same as those adopted by the board in rules pursuant to chapter 34.05 RCW for a spirits, beer, and wine restaurant license authorized by RCW 66.24.400. The annual fee for a spirits, beer, and wine theater license is two thousand dollars.

(2) If the theater premises is to be frequented by minors, an alcohol control plan must be submitted to the board at the time of application. The alcohol control plan must be approved by the board and be prominently posted on the premises, prior to minors being allowed.

(3) For the purposes of this section:

(a) "Alcohol control plan" means a written, dated, and signed plan submitted to the board by an applicant or licensee for the entire theater premises, or rooms or areas therein, that shows where and when alcohol is permitted, where and when minors are permitted, and the control measures used to ensure that minors are not able to obtain alcohol or be exposed to environments where drinking alcohol predominates.

(b) "Theater" means a place of business where motion pictures or other primarily nonparticipatory entertainment are shown.

(4) The board must adopt rules regarding alcohol control plans and necessary control measures to ensure that minors are not able to obtain alcohol or be exposed to areas where drinking alcohol predominates. All alcohol control plans must include a requirement that any person involved in the serving of spirits, beer, and/or wine must have completed a mandatory alcohol server training program.

(5)(a) A licensee that is an entity that is exempt from taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended as of January 1, 2013, may enter into arrangements with a spirits, beer, or wine manufacturer, importer, or distributor for brand advertising at the theater or promotion of events held at the theater. The financial arrangements providing for the brand advertising or promotion of events may not be used as an inducement to purchase the products of the manufacturer, importer, or distributor entering into the arrangement and such arrangements may not result in the exclusion of brands or products of other companies.

(b) The arrangements allowed under this subsection (5) are an exception to arrangements prohibited under RCW 66.28.305. The board must monitor the impacts of these arrangements. The board may conduct audits of a licensee and the affiliated business to determine compliance with this subsection (5). Audits may include, but are not limited to: Product selection at the facility; purchase patterns of the licensee; contracts with the spirits, beer, or wine manufacturer, importer, or distributor; and the amount allocated or used for spirits, beer, or wine advertising by the licensee, affiliated business, manufacturer, importer, or distributor under the arrangements.

(6) The maximum penalties prescribed by the board in WAC 314-29-020 relating to fines and suspensions are double for violations involving minors or the failure to follow the alcohol control plan with respect to theaters licensed under this section.

Sec. 2. RCW 66.20.300 and 2011 c 325 s 5 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout RCW 66.20.310 through 66.20.350 unless the context clearly requires otherwise.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by this section and RCW 66.20.310, 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, ~~((and))~~ 66.24.610, and section 1 of this act;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production;

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4); and

(d) Grocery store licensed under RCW 66.24.360, but only with respect to employees whose duties include serving during tasting activities under RCW 66.24.363.

Sec. 3. RCW 66.20.310 and 2011 c 325 s 4 are each amended to read as follows:

(1)(a) There ~~((shall be))~~ is an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There ~~((shall be))~~ is an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise ~~((shall))~~ must be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued ~~((shall))~~ must be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder ~~((shall))~~ must present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit ~~((shall be))~~ is valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by this section and RCW 66.20.300, 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, 66.24.600, ~~((and))~~ 66.24.610, and section 1 of this act may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor ~~((shall))~~ must have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW

66.20.300 through 66.20.350, except for employees whose duties include serving during tasting activities under RCW 66.24.363." and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Holmquist Newbry moved that the Senate refuse to concur in the House amendment(s) to Engrossed Senate Bill No. 5607 and ask the House to recede therefrom.

Senator Conway spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Holmquist Newbry that the Senate refuse to concur in the House amendment(s) to Engrossed Senate Bill No. 5607 and ask the House to recede therefrom.

The motion by Senator Holmquist Newbry carried and the Senate refused to concur in the House amendment(s) to Engrossed Senate Bill No. 5607 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

April 15, 2013

MR. PRESIDENT:

The House passed SENATE BILL NO. 5472 with the following amendment(s): 5472 AMH HE H2111.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 28B.35 RCW to read as follows:

The board of trustees of Western Washington University may offer applied, but not research, doctorate level degrees in audiology."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Bailey moved that the Senate concur in the House amendment(s) to Senate Bill No. 5472.

Senators Bailey and Kohl-Welles spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Bailey that the Senate concur in the House amendment(s) to Senate Bill No. 5472.

The motion by Senator Bailey carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5472 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5472, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5472, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier,

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Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senator Carrell

SENATE BILL NO. 5472, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 15, 2013

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5491 with the following amendment(s): 5491-S.E AMH ED H2145.2

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature acknowledges that multiple entities, including the state board of education, the office of the superintendent of public instruction, the workforce training and education coordinating board, the quality education council, and the student achievement council, are actively working on efforts to identify measurable goals and priorities, road maps, and strategic plans for the entire educational system. It is not the legislature's intent to undermine or curtail the ongoing work of these groups. However, the legislature believes that a coordinated single set of statewide goals would help focus these efforts.

(2) It is, therefore, the intent of the legislature to establish a discrete set of statewide data points that will serve as snapshots of the overall health of the educational system and as a means for evaluating progress in achieving the outcomes set for the system and the students it serves. By monitoring these statewide indicators over time, it is the intent of the legislature to understand whether reform efforts and investments are making positive progress in the overall education of students and whether adjustments are necessary. Finally, it is the intent of the legislature to align the education reform efforts of each state education agency in order to hold each part of the system – statewide leaders, school personnel, and students – accountable to the same definitions of success.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.150 RCW to read as follows:

(1) The following statewide indicators of educational system health are established:

(a) The percentage of students demonstrating the characteristics of entering kindergartners in all six areas identified by the Washington kindergarten inventory of developing skills administered in accordance with RCW 28A.655.080;

(b) The percentage of students meeting the standard on the fourth grade statewide reading assessment administered in accordance with RCW 28A.655.070;

(c) The percentage of students meeting the standard on the eighth grade statewide mathematics assessment administered in accordance with RCW 28A.655.070;

(d) The four-year cohort high school graduation rate;

(e) The percentage of high school graduates who during the second quarter after graduation are either enrolled in postsecondary education or training or are employed, and the percentage during the fourth quarter after graduation who are either enrolled in postsecondary education or training or are employed; and

(f) The percentage of students enrolled in precollege or remedial courses in college.

(2) The statewide indicators established in subsection (1) of this section shall be disaggregated as provided under RCW 28A.300.042.

(3) The state board of education, with assistance from the office of the superintendent of public instruction, the workforce training and education coordinating board, the educational opportunity gap oversight and accountability committee, and the student achievement council, shall establish a process for identifying realistic but challenging system-wide performance goals and measurements, if necessary, for each of the indicators established in subsection (1) of this section, including for subcategories of students as provided under subsection (2) of this section. The performance goal for each indicator must be set on a biennial basis, and may only be adjusted upward.

(4) The state board of education, the office of the superintendent of public instruction, and the student achievement council shall each align their strategic planning and education reform efforts with the statewide indicators and performance goals established under this section.

(5)(a) The state board of education, with assistance from the office of the superintendent of public instruction, the workforce training and education coordinating board, the educational opportunity gap oversight and accountability committee, and the student achievement council, shall submit a report on the status of each indicator in subsection (1) of this section and recommend revised performance goals and measurements, if necessary, by December 1st of each even-numbered year, except that the initial report establishing baseline values and initial goals shall be delivered to the education committees of the legislature by December 1, 2013.

(b) If the educational system is not on target to meet the performance goals on any individual indicator, the report must recommend evidence-based reforms intended to improve student achievement in that area.

(c) To the extent data is available, the performance goals for each indicator must be compared with national data in order to identify whether Washington student achievement results are within the top ten percent nationally or are comparable to results in peer states with similar characteristics as Washington. If comparison data show that Washington students are falling behind national peers on any indicator, the report must recommend evidence-based reforms targeted at addressing the indicator in question."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator McAuliffe moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5491.

Senators McAuliffe and Litzow spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator McAuliffe that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5491.

The motion by Senator McAuliffe carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5491 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5491, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5491, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senator Carrell

ENGROSSED SUBSTITUTE SENATE BILL NO. 5491, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 9, 2013

MR. PRESIDENT:

The House passed ENGROSSED SENATE BILL NO. 5616 with the following amendment(s): 5616.E AMH TR H2286.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 46.16A.420 and 2010 c 161 s 409 and 2010 c 8 s 9010 are each reenacted and amended to read as follows:

(1) A farmer shall apply to the department, county auditor or other agent, or subagent appointed by the director for a farm exempt decal for a farm vehicle if the farm vehicle is exempt under RCW 46.16A.080(3). The farm exempt decal:

(a) Allows the farm vehicle to be operated ~~((within a radius of fifteen miles of the farm where it is principally used or garaged))~~ on public highways as identified under RCW 46.16A.080(3);

(b) Must be displayed on the farm vehicle so that it is clearly visible from outside of the farm vehicle; ~~((and))~~

(c) Must identify that the farm vehicle is exempt from the registration requirements of this chapter; and

(d) Must be visible from the rear of the farm vehicle. This requirement for a farm exempt decal to be visible from the rear of the vehicle applies only to farm exempt decals issued after the effective date of this section.

(2) A farmer or the farmer's representative must apply for a farm exempt decal on a form furnished or approved by the department. The application must show:

(a) The name and address of the person who is the owner of the vehicle;

(b) A full description of the vehicle, including its make, model, year, the motor number or the vehicle identification number if the vehicle is a motor vehicle, or the serial number if the vehicle is a trailer;

(c) The purpose for which the vehicle is principally used;

(d) The place where the farm vehicle is principally used or garaged; and

(e) Other information as required by the department upon application.

(3) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required under RCW 46.17.325 when issuing a farm exempt decal.

(4) A farm exempt decal may not be renewed. The status as an exempt vehicle continues until suspended or revoked for misuse, or when the vehicle is no longer used as a farm vehicle.

(5) The department may adopt rules to implement this section.

Sec. 2. RCW 46.16A.080 and 2011 c 171 s 45 are each amended to read as follows:

The following vehicles are not required to be registered under this chapter:

(1) Converter gears used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle;

(2) Electric-assisted bicycles;

(3)(a) ~~((Farm implements, tractors, trailers, and other))~~ Farm vehicles ((~~+~~)) operated within a radius of ((~~fifteen~~)) twenty-five miles of the farm where it is principally used or garaged for the purposes of traveling between farms or other locations to engage in activities that support farming operations. (b) farm tractors and farm implements including trailers designed as cook or bunk houses(~~(~~+~~))~~) used exclusively for animal herding(~~((~~+~~ and ~~+~~))) temporarily operating or drawn upon the public highways, and ~~((~~+~~))~~ (c) trailers used exclusively to transport farm implements from one farm to another during daylight hours or at night when the trailer is equipped with lights that comply with applicable law;~~

(4) Forklifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses they serve;

(5) Golf carts, as defined in RCW 46.04.1945, operating within a designated golf cart zone as described in RCW 46.08.175;

(6) Motor vehicles operated solely within a national recreation area that is not accessible by a state highway, including motorcycles, motor homes, passenger cars, and sport utility vehicles. This exemption applies only after initial registration;

(7) Motorized foot scooters;

(8) Nurse rigs or equipment auxiliary for the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(9) Off-road vehicles operated on a street, road, or highway as authorized under RCW 46.09.360, or nonhighway roads under RCW 46.09.450;

(10) Special highway construction equipment;

(11) Dump trucks and tractor-dump trailer combinations that are:

(a) Designed and used primarily for construction work on highways;

(b) Not designed or used primarily for the transportation of persons or property on a public highway; and

(c) Only incidentally operated or moved over the highways;

(12) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation;

(13) Tow dollies;

(14) Trams used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from end to end, the public rights-of-way over which the tram operates have average daily traffic of not more than fifteen thousand vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another; and

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(15) Vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks.

Sec. 3. RCW 46.04.181 and 2012 c 130 s 1 are each amended to read as follows:

"Farm vehicle" means any vehicle other than a farm tractor or farm implement which is: (1) Designed and/or used primarily in agricultural pursuits on farms for the purpose of transporting machinery, equipment, implements, farm products, supplies and/or farm labor thereon and is only incidentally operated on or moved along public highways for the purpose of going from one farm to another or between locations supporting farming operations; or (2) for purposes of RCW 46.25.050, used to transport agricultural products, farm machinery, farm supplies, or any combination of these materials to or from a farm."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Sheldon moved that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 5616.

Senator Sheldon spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Sheldon that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 5616.

The motion by Senator Sheldon carried and the Senate concurred in the House amendment(s) to Engrossed Senate Bill No. 5616 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5616, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5616, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senator Carrell

ENGROSSED SENATE BILL NO. 5616, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 16, 2013

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5709 with the following amendment(s): 5709-S.E AMH ENGR H2341.E

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. Currently more than a million homes nationwide and approximately fifty thousand homes in Washington state are heated with wood pellets, or densified biomass, in modern high-efficiency appliances. This residential use establishes that many homeowners experience significant cost savings compared to other fossil fuel-based heating systems and that this technology can have a wide and varied acceptance. Bulk delivery that can be facilitated by large volume anchor users such as schools, institutions, and businesses could provide the next step in making this form of renewable energy utilization more efficient and convenient for the consumer. The legislature makes the following findings:

(1) That manufactured and direct thermal conversion of densified biomass is a renewable energy activity;

(2) That much of western Europe, China, Japan, and other Asian countries have chosen to use renewable densified biomass as a renewable energy fuel to heat homes, businesses, and other facilities;

(3) That clean burning, renewable densified biomass will: (a) Lead our country to energy independence; (b) create jobs; (c) stimulate our economy by keeping more of our money circulating in the United States; (d) reduce carbon emissions; (e) improve air quality in noncompliant air sheds; (f) promote healthy forests; and (g) reduce the volume of waste in landfills; that the densified biomass industry will be complimentary to other biofuel industries, providing an outlet and use for the resultant high lignin by-products and agriculture residuals; and

(4) That a December 2012 report by the Washington State University energy program identified opportunities to develop and expand the in-state manufacturing of densified biomass.

Therefore, it is the intent of the legislature to have the Washington State University energy program conduct a pilot program to demonstrate the feasibility of using densified biomass as a renewable energy source to heat schools and other buildings.

NEW SECTION. Sec. 2. (1) Subject to receiving federal and private funds for this purpose, by December 1, 2013, the Washington State University energy program must develop and initiate a pilot program to demonstrate the feasibility of using densified biomass to heat public schools. Two public schools must be chosen for the pilot program, using the following criteria: The school's proximity to a currently operating densified biomass manufacturing facility, the age and condition of the school's current heating system, and the school's design is of a nature that most resembles other schools of its class. The pilot program must consist of the following: The replacement of the school's current heating system with one that uses densified biomass as a fuel; the measurement and evaluation of the heating system, including a cost comparison with other conventional fuels; and the measurement of emissions from the heating system. One of the public schools selected for the pilot must be located in a district east of the crest of the Cascade mountains and one must be located in a district west of the crest of the Cascade mountains. The school district east of the crest of the Cascade mountains must be located in a county that shares an international border or borders the state of Idaho.

(2) The office of the superintendent of public instruction must notify all school districts about the pilot project and their opportunity to participate.

(3) By December 31, 2015, the Washington State University energy program must summarize and report its findings to the legislature. The report must include an analysis extrapolating the results to other similarly situated schools in the state.

(4) In designing the pilot program, the Washington State University energy program must seek to leverage other existing private and federal funding programs and resources.

(5) The Washington State University energy program may contract with other entities for assistance in implementing the pilot program.

(6) The pilot program expires December 15, 2015."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Smith moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5709.

Senator Smith spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Smith that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5709.

The motion by Senator Smith carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5709 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5709, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5709, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senator Carrell

ENGROSSED SUBSTITUTE SENATE BILL NO. 5709, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 9, 2013

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5761 with the following amendment(s): 5761-S AMH TR H2285.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 47.42.120 and 2010 c 138 s 2 are each amended to read as follows:

Notwithstanding any other provisions of this chapter, no sign except a sign of type 1 or 2 or those type 3 signs that advertise activities conducted upon the properties where the signs are located, may be erected or maintained without a permit issued by the department. Application for a permit shall be made to the department on forms furnished by it. The forms shall contain a

statement that the owner or lessee of the land in question has consented thereto. For type 8 signs (temporary agricultural directional signs), when the land in question is owned by the department, the consent statement must be reviewed and, if the sign does not create a safety concern, be approved within ten days of application by the department. The application shall be accompanied by a fee established by department rule to be deposited with the state treasurer to the credit of the motor vehicle fund. Permits shall be for the remainder of the calendar year in which they are issued, and accompanying fees shall not be prorated for fractions of the year. Permits must be renewed annually through a certification process established by department rule. Advertising copy may be changed at any time without the payment of an additional fee. Assignment of permits in good standing is effective only upon receipt of written notice of assignment by the department. A permit may be revoked after hearing if the department finds that any statement made in the application or annual certification process was false or misleading, or that the sign covered is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this chapter, if the false or misleading information has not been corrected and the sign has not been brought into compliance with this chapter or rules adopted under it within thirty days after written notification. Beginning July 1, 2014, the department shall establish and charge by rule an annual fee for type 4 and 5 sign permits. The fee must reasonably recover costs for outdoor advertising control program administration and enforcement and may not exceed one hundred fifty dollars. The department shall establish by rule exemptions from payment of the annual fee for type 4 and 5 signs that do not generate rental income.

Sec. 2. RCW 47.42.080 and 2010 c 8 s 10016 are each amended to read as follows:

(1) Any sign erected or maintained contrary to the provisions of this chapter or rules adopted hereunder that is designed to be viewed from the interstate system, the primary system, or the scenic system is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the permittee or, if there is no permittee, the owner of the property on which the sign is located, by certified mail at his or her last known address, that it constitutes a public nuisance and must comply with the chapter or be removed.

(2) If the permittee or owner, as the case may be, fails to comply with the chapter or remove any such sign within fifteen days after being notified to remove the sign he or she is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling removal of the sign. Each day the sign is maintained constitutes a separate offense.

(3) If the permittee or owner, as the case may be, fails to comply with this chapter or rules adopted under this chapter or fails to remove any sign erected or maintained contrary to the provisions of this chapter or rules adopted under this chapter within fifteen days after being notified to remove the sign, the department shall assess a fine of one hundred dollars per calendar day until the sign is brought into compliance or is removed. The one hundred dollar per calendar day fine is not contingent on a misdemeanor conviction. Fines collected under this subsection must be deposited with the state treasurer to the credit of the motor vehicle fund.

(4) If the permittee or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the sign and property upon which it is located with a notice that the sign constitutes a public nuisance and must be removed. If the sign is not removed within fifteen days after such posting, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the

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nuisance and destroy the sign, and for that purpose may enter upon private property without incurring liability for doing so.

~~((4))~~ (5) Nothing in this section may be construed to affect the provisions contained in RCW 47.42.102 requiring the payment of compensation upon the removal of any signs compensable under state law.

~~((5))~~ (6) Any sign erected or maintained on state highway right-of-way contrary to this chapter or rules adopted under it is a public nuisance, and the department is authorized to remove any such sign without notice.

Sec. 3. RCW 47.42.130 and 1999 c 276 s 2 are each amended to read as follows:

Every permit issued by the department shall be assigned a separate identification number, and each permittee shall fasten to each sign a weatherproof label, not larger than ~~((sixteen))~~ twenty-eight square inches, that shall be furnished by the department and on which shall be plainly visible the permit number. The permittee shall also place his or her name in a conspicuous position on the front or back of each sign. The failure of a sign to have such a label affixed to it is prima facie evidence that it is not in compliance with the provisions of this chapter.

NEW SECTION. Sec. 4. RCW 47.42.048 (State and local prohibitions) and 1974 ex.s. c 80 s 3 are each repealed."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator King moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5761.

Senator King spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator King that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5761.

The motion by Senator King carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5761 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5761, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5761, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 40; Nays, 8; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hewitt, Hill, Hobbs, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Parlette, Pearson, Ranker, Rolfes, Schlicher, Schoesler, Sheldon, Shin and Tom

Voting nay: Senators Benton, Hatfield, Holmquist Newbry, Honeyford, Padden, Rivers, Roach and Smith

Excused: Senator Carrell

SUBSTITUTE SENATE BILL NO. 5761, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 12, 2013

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5767 with the following amendment(s): 5767-S AMH AGNR H2320.1

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 16.57.160 and 2011 c 204 s 13 are each amended to read as follows:

(1) The director may adopt rules:

(a) Designating any point for mandatory inspection of cattle or horses or the furnishing of proof that cattle or horses passing or being transported through the point have been inspected or identified and are lawfully being transported;

(b) Providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification;

(c) Designating the documents that constitute other satisfactory proof of ownership for cattle and horses. A bill of sale may not be designated as documenting satisfactory proof of ownership for cattle; and

(d) Designating when inspection certificates, certificates of permit, or other transportation documents required by law or rule must designate a physical address of a destination. Cattle and horses must be delivered or transported directly to the physical address of that destination.

(2) A self-inspection certificate may be accepted as satisfactory proof of ownership for cattle if the director determines that the self-inspection certificate, together with other available documentation, sufficiently establishes ownership. Self-inspection certificates completed after June 10, 2010, are not satisfactory proof of ownership for cattle.

(3)(a) Upon request by a milk producer licensed under chapter 15.36 RCW, the department must issue an official individual identification tag to be placed by the producer before the first point of sale on bull calves and free-martins (infertile female calves) under thirty days of age. The fee for each tag is the cost to the department for manufacture, purchase, and distribution of the tag plus the applicable beef commission assessment. As used in this subsection (3), "green tag" means the official individual identification issued by the department.

(b) Transactions involving unbranded dairy breed bull calves or free-martins (infertile female calves) not being moved or transported out of Washington are exempt from inspection requirements under this chapter only if:

(i) The animal is under thirty days old and has not been previously bought or sold;

(ii) The seller holds a valid milk producer's license under chapter 15.36 RCW;

(iii) The sale does not take place at or through a public livestock market or special sale authorized by chapter 16.65 RCW;

(iv) Each animal is officially identified as provided in (a) of this subsection; and

(v) A certificate of permit and a bill of sale listing each animal's green tag accompanies the animal to the buyer's location. These documents do not constitute proof of ownership under this chapter.

(c) All fees received under (a) of this subsection, except for the beef commission assessment, must be deposited in the animal disease traceability account in the agricultural local fund created in RCW 43.23.230.

Sec. 2. RCW 16.57.370 and 2003 c 326 s 43 are each amended to read as follows:

All fees collected under the provisions of this chapter shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter, except as otherwise provided.
NEW SECTION. Sec. 3. RCW 16.57.303 (Proceeds from sale of impounded dairy breed cattle--Paid to seller) and 2003 c 326 s 37 are each repealed.

Sec. 4. RCW 16.57.300 and 2003 c 326 s 36 are each amended to read as follows:

~~((Except under RCW 16.57.303,))~~ The proceeds from the sale of cattle and horses when impounded under RCW 16.57.290, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of the cattle or horses at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell the cattle or horses. If the consignor fails to establish legal ownership or the right to sell the cattle or horses, the proceeds shall be paid to the director to be disposed of as any other stray proceeds."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hatfield moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5767.

Senator Hatfield spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hatfield that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5767.

The motion by Senator Hatfield carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5767 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5767, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5767, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 2; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Voting nay: Senators Holmquist Newbry and Padden

Excused: Senator Carrell

SUBSTITUTE SENATE BILL NO. 5767, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 9, 2013

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5786 with the following amendment(s): 5786-S AMH AGNR H2140.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 77.65 RCW to read as follows:

(1) Any application for a food fish guide license under RCW 77.65.370 or game fish guide license under RCW 77.65.480 must include:

(a) The applicant's driver's license or other government-issued identification card number and the jurisdiction of issuance;

(b) The applicant's unified business identifier number under a master license issued under RCW 19.02.070;

(c) Proof of current certification in first aid and cardiopulmonary resuscitation;

(d) A certificate of insurance demonstrating that the applicant has commercial liability coverage of at least three hundred thousand dollars; and

(e) If applicable, an original or notarized copy of a valid license issued by the United States coast guard to the applicant that authorizes the holder to carry passengers for hire.

(2) The requirements of this section related to licensure by the United States coast guard apply only to applicants intending to carry passengers for hire with a motorized vessel on federally recognized navigable waters. The license issued by the United States coast guard must be valid in the waters where the game fish guide or food fish guide license applicant will be carrying passengers for hire in a motorized vessel.

(3) The requirements in this section are in addition to the requirements of RCW 77.65.050.

Sec. 2. RCW 77.65.480 and 2011 c 339 s 30 are each amended to read as follows:

(1) A taxidermy license allows the holder to practice taxidermy for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars. The application fee is seventy dollars.

(2) A fur dealer's license allows the holder to purchase, receive, or resell raw furs for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars. The application fee is seventy dollars.

(3) A game fish guide license allows the holder to offer or perform the services of a game fish guide in the taking of game fish. The fee for this license is one hundred eighty dollars for a resident and six hundred dollars for a nonresident. The application fee is seventy dollars. An application for a game fish guide license must include the information required in section 1 of this act.

(4) A game farm license allows the holder to operate a game farm to acquire, breed, grow, keep, and sell wildlife under conditions prescribed by the rules adopted pursuant to this title. The fee for this license is seventy-two dollars for the first year and forty-eight dollars for each following year. The application fee is seventy dollars.

(5) A game fish stocking permit allows the holder to release game fish into the waters of the state as prescribed by rule of the commission. The fee for this permit is twenty-four dollars. The application fee is seventy dollars.

(6) A fishing or field trial permit allows the holder to promote, conduct, hold, or sponsor a fishing or field trial contest in accordance with rules of the commission. The fee for a fishing contest permit is twenty-four dollars. The fee for a field trial contest permit is twenty-four dollars. The application fee is seventy dollars.

(7)(a) An anadromous game fish buyer's license allows the holder to purchase or sell steelhead trout and other anadromous game fish harvested by Indian fishers lawfully exercising fishing

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rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director. The fee for this license is one hundred eighty dollars. The application fee is one hundred five dollars.

(b) An anadromous game fish buyer's license is not required for those businesses that buy steelhead trout and other anadromous game fish from Washington licensed game fish dealers and sell solely at retail.

Sec. 3. RCW 77.65.370 and 2009 c 333 s 8 are each amended to read as follows:

(1) A person shall not offer or perform the services of a food fish guide without a food fish guide license in the taking of food fish for personal use in freshwater rivers and streams, except that a charter boat license is required to operate a vessel from which a person may for a fee fish for food fish in state waters listed in RCW 77.65.150(4)(b).

(2) Only an individual at least sixteen years of age may hold a food fish guide license. No individual may hold more than one food fish guide license.

(3) An application for a food fish guide license must include the information required in section 1 of this act."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Pearson moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5786.

Senators Pearson and Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Pearson that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5786.

The motion by Senator Pearson carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5786 by voice vote.

MOTION

On motion of Senator Billig, Senator Kline was excused.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5786, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5786, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senators Carrell and Kline

SUBSTITUTE SENATE BILL NO. 5786, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 12, 2013

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5082 with the following amendment(s): 5082-S.E AMH BFS H2019.2

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 19.310.010 and 2009 c 70 s 2 are each amended to read as follows:

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

(1) A person or entity "affiliated" with a specific person or entity, means a person or entity who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person or entity specified.

(2) "Client" means the taxpayer with whom the exchange facilitator enters into an agreement as described in subsection ~~((3))~~ ~~(4)~~(a)(i) of this section.

(3) "Covered dishonest act" means a crime involving fraud, embezzlement, misappropriation of funds, robbery, or other theft of property.

~~(4)~~(a) "Exchange facilitator" means a person who:

(i)(A) Facilitates, for a fee, an exchange of like-kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property located in this state and transfer a replacement property to the taxpayer as a qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4); (B) enters into an agreement with a taxpayer to take title to a property in this state as an exchange accommodation titleholder, as defined in internal revenue service revenue procedure 2000-37; or (C) enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3); or

(ii) Maintains an office in this state for the purpose of soliciting business as an exchange facilitator.

(b) "Exchange facilitator" does not include:

(i) A taxpayer or a disqualified person, as defined under treasury regulation section 1.1031(k)-1(k), seeking to qualify for the nonrecognition provisions of section 1031 of the internal revenue code of 1986, as amended;

(ii) A financial institution that is (A) acting as a depository for exchange funds and is not facilitating an exchange or (B) acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iii) A title insurance company, underwritten title company, or escrow company that is acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iv) A person that advertises for and teaches seminars or classes, or otherwise makes a presentation, to attorneys, accountants, real estate professionals, tax professionals, or other professionals, when the primary purpose is to teach the professionals about tax-deferred exchanges or to train them to act as exchange facilitators;

(v) A qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4), who holds exchange funds from the disposition of relinquished property located outside of this state; or

(vi) An affiliated entity that is used by the exchange facilitator to facilitate exchanges or to take title to property in this state as an exchange accommodation titleholder.

(c) For the purposes of this subsection, "fee" means compensation of any nature, direct or indirect, monetary or in kind, that is received by a person or related person, as defined in section 267(b) or 707(b) of the internal revenue code, for any services relating to or incidental to the exchange of like-kind property.

~~((4))~~ (5) "Financial institution" means a state chartered or federally chartered bank, credit union, savings and loan association, savings bank, or trust company ~~((chartered under the laws of this state or the United States))~~ whose accounts are insured by the full faith and credit of the United States, the federal deposit insurance corporation, the national credit union share insurance fund, or other similar or successor programs.

~~((5))~~ (6) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, or any other form of a legal entity, and includes the agents and employees of that person.

~~((6))~~ (7) "Prudent investor standard" means the standard for investment as described under RCW 11.100.020.

Sec. 2. RCW 19.310.040 and 2012 c 34 s 2 are each amended to read as follows:

(1) A person who engages in business as an exchange facilitator must:

(a)(i) Maintain a fidelity bond or bonds in an amount of not less than one million dollars executed by an insurer authorized to do business in this state for the benefit of a client of the exchange facilitator that suffers a direct financial loss as a result of the exchange facilitator's covered dishonest act. Such fidelity bond must cover the acts of employees of an exchange facilitator and owners of a nonpublicly traded exchange facilitator; or

(ii) Deposit all exchange funds in a qualified escrow account or qualified trust, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), with a financial institution. ~~((The qualified escrow account or qualified trust must provide that))~~ If an exchange facilitator deposits exchange funds in a qualified escrow account or qualified trust:

~~(A)~~ (A) A withdrawal ~~((from that escrow account or trust))~~ of exchange funds requires the exchange facilitator and the client to independently authenticate a record, as defined under RCW 62A.9A-102, of the transaction; and

~~((B))~~ (B) The client of the exchange facilitator must receive independently from the depository financial institution, by any commercially reasonable means, a current statement for verification of the deposited exchange funds; and

~~(b)~~ (b) Disclose on the company web site and contractual agreement the following statement in large, bold, or otherwise conspicuous typeface calculated to draw the eye: "Washington state law, RCW 19.310.040, requires an exchange facilitator to either maintain a fidelity bond in an amount of not less than one million dollars that protects clients against losses caused by criminal acts of the exchange facilitator, or to hold all client funds in a qualified escrow account or qualified trust that requires your consent for withdrawals. All exchange funds must be deposited in a separately identified account using your taxpayer identification number. You must receive written notification of how your exchange funds have been deposited. Your exchange facilitator is required to provide you with written directions of how to independently verify the deposit of the exchange funds. Exchange facilitation services are not regulated by any agency of the state of Washington or of the United States government. It is your responsibility to determine that your exchange funds will be held in a safe manner." If recommending other products or services, the exchange facilitator must disclose to the client that the exchange facilitator may receive a financial benefit, such as a commission or referral fee, as a result of such recommendation. The exchange facilitator must not recommend or suggest to a client the use of services of another organization or business entity in which the

exchange facilitator has a direct or indirect interest without full disclosure of such interest at the time of recommendation or suggestion.

(2) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement.

(3) Upon request of a current or prospective client, or the attorney general under chapter 19.86 RCW, the exchange facilitator must offer evidence proving that the requirements of this section are satisfied at the time of the request.

Sec. 3. RCW 19.310.050 and 2009 c 70 s 6 are each amended to read as follows:

(1) A person who claims to have sustained damages by reason of the fraudulent act or covered dishonest act~~((s))~~ of an exchange facilitator or an exchange facilitator's employee may file a claim on the fidelity bond ~~((or approved alternative described in RCW 19.310.040 to recover the damages))~~.

(2) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law.

Sec. 4. RCW 19.310.080 and 2009 c 70 s 9 are each amended to read as follows:

(1) A person who engages in business as an exchange facilitator shall act as a custodian for all exchange funds, including money, property, other consideration, or instruments received by the exchange facilitator from, or on behalf of, the client, except funds received as the exchange facilitator's compensation. The exchange facilitator shall hold the exchange funds in a manner that provides liquidity and preserves both principal and any earned interest, and if invested, shall invest those exchange funds in investments that meet a prudent investor standard and satisfy investment goals of liquidity and preservation of principal and any earned interest. For purposes of this section, a violation of the prudent investor standard includes, but is not limited to, a transaction in which:

(a) Exchange funds are knowingly commingled by the exchange facilitator with the operating accounts of the exchange facilitator, except that the exchange facilitator's fee may be deposited as part of the exchange transaction into the same account as that containing exchange funds, in which event the exchange facilitator must promptly withdraw the fee;

(b) Exchange funds are loaned or otherwise transferred to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except that this subsection (1)(b) does not apply to the transfer of funds from an exchange facilitator to an exchange accommodation titleholder in accordance with an exchange contract;

(c) Exchange funds are invested in a manner that does not provide sufficient liquidity to meet the exchange facilitator's contractual obligations to its clients, unless insufficient liquidity occurs as the result of: (i) Events beyond the prediction or control of the exchange facilitator including, but not limited to, failure of a financial institution; or (ii) an investment specifically requested by the client; or

(d) Exchange funds are invested in a manner that does not preserve the principal of the exchange funds, unless loss of principal occurs as the result of: (i) Events beyond the prediction or control of the exchange facilitator; or (ii) an investment specifically requested by the client.

(2) Exchange funds are not subject to execution or attachment on any claim against the exchange facilitator.

Sec. 5. RCW 19.310.100 and 2009 c 70 s 11 are each amended to read as follows:

A person who engages in business as an exchange facilitator shall not, with respect to a like-kind exchange transaction~~((knowingly or with criminal negligence))~~:

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(1) Make a false, deceptive, or misleading material representation, directly or indirectly, concerning a like-kind transaction;

(2) Make a false, deceptive, or misleading material representation, directly or indirectly, in advertising or by any other means, concerning a like-kind transaction;

(3) Engage in any unfair or deceptive practice toward any person;

(4) Obtain property by fraud or misrepresentation;

(5) Fail to account for any moneys or property belonging to others that may be in the possession or under the control of the exchange facilitator;

(6) Commingle funds held for a client in any account that holds the exchange facilitator's own funds, except as provided in RCW 19.310.080(1)(a);

(7) Loan or otherwise transfer exchange funds to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except for the transfer of funds from an exchange facilitator to an exchange accommodation title holder in accordance with an exchange contract;

(8) Keep, or cause to be kept, any money in any bank, credit union, or other financial institution under a name designating the money as belonging to the client of any exchange facilitator, unless that money belongs to that client and was entrusted to the exchange facilitator by that client;

(9) Fail to fulfill its contractual duties to the client to deliver property or funds to the taxpayer in a material way unless such a failure is due to ~~((circumstances beyond the control of the exchange facilitator))~~; (a) Events beyond the prediction or control of the exchange facilitator; or (b) an investment specifically requested by the client;

(10) Commit, including commission by its owners, officers, directors, employees, agents, or independent contractors, any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property;

(11) Fail to make disclosures required by any applicable state law; or

(12) Make any false statement or omission of material fact in connection with any reports filed by an exchange facilitator or in connection with any investigation conducted by the department of financial institutions.

Sec. 6. RCW 19.310.110 and 2009 c 70 s 12 are each amended to read as follows:

(1) An exchange facilitator must deposit all client funds in ~~((~~ ~~(a) For accounts with a value of five hundred thousand dollars or more,~~) a separately identified account, as defined in treasury regulation section 1.468B-6(c)(ii), for the particular client or client's matter, and the client must receive all the earnings credited to the separately identified account ~~((~~ ~~(b) For accounts with a value less than five hundred thousand dollars, (i) a pooled interest bearing trust account if the client agrees to pooling in writing; or (ii) if the client does not agree to pooling, in a separately identified account, as defined in treasury regulation section 1.468B-6(c)(ii)).~~

(2) An exchange facilitator must provide the client with written notification of how the exchange proceeds have been invested or deposited.

Sec. 7. RCW 19.310.120 and 2012 c 34 s 4 are each amended to read as follows:

(1) Failure to fulfill the requirements under RCW 19.310.040 constitutes prima facie evidence that the exchange facilitator intended to defraud a client who suffered a subsequent loss of the asset entrusted to the exchange facilitator.

(2) A person who engages in business as an exchange facilitator and who knowingly violates RCW 19.310.100 (1) through ~~((8))~~

~~(9)~~ or fails to comply with the requirements under RCW 19.310.040 is guilty of a class B felony under chapter 9A.20 RCW. However, an exchange facilitator is not guilty of a class B felony for failure to comply with the requirements under RCW 19.310.040 if: (a) Failure to comply is due to the cancellation or amendment of the fidelity bond by the bond issuer; and (b) the exchange facilitator:

(i) Within thirty days, takes all reasonable steps to comply with the requirements under RCW 19.310.040; and

(ii) Deposits any new exchange funds into a qualified escrow account or qualified trust until a fidelity bond is obtained that meets the requirements under RCW 19.310.040(1)(a)(i)."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Benton moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5082.

Senator Benton spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Benton that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5082.

The motion by Senator Benton carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5082 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5082, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5082, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senators Carrell and Kline

ENGROSSED SUBSTITUTE SENATE BILL NO. 5082, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 9, 2013

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5153 with the following amendment(s): 5153-S.E AMH HCW H2170.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 71.24 RCW to read as follows:

The regional support networks shall jointly develop a uniform transfer agreement to govern the transfer of clients between regional support networks. By September 1, 2013, the regional support networks shall submit the uniform transfer agreement to the department. By December 1, 2013, the department shall establish guidelines to implement the uniform transfer agreement and may modify the uniform transfer agreement as necessary to avoid impacts on state administrative systems."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kohl-Welles moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5153.

Senator Kohl-Welles spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kohl-Welles that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5153.

The motion by Senator Kohl-Welles carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5153 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5153, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5153, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senators Carrell and Kline

ENGROSSED SUBSTITUTE SENATE BILL NO. 5153, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 16, 2013

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5315 with the following amendment(s): 5315-S AMH ELHS H2235.1

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 13.34.130 and 2011 c 309 s 27 and 2011 c 292 s 1 are each reenacted and amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after

consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition that maintains the child in his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b)(i) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other suitable person, the department, or a supervising agency for supervision of the child's placement. If the court orders that the child be placed with a caregiver over the objections of the parent or the department, the court shall articulate, on the record, his or her reasons for ordering the placement. The court may not order an Indian child, as defined in RCW 13.38.040, to be removed from his or her home unless the court finds, by clear and convincing evidence including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(ii) The department or supervising agency has the authority to place the child, subject to review and approval by the court (A) with a relative as defined in RCW 74.15.020(2)(a), (B) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child, or (C) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW.

(iii) The department may also consider placing the child, subject to review and approval by the court, with a person with whom the child's sibling or half-sibling is residing or a person who has adopted the sibling or half-sibling of the child being placed as long as the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be competent to provide care for the child.

(2) Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260.

(3) The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a), including a placement provided for in subsection (1)(b)(iii) of this section, when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in subsection (1)(b) of this section. The court shall consider the child's existing relationships and attachments when determining placement.

(4) When placing an Indian child in out-of-home care, the department or supervising agency shall follow the placement preference characteristics in RCW 13.38.180.

(5) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given

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preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(6) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a stepbrother or stepsister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the stepsibling.

(7) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(8) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(9) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative or other suitable person, the child shall remain in foster care and the court shall direct the department or supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative or other person appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court.

Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court.

Sec. 2. RCW 13.34.136 and 2011 c 309 s 29 are each amended to read as follows:

(1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in RCW 13.38.040; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(~~(6)~~) (8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii)(A) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement.

(B) Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation.

(C) Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. When a parent or sibling has been

identified as a suspect in an active criminal investigation for a violent crime that, if the allegations are true, would impact the safety of the child, the department shall make a concerted effort to consult with the assigned law enforcement officer in the criminal case before recommending any changes in parent/child or child/sibling contact. In the event that the law enforcement officer has information pertaining to the criminal case that may have serious implications for child safety or well-being, the law enforcement officer shall provide this information to the department during the consultation. The department may only use the information provided by law enforcement during the consultation to inform family visitation plans and may not share or otherwise distribute the information to any person or entity. Any information provided to the department by law enforcement during the consultation is considered investigative information and is exempt from public inspection pursuant to RCW 42.56.240. The results of the consultation shall be communicated to the court.

(D) The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(~~((6))~~) (8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be

made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(~~((4))~~) (6). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe.

Sec. 3. RCW 13.34.380 and 2009 c 520 s 45 are each amended to read as follows:

The department shall develop consistent policies and protocols, based on current relevant research, concerning visitation for dependent children to be implemented consistently throughout the state. The department shall develop the policies and protocols in consultation with researchers in the field, community-based agencies, court-appointed special advocates, parents' representatives, and court representatives. The policies and protocols shall include, but not be limited to: The structure and quality of visitations; consultation with the assigned law enforcement officer in the event the parent or sibling of the child is identified as a suspect in an active criminal investigation for a violent crime that, if the allegations are true, would impact the safety of the child; and training for department and supervising agency caseworkers, visitation supervisors, and foster parents related to visitation.

The policies and protocols shall be consistent with the provisions of this chapter and implementation of the policies and protocols shall be consistent with relevant orders of the court.

NEW SECTION. Sec. 4. A new section is added to chapter 13.34 RCW to read as follows:

In the event a judge orders a parent to undergo a psychosexual evaluation, and pending the outcome of the evaluation, the department, subject to the approval of the court, may reassess visitation duration, supervision, and location, if appropriate. If the assessment indicates the current visitation plan is contrary to the child's health, safety, or welfare, the department, subject to approval by the court, may alter the visitation plan pending the outcome of the investigation.

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Sec. 5. RCW 74.14B.010 and 1999 c 389 s 5 are each amended to read as follows:

(1) Caseworkers employed in children services shall meet minimum standards established by the department of social and health services. Comprehensive training for caseworkers shall be completed before such caseworkers are assigned to case-carrying responsibilities without direct supervision. Intermittent, part-time, and standby workers shall be subject to the same minimum standards and training.

(2) Ongoing specialized training shall be provided for persons responsible for investigating child sexual abuse. Training participants shall have the opportunity to practice interview skills and receive feedback from instructors.

(3) The department, the criminal justice training commission, the Washington association of sheriffs and police chiefs, and the Washington association of prosecuting attorneys shall design and implement statewide training that contains consistent elements for persons engaged in the interviewing of children, including law enforcement, prosecution, and child protective services.

(4) The training shall: (a) Be based on research-based practices and standards; (b) minimize the trauma of all persons who are interviewed during abuse investigations; (c) provide methods of reducing the number of investigative interviews necessary whenever possible; (d) assure, to the extent possible, that investigative interviews are thorough, objective, and complete; (e) recognize needs of special populations, such as persons with developmental disabilities; (f) recognize the nature and consequences of victimization; (g) require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances; (h) address record retention and retrieval; and (i) documentation of investigative interviews.

(5) The identification of domestic violence is critical in ensuring the safety of children in the child welfare system. As a result, ongoing domestic violence training and consultation shall be provided to caseworkers, including how to use the children's administration's practice guide to domestic violence."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Becker moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5315.
Senator Becker spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Becker that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5315.

The motion by Senator Becker carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5315 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5315, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5315, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senators Carrell and Kline

SUBSTITUTE SENATE BILL NO. 5315, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 9, 2013

MR. PRESIDENT:

The House passed SENATE BILL NO. 5417 with the following amendment(s): 5417 AMH LG H2233.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 35A.14.295 and 1997 c 429 s 36 are each amended to read as follows:

(1) The legislative body of a code city may resolve to annex territory (~~(containing residential property owners)~~) to the city if there is within the city, unincorporated territory:

(a) Containing less than one hundred ~~seventy-five~~ acres and having (~~(at least eighty percent)~~) all of the boundaries of such area contiguous to the code city; or

(b) Of any size and having at least eighty percent of the boundaries of such area contiguous to the city (~~(if such area existed before June 30, 1994)~~), and is within the same county and within the same urban growth area designated under RCW 36.70A.110, and the city (~~(was)~~) is planning under chapter 36.70A RCW (~~(as of June 30, 1994)~~).

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the code city and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same river, lake, or other body of water."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Mullet moved that the Senate concur in the House amendment(s) to Senate Bill No. 5417.

The President declared the question before the Senate to be the motion by Senator Mullet that the Senate concur in the House amendment(s) to Senate Bill No. 5417.

The motion by Senator Mullet carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5417 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5417, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5417, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 34; Nays, 14; Absent, 0; Excused, 1.

Voting yea: Senators Billig, Braun, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Hewitt, Hill, Hobbs, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Nelson, Parlette, Pearson, Ranker, Roach, Rolfes, Schlicher, Schoesler, Shin, Smith and Tom

Voting nay: Senators Bailey, Baumgartner, Becker, Benton, Brown, Ericksen, Frockt, Hasegawa, Holmquist Newbry, Honeyford, Murray, Padden, Rivers and Sheldon

Excused: Senator Carrell

SENATE BILL NO. 5417, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 9, 2013

MR. PRESIDENT:

The House passed SENATE JOINT MEMORIAL NO. 8005 with the following amendment(s): 8005 AMH TR H2251.1

Beginning on page 1, line 1, strike all material through page 2, line 36, and insert the following:

"TO THE HONORABLE LYNN PETERSON, SECRETARY OF TRANSPORTATION, AND TO THE WASHINGTON STATE TRANSPORTATION COMMISSION, AND TO THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION:

We, your Memorialists, the Senate and House of Representatives of the State of Washington, in legislative session assembled, respectfully represent and petition as follows:

WHEREAS, American soldiers and sailors were taken as prisoners of war during the American Revolutionary War with the majority of prisoners kept aboard British prison hulks near New York City. In 1873, a general exchange of prisoners occurred after the cessation of hostilities and recognition of American independence; and

WHEREAS, During the War of 1812, battlefield exchanges occurred under a general British/American cartel for exchanging prisoners. The British continued to use prison hulks and the American POW's were treated humanely until their repatriation following the Treaty of Ghent in 1814; and

WHEREAS, During the Mexican-American War, the Mexican forces released some American prisoners in "head for head" exchanges that occasionally took place during the war, but most American prisoners of war remained incarcerated until the ratification of the Treaty of Guadalupe Hidalgo; and

WHEREAS, During the Civil War, both Union and Confederate forces were unprepared to detain the enormous number of POW's. 211,400 Union prisoners were held in the South and 220,000 Confederate prisoners were held in the North. Starting in 1865, the federal government began returning large numbers of prisoners to the Confederacy. After the surrender at Appomattox, the Union prisons were closed quickly; and

WHEREAS, The United States entered World War I in April 1917. Of the 4,120 American POW's during World War I, 147 died in captivity with most deaths resulting from wounds received in combat. Prisoner exchanges followed the signing of the armistice; and

WHEREAS, During World War II, 260,000 American POW's were held by Germans in Europe. Over 1,121 American POW's died in European prison camps. In the Far East, the Japanese held 124,079 American POW's. 10,650 American POW's died in Japanese prison camps. In addition, there were 30,314 MIA's and 78,776 unaccounted for in the Far East; and

WHEREAS, During the Korean War, more than 12,000 American POW's were held by North Korea and China. Additionally, over 8,000 were classified as MIA and unaccounted for. After a truce was signed at Panmonjum, over 4,000 American POW's were returned in August 1953; and

WHEREAS, During the Vietnam War, 1,750 Americans were listed as MIA or unaccounted for in Vietnam and an additional 600 were MIA in neighboring Laos and Cambodia. To date, Vietnam has not accounted for all American POW's; and

WHEREAS, During the Gulf War, 47 Americans were listed as POW's or MIA at some point during Operation Desert Storm. At the conclusion of the war, 21 POW's were repatriated, 23 bodies were recovered, 2 bodies were never recovered, and one MIA case was left unresolved until 2009 when his remains were found in the Iraq desert; and

WHEREAS, During the Cold War, there was a sustained state of political and military tension between Western and Eastern powers and, as of 2000, there were 126 United States servicemen still unaccounted for. The United States Senate Select Committee on POW/MIA Affairs found evidence that some United States POW's were held in the former Soviet Union after the Cold War incident and that it "cannot, based on its investigation to date, rule out the possibility that one or more U.S. POW's from past wars or incidents are still being held somewhere within the borders of the former Soviet Union";

NOW, THEREFORE, Your Memorialists respectfully pray that the Washington State Transportation Commission commence proceedings to designate state route number 117 in Clallam county between the junction of state route number 101 and Marine Drive in the city of Port Angeles as the POW/MIA Memorial Highway to honor the service and sacrifice of all prisoners of war, missing in action, and those unaccounted for who served in the United States of America.

BE IT RESOLVED, That copies of this Memorial be immediately transmitted to the Honorable Lynn Peterson, Secretary of Transportation, the Washington State Transportation Commission, and the Washington State Department of Transportation."

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Senate Joint Memorial No. 8005.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Senate Joint Memorial No. 8005.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Senate Joint Memorial No. 8005 by voice vote.

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The President declared the question before the Senate to be the final passage of Senate Joint Memorial No. 8005, as amended by the House.

MOTION

Senator Bailey moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5615.

Senator Bailey spoke in favor of the motion.

ROLL CALL

The Secretary called the roll on the final passage of Senate Joint Memorial No. 8005, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senator Carrell

SENATE JOINT MEMORIAL NO. 8005, as amended by the House, having received the constitutional majority, was declared passed.

The President declared the question before the Senate to be the motion by Senator Bailey that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5615.

The motion by Senator Bailey carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5615 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5615, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5615, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senator Carrell

SUBSTITUTE SENATE BILL NO. 5615, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

April 12, 2013

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5615 with the following amendment(s): 5615-S AMH APPE H2128.4

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 28B.115.030 and 2011 1st sp.s. c 11 s 205 are each amended to read as follows:

The health professional loan repayment and scholarship program is established for credentialed health professionals and residents serving in health professional shortage areas. The program shall be administered by the office. In administering this program, the office shall:

(1) Select credentialed health care professionals and residents to participate in the loan repayment portion of the loan repayment and scholarship program and select eligible students to participate in the scholarship portion of the loan repayment and scholarship program;

(2) Adopt rules and develop guidelines to administer the program;

(3) Collect and manage repayments from participants who do not meet their service obligations under this chapter;

(4) Publicize the program, particularly to maximize participation among individuals in shortage areas and among populations expected to experience the greatest growth in the workforce;

(5) Solicit and accept grants and donations from public and private sources for the program;

(6) Use a competitive procurement to contract with a fund-raiser to solicit and accept grants and donations from private sources for the program. The fund-raiser shall be paid on a contingency fee basis on a sliding scale but must not exceed fifteen percent of the total amount raised for the program each year. The fund-raiser shall not be a registered state lobbyist; and

((6)) (7) Develop criteria for a contract for service in lieu of the service obligation where appropriate, that may be a combination of service and payment."

Correct the title.

and the same are herewith transmitted.

MESSAGE FROM THE HOUSE

April 12, 2013

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5324 with the following amendment(s): 5324-S.E AMH AGNR H2245.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW to read as follows:

(1) A county, city, town, water-sewer district, or flood control zone district constructing, improving, operating, or maintaining storm water control facilities under chapter 35.67, 35.92, 36.89, 36.94, 57.08, or 86.15 RCW that include storm water retention ponds, also known as wet ponds, wet retention ponds, or wet extended detention ponds, as part of a storm water control facility for which the primary function of the pond is to detain storm water, must:

(a) Consider and to the extent possible consistent with department design guidelines, and without compromising the intended function of the storm water retention pond, construct storm water retention ponds to maintain and control vegetation to minimize mosquito propagation;

(b) Consult with the local mosquito control district, where established, in the development of construction plans that include storm water retention ponds; and

BARBARA BAKER, Chief Clerk

(c) Provide for maintenance and control of vegetation growth in storm water retention ponds to reduce mosquito habitat and inhibit mosquito propagation without compromising the intended function of a storm water retention pond.

(2) A county, city, town, water-sewer district, or flood control zone district operating or maintaining storm water control facilities must, except where mosquito control districts are established, when notified by the department of health or a local health jurisdiction of the positive identification of west nile virus or other mosquito-borne human disease viruses in mosquitoes, birds, or mammals, including humans, consult with the department of health or a mosquito control district concerning which integrated pest management strategies, as defined under chapter 17.15 RCW, for mosquito control or abatement in storm water retention ponds would be most effective to prevent the spread of the disease.

(3) Where a mosquito control district is established, when notified by the department of health or a local health jurisdiction of the positive identification of west nile virus or other mosquito-borne human disease viruses in mosquitoes, birds, or mammals, including humans, the mosquito control district is responsible for mosquito control or abatement in storm water retention ponds."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Honeyford moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5324.

Senator Honeyford spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Honeyford that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5324.

The motion by Senator Honeyford carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5324 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5324, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5324, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, King, Kline, Kohl-Welles, Litzow, McAuliffe, Mullet, Murray, Nelson, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schlicher, Schoesler, Sheldon, Shin, Smith and Tom

Excused: Senator Carrell

ENGROSSED SUBSTITUTE SENATE BILL NO. 5324, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Billig, Senator Kohl-Welles was excused.

MOTION

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

SECOND READING

SENATE BILL NO. 5898, by Senators Hill and Hargrove

Increasing education funding, including adjusting school district levy and state levy equalization provisions.

MOTION

On motion of Senator Dammeier, Substitute Senate Bill No. 5898 was substituted for Senate Bill No. 5898 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator McAuliffe moved that the following amendment by Senators McAuliffe and Rolfes be adopted:

On page 10, beginning on line 17, strike all material down through and including page 14, line 30.

Renumber the sections consecutively and correct internal references accordingly.

On page 16, line 28, after "percent in 2010", strike all material through and including line 32 and insert:

"~~((and twenty-eight percent in 2011 through 2017 and));~~ twenty-seven percent in 2018; twenty-six percent in 2019; twenty-five percent in 2020; and twenty-four percent in 2021 and every year thereafter;"

On page 19, line 3, after "years 2013", strike "and 2014" and insert "through 2017"

On page 19, line 4, after "For calendar year" strike "2015, thirteen and one-half percent and thereafter. However, if the condition in section 7 of this act is met, the applicable percentage shall be thirteen percent in 2016 and twelve and one-half percent in 2017." And insert:

"2018, thirteen and one-half percent; 2019, thirteen percent; 2020, twelve and one-half percent; and in 2021 and thereafter, twelve percent."

On page 19, beginning on line 35, strike all material down through and including page 20, line 16.

On page 1, line 4 of the title, strike "adding a new section to chapter 28A.150 RCW;"

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

Senator Dammeier spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators McAuliffe and Rolfes on page 10, line 17 to Substitute Senate Bill No. 5898.

The motion by Senator McAuliffe failed and the amendment was not adopted by a rising vote.

MOTION

Senator Frockt moved that the following amendment by Senator Frockt and others be adopted:

On page 20, line 5, after "in policy-level enhancements", insert "appropriated from the general fund--state and exclusive of

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revenues sources derived from sections 201 and 300 of chapter . . . (Substitute Senate Bill no. 5895), Laws of 2013"

Senator Frockt spoke in favor of adoption of the amendment.
 Senator Dammeier spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Frockt and others on page 20, line 5 to Substitute Senate Bill No. 5898.

The motion by Senator Frockt failed and the amendment was not adopted by a rising vote.

MOTION

On motion of Senator Dammeier, the rules were suspended, Substitute Senate Bill No. 5898 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Dammeier spoke in favor of passage of the bill.
 Senators Rolfes and McAuliffe spoke against passage of the bill.

Senators Conway and Hargrove spoke on final passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5898.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5898 and the bill passed the Senate by the following vote: Yeas, 28; Nays, 20; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Ericksen, Fain, Hargrove, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, King, Litzow, Mullet, Padden, Parlette, Pearson, Rivers, Roach, Schoesler, Sheldon, Smith and Tom

Voting nay: Senators Billig, Chase, Cleveland, Conway, Darneille, Eide, Fraser, Frockt, Harper, Hasegawa, Keiser, Kline, Kohl-Welles, McAuliffe, Murray, Nelson, Ranker, Rolfes, Schlicher and Shin

Excused: Senator Carrell

SUBSTITUTE SENATE BILL NO. 5898, 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

SENATE BILL NO. 5903, by Senators Braun and Holmquist Newbry

Concerning the family and medical leave insurance act.

The measure was read the second time.

MOTION

Senator Hobbs moved that the following striking amendment by Senator Hobbs and others be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 49.86.030 and 2011 1st sp.s. c 25 s 1 are each amended to read as follows:

Beginning October 1, ((2015)) 2017, family leave insurance benefits are payable to an individual during a period in which the

individual is unable to perform his or her regular or customary work because he or she is on family leave if the individual:

(1) Files a claim for benefits in each week in which the individual is on family leave, and as required by rules adopted by the director;

(2) Has been employed for at least six hundred eighty hours in employment during the individual's qualifying year;

(3) Establishes an application year. An application year may not be established if the qualifying year includes hours worked before establishment of a previous application year;

(4) Consents to the disclosure of information or records deemed private and confidential under chapter 50.13 RCW. Initial disclosure of this information and these records by the employment security department to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to RCW 49.86.020(3);

(5) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050; and

(6) Documents that he or she has provided the employer from whom family leave is to be taken with written notice of the individual's intention to take family leave in the same manner as an employee is required to provide notice in RCW 49.78.250.

NEW SECTION. Sec. 2. (1)(a)(i) The joint legislative task force on family and medical leave insurance funding is established, with eight members as provided in this subsection.

(A) The chair and the ranking member of the senate commerce and labor committee.

(B) The chair and the ranking member of the house labor and workforce development committee.

(C) The majority leader of the senate must appoint one member from each of the two largest caucuses of the senate.

(D) The speaker of the house of representatives must appoint one member from each of the two largest caucuses of the house of representatives.

(ii) The department of labor and industries and the employment security department must cooperate with the task force and must each maintain a liaison representative, who must be a nonvoting member.

(iii) The majority leader of the senate and the speaker of the house of representatives jointly must appoint the cochair of the task force from among the legislative members of the task force. The cochairs must convene the initial meeting of the task force no later than January 1, 2014, and set a schedule of monthly meetings thereafter.

(b) The task force must make legislative recommendations for financing of the benefits and administrative costs of the family and medical leave insurance act.

(c) Staff support for the task force must be provided by senate committee services and the house of representatives office of program research.

(d) Legislative members of the task force must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(e) The expenses of the task force must be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(f) By January 1, 2015, and in compliance with RCW 43.01.036, the task force must submit a report to the legislature that details the task force's recommendations for funding the family and medical leave insurance act. The recommendations of the task force must include proposed legislation for introduction during the

2015 legislative session that implements the task force's recommendations.

(2) The following acts or parts of acts, as now existing or hereafter amended, are each repealed:

- (a) RCW 49.86.005 (Findings) and 2007 c 357 s 1;
- (b) RCW 49.86.010 (Definitions) and 2007 c 357 s 3;
- (c) RCW 49.86.020 (Family leave insurance program) and 2007 c 357 s 4;
- (d) RCW 49.86.030 (Eligibility for benefits) and 2013 c ... s 1 (section 1 of this act), 2011 1st sp.s. c 25 s 1, 2009 c 544 s 1, & 2007 c 357 s 5;
- (e) RCW 49.86.040 (Disqualification from benefits) and 2007 c 357 s 6;
- (f) RCW 49.86.050 (Duration of benefits--Payment of benefits) and 2007 c 357 s 7;
- (g) RCW 49.86.060 (Amount of benefits) and 2007 c 357 s 8;
- (h) RCW 49.86.070 (Federal income tax) and 2007 c 357 s 9;
- (i) RCW 49.86.080 (Erroneous payments--Payments induced by willful misrepresentation--Claim rejected after payments) and 2007 c 357 s 10;
- (j) RCW 49.86.090 (Leave and employment protection) and 2007 c 357 s 11;
- (k) RCW 49.86.100 (Employment by same employer) and 2007 c 357 s 12;
- (l) RCW 49.86.110 (Elective coverage) and 2007 c 357 s 13;
- (m) RCW 49.86.120 (Appeals) and 2007 c 357 s 14;
- (n) RCW 49.86.130 (Prohibited acts--Discrimination--Enforcement) and 2007 c 357 s 15;
- (o) RCW 49.86.140 (Coordination of leave) and 2007 c 357 s 16;
- (p) RCW 49.86.150 (Continuing entitlement or contractual rights--Not created) and 2007 c 357 s 17;
- (q) RCW 49.86.160 (Rules) and 2007 c 357 s 18;
- (r) RCW 49.86.170 (Family leave insurance account) and 2009 c 4 s 905 & 2007 c 357 s 19;
- (s) RCW 49.86.180 (Family leave insurance account funds--Investment) and 2007 c 357 s 20;
- (t) RCW 49.86.210 (Reports) and 2011 1st sp.s. c 25 s 2, 2009 c 544 s 2, & 2007 c 357 s 26;
- (u) RCW 49.86.900 (Severability--2007 c 357) and 2007 c 357 s 27;
- (v) RCW 49.86.901 (Captions not law--2007 c 357) and 2007 c 357 s 28;
- (w) RCW 49.86.902 (Effective dates--2007 c 357) and 2007 c 357 s 30; and
- (x) RCW 49.86.903 (Construction--Chapter applicable to state registered domestic partnerships--2009 c 521) and 2009 c 521 s 136.

(3)(a) Subsection (2) of this section takes effect December 31, 2015, if the family and medical leave insurance act is not funded by December 31, 2015.

(b) The director of the office of financial management must provide written notice of the effective date of subsection (2) of this section to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the director."

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

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Hobbs and others to Senate Bill No. 5903.

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

MOTION

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

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "funding the family and medical leave insurance act; amending RCW 49.86.030; creating a new section; repealing RCW 49.86.005, 49.86.010, 49.86.020, 49.86.030, 49.86.040, 49.86.050, 49.86.060, 49.86.070, 49.86.080, 49.86.090, 49.86.100, 49.86.110, 49.86.120, 49.86.130, 49.86.140, 49.86.150, 49.86.160, 49.86.170, 49.86.180, 49.86.210, 49.86.900, 49.86.901, 49.86.902, and 49.86.903; and providing a contingent effective date."

MOTION

On motion of Senator Braun, the rules were suspended, Engrossed Senate Bill No. 5903 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Braun spoke in favor of passage of the bill.

Senators Keiser and Murray spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5903.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5903 and the bill passed the Senate by the following vote: Yeas, 27; Nays, 21; Absent, 0; Excused, 1.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Ericksen, Fain, Hargrove, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, King, Litzow, Padden, Parlette, Pearson, Rivers, Roach, Schoesler, Sheldon, Smith and Tom

Voting nay: Senators Billig, Chase, Cleveland, Conway, Darneille, Eide, Fraser, Frockt, Harper, Hasegawa, Keiser, Kline, Kohl-Welles, McAuliffe, Mullet, Murray, Nelson, Ranker, Rolfes, Schlicher and Shin

Excused: Senator Carrell

ENGROSSED SENATE BILL NO. 5903, 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 3:55 p.m., on motion of Senator Fain, the Senate adjourned until 10:00 a.m. Tuesday, April 23, 2013.

BRAD OWEN, President of the Senate

HUNTER GOODMAN, Secretary of the Senate

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