

SEVENTY FOURTH DAY, MARCH 23, 2017

2017 REGULAR SESSION

## SEVENTY FOURTH DAY

## NOON SESSION

Senate Chamber, Olympia  
Thursday, March 23, 2017

The Senate was called to order at 12:00 o'clock noon by the President Pro Tempore, Senator Sheldon presiding. No roll call was taken.

## MOTION

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

## MOTION

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

## REPORTS OF STANDING COMMITTEES

March 22, 2017

SB 5048 Prime Sponsor, Senator Braun: Making 2017-2019 fiscal biennium operating appropriations. Reported by Committee on Ways & Means

MAJORITY recommendation: That Substitute Senate Bill No. 5048 be substituted therefor, and the substitute bill do pass. Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Bailey; Becker; Fain; Padden; Rivers; Schoesler; Warnick and Zeiger.

MINORITY recommendation: Do not pass. Signed by Senators Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Billig; Carlyle; Conway; Darneille; Hasegawa; Keiser; Miloscia and Pedersen.

Referred to Committee on Rules for second reading.

March 22, 2017

SB 5096 Prime Sponsor, Senator King: Making transportation appropriations for the 2017-2019 fiscal biennium. Reported by Committee on Transportation

MAJORITY recommendation: That Substitute Senate Bill No. 5096 be substituted therefor, and the substitute bill do pass. Signed by Senators King, Chair; Sheldon, Vice Chair; Baumgartner; Ericksen; Fortunato; Hawkins; O'Ban; Walsh and Wilson.

MINORITY recommendation: Do not pass. Signed by Senators Hobbs, Ranking Minority Member; Liias; Cleveland; Saldaña; Takko and Van De Wege.

Referred to Committee on Rules for second reading.

March 22, 2017

SB 5866 Prime Sponsor, Senator Brown: Creating a tax court for the state of Washington. Reported by Committee on Law & Justice

MAJORITY recommendation: That Substitute Senate Bill No. 5866 be substituted therefor, and the substitute bill do pass. Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel; Frockt and Wilson.

MINORITY recommendation: Do not pass. Signed by Senators Pedersen, Ranking Minority Member and Darneille.

Referred to Committee on Ways & Means.

March 22, 2017

SB 5875 Prime Sponsor, Senator Braun: Relating to education. Reported by Committee on Ways & Means

MAJORITY recommendation: That Substitute Senate Bill No. 5875 be substituted therefor, and the substitute bill do pass. Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Bailey; Becker; Fain; Miloscia; Padden; Rivers; Schoesler; Warnick and Zeiger.

MINORITY recommendation: Do not pass. Signed by Senators Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Billig; Carlyle; Conway; Darneille; Hasegawa; Keiser and Pedersen.

Referred to Committee on Rules for second reading.

March 22, 2017

SB 5891 Prime Sponsor, Senator Zeiger: Eliminating the use of the high school science assessment as a graduation prerequisite. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey; Becker; Billig; Carlyle; Conway; Darneille; Fain; Hasegawa; Keiser; Miloscia; Padden; Pedersen; Rivers; Schoesler; Warnick and Zeiger.

Referred to Committee on Rules for second reading.

March 22, 2017

SB 5894 Prime Sponsor, Senator O'Ban: Concerning behavioral health system reform. Reported by Committee on Ways & Means

MAJORITY recommendation: That Substitute Senate Bill No. 5894 be substituted therefor, and the substitute bill do pass. Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ;

Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey; Becker; Billig; Carlyle; Darneille; Fain; Hasegawa; Keiser; Miloscia; Padden; Pedersen; Rivers; Schoesler; Warnick and Zeiger.

Referred to Committee on Rules for second reading.

March 22, 2017

SB 5895 Prime Sponsor, Senator Braun: Making expenditures from the budget stabilization account for catastrophic wildfire events in fiscal year 2017. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey; Becker; Billig; Carlyle; Conway; Darneille; Fain; Keiser; Miloscia; Padden; Pedersen; Rivers; Schoesler; Warnick and Zeiger.

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

Referred to Committee on Rules for second reading.

March 22, 2017

SB 5896 Prime Sponsor, Senator Rossi: Concerning claims against public entities. Reported by Committee on Law & Justice

MAJORITY recommendation: That Substitute Senate Bill No. 5896 be substituted therefor, and the substitute bill do pass. Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel and Wilson.

MINORITY recommendation: Do not pass. Signed by Senators Pedersen, Ranking Minority Member; Darneille and Frockt.

Referred to Committee on Rules for second reading.

March 22, 2017

SB 5898 Prime Sponsor, Senator Braun: Concerning eligibility for public assistance programs. Reported by Committee on Ways & Means

MAJORITY recommendation: That Substitute Senate Bill No. 5898 be substituted therefor, and the substitute bill do pass. Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Bailey; Becker; Fain; Miloscia; Padden; Rivers; Schoesler; Warnick and Zeiger.

MINORITY recommendation: Do not pass. Signed by Senators Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Billig; Carlyle; Conway; Darneille; Hasegawa; Keiser and Pedersen.

Referred to Committee on Rules for second reading.

March 22, 2017

SB 5900 Prime Sponsor, Senator Braun: Making expenditures from the budget stabilization account for public employer unfunded actuarially accrued liabilities. Reported by Committee on Ways & Means

MAJORITY recommendation: That Substitute Senate Bill No. 5900 be substituted therefor, and the substitute bill do pass. Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey; Becker; Billig; Carlyle; Conway; Darneille; Fain; Keiser; Miloscia; Padden; Pedersen; Rivers; Schoesler; Warnick and Zeiger.

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

Referred to Committee on Rules for second reading.

March 22, 2017

SB 5901 Prime Sponsor, Senator Braun: Concerning eligibility for the working connections child care and early childhood education and assistance programs. Reported by Committee on Ways & Means

MAJORITY recommendation: That Substitute Senate Bill No. 5901 be substituted therefor, and the substitute bill do pass. Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Bailey; Becker; Fain; Miloscia; Padden; Rivers; Schoesler; Warnick and Zeiger.

MINORITY recommendation: Do not pass. Signed by Senators Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Billig; Carlyle; Conway; Darneille; Hasegawa; Keiser and Pedersen.

Referred to Committee on Rules for second reading.

March 22, 2017

SB 5902 Prime Sponsor, Senator Braun: Addressing enrollments in postsecondary certification and degree programs with an emphasis in science, technology, engineering, and mathematics. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey; Becker; Billig; Carlyle; Conway; Darneille; Fain; Keiser; Miloscia; Padden; Pedersen; Rivers; Schoesler; Warnick and Zeiger.

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

Referred to Committee on Rules for second reading.

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SJR 8209 Prime Sponsor, Senator Brown: Authorizing a tax court. Reported by Committee on Law & Justice

MAJORITY recommendation: Do pass. Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel; Frockt and Wilson.

MINORITY recommendation: Do not pass. Signed by Senators Pedersen, Ranking Minority Member and Darneille.

Referred to Committee on Ways & Means.

March 22, 2017

HB 1091 Prime Sponsor, Representative Appleton: Authorizing tribal court judges to solemnize marriages. Reported by Committee on Law & Justice

MAJORITY recommendation: Do pass as amended. Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel; Darneille; Frockt and Wilson.

Referred to Committee on Rules for second reading.

March 22, 2017

SHB 1100 Prime Sponsor, Committee on Appropriations: Concerning concealed pistol license renewal notices. Reported by Committee on Law & Justice

MAJORITY recommendation: Do pass. Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel and Wilson.

MINORITY recommendation: Do not pass. Signed by Senators Pedersen, Ranking Minority Member; Darneille and Frockt.

Referred to Committee on Ways & Means.

March 22, 2017

HB 1125 Prime Sponsor, Representative Condotta: Limiting the total number of retail marijuana licenses that may be held by a retailer and co-owners. Reported by Committee on Commerce, Labor & Sports

MAJORITY recommendation: Do pass. Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway; Hasegawa; King; Rossi; Saldaña and Wilson.

Referred to Committee on Rules for second reading.

March 22, 2017

SHB 1126 Prime Sponsor, Committee on Commerce & Gaming: Establishing a deadline for the use and implementation of a marijuana retail license by a licensee. Reported by Committee on Commerce, Labor & Sports

MAJORITY recommendation: Do pass as amended. Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway; Hasegawa; King; Rossi; Saldaña and Wilson.

Referred to Committee on Rules for second reading.

HB 1128 Prime Sponsor, Representative Shea: Concerning civil arbitration. Reported by Committee on Law & Justice

MAJORITY recommendation: Do pass as amended. Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille and Frockt.

MINORITY recommendation: Do not pass. Signed by Senators Angel and Wilson.

Referred to Committee on Ways & Means.

March 22, 2017

SHB 1129 Prime Sponsor, Committee on Higher Education: Providing associate degree education to enhance education opportunities and public safety. Reported by Committee on Law & Justice

MAJORITY recommendation: Do pass as amended. Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel; Darneille; Frockt and Wilson.

Referred to Committee on Rules for second reading.

March 22, 2017

SHB 1176 Prime Sponsor, Committee on Commerce & Gaming: Concerning the alcoholic beverage mead. Reported by Committee on Commerce, Labor & Sports

MAJORITY recommendation: Do pass. Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway; Hasegawa; King; Rossi; Saldaña and Wilson.

Referred to Committee on Rules for second reading.

March 22, 2017

HB 1250 Prime Sponsor, Representative Griffey: Authorizing retail marijuana outlets to give a free lockable drug box to adults age twenty-one years and over and to qualifying patients age eighteen years and over subject to restrictions. Reported by Committee on Commerce, Labor & Sports

MAJORITY recommendation: Do pass as amended. Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway; King; Rossi; Saldaña and Wilson.

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

Referred to Committee on Rules for second reading.

March 21, 2017

SHB 1257 Prime Sponsor, Committee on Agriculture & Natural Resources: Concerning the release of wild beavers. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: Do pass. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 21, 2017

SHB 1275 Prime Sponsor, Committee on Agriculture & Natural Resources: Including fish passage barrier removal projects that comply with the forest practices rules in the streamlined permit process provided in RCW 77.55.181. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: Do pass as amended. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 22, 2017

SHB 1320 Prime Sponsor, Representative Reeves: Concerning certain gold star license plate qualified applicants and recipients. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Senators King, Chair; Sheldon, Vice Chair; Hobbs, Ranking Minority Member; Liias; Cleveland; Erickson; Fortunato; Hawkins; O'Ban; Saldaña; Takko; Van De Wege; Walsh and Wilson.

Referred to Committee on Rules for second reading.

March 22, 2017

E2SHB 1351 Prime Sponsor, Committee on Appropriations: Authorizing, under one license, the sale of spirits, beer, and wine at retail for off-premises consumption. Reported by Committee on Commerce, Labor & Sports

MAJORITY recommendation: Do pass. Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway; Hasegawa; King; Rossi; Saldaña and Wilson.

Referred to Committee on Rules for second reading.

March 22, 2017

HB 1400 Prime Sponsor, Representative Dent: Creating Washington state aviation special license plates. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Senators King, Chair; Sheldon, Vice Chair; Hobbs, Ranking Minority Member; Liias; Cleveland; Erickson; Fortunato; Hawkins; O'Ban; Saldaña; Takko; Van De Wege; Walsh and Wilson.

Referred to Committee on Rules for second reading.

March 21, 2017

ESHB 1489 Prime Sponsor, Committee on Agriculture & Natural Resources: Concerning private wildland fire suppression contractors. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: Do pass. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 22, 2017

SHB 1515 Prime Sponsor, Committee on Transportation: Clarifying the appropriate format for signed written authorizations for special parking privileges. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Senators King, Chair; Sheldon, Vice Chair; Hobbs, Ranking Minority Member; Liias; Cleveland; Erickson; Fortunato; Hawkins; O'Ban; Saldaña; Takko; Van De Wege; Walsh and Wilson.

Referred to Committee on Rules for second reading.

March 21, 2017

ESHB 1531 Prime Sponsor, Committee on Agriculture & Natural Resources: Concerning the forest riparian easement program. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: Do pass. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 22, 2017

SHB 1568 Prime Sponsor, Committee on Transportation: Creating Fred Hutch special license plates. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Senators King, Chair; Sheldon, Vice Chair; Hobbs, Ranking Minority Member; Liias; Cleveland; Erickson; Fortunato; Hawkins; O'Ban; Saldaña; Takko; Van De Wege; Walsh and Wilson.

Referred to Committee on Rules for second reading.

March 22, 2017

HB 1606 Prime Sponsor, Representative Pike: Requiring transportation benefit districts to hold public hearings prior to imposing fees or charges by a vote of the governing board. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Senators King, Chair; Sheldon, Vice Chair; Hobbs, Ranking Minority Member; Erickson; Fortunato; Hawkins; O'Ban; Walsh and Wilson.

MINORITY recommendation: Do not pass. Signed by Senators Liias; Cleveland; Takko and Van De Wege.

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

Referred to Committee on Rules for second reading.

March 22, 2017

HB 1623 Prime Sponsor, Representative Senn: Concerning secondhand dealers utilizing automated kiosks to purchase secondhand electronic devices. Reported by Committee on Commerce, Labor & Sports

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MAJORITY recommendation: Do pass. Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway; Hasegawa; King; Rossi; Saldaña and Wilson.

MAJORITY recommendation: Do pass as amended. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

Referred to Committee on Rules for second reading.

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SHB 1626 Prime Sponsor, Committee on Public Safety: Changing the date in which community impact statements are provided to the department of corrections. Reported by Committee on Law & Justice

HB 1965 Prime Sponsor, Representative Lovick: Standardizing the collection and distribution of criminal records. Reported by Committee on Law & Justice

MAJORITY recommendation: Do pass. Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel; Darneille; Frockt and Wilson.

MAJORITY recommendation: Do pass as amended. Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel; Darneille; Frockt and Wilson.

Referred to Committee on Rules for second reading.

Referred to Committee on Rules for second reading.

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SHB 1820 Prime Sponsor, Committee on Environment: Concerning the maintenance and operations of parks and recreational land acquired through the conservation futures program. Reported by Committee on Natural Resources & Parks

HB 2038 Prime Sponsor, Representative Jenkin: Clarifying the applicability of RCW 70.345.080 to only vapor products. Reported by Committee on Commerce, Labor & Sports

MAJORITY recommendation: Do pass. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

MAJORITY recommendation: Do pass. Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Hasegawa; King; Rossi; Saldaña and Wilson.

Referred to Committee on Rules for second reading.

Referred to Committee on Rules for second reading.

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HB 1906 Prime Sponsor, Representative Orcutt: Allowing the expansion of counties qualifying for the farm internship program, including certain southwest Washington counties. Reported by Committee on Commerce, Labor & Sports

HB 2064 Prime Sponsor, Representative Shea: Removing industrial hemp from the scope of the uniform controlled substances act. Reported by Committee on Law & Justice

MAJORITY recommendation: Do pass as amended. Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway; Hasegawa; King; Rossi; Saldaña and Wilson.

MAJORITY recommendation: Do pass. Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel; Darneille; Frockt and Wilson.

Referred to Committee on Rules for second reading.

Referred to Committee on Rules for second reading.

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EHB 1924 Prime Sponsor, Representative Dent: Concerning small forest landowners. Reported by Committee on Commerce, Labor & Sports

HB 2087 Prime Sponsor, Representative Stambaugh: Concerning worker safety on roadways and roadsides. Reported by Committee on Commerce, Labor & Sports

MAJORITY recommendation: Do pass as amended. Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway; Hasegawa; King; Rossi; Saldaña and Wilson.

MAJORITY recommendation: Do pass. Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway; Hasegawa; Rossi; Saldaña and Wilson.

Referred to Committee on Rules for second reading.

Referred to Committee on Rules for second reading.

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SHB 1944 Prime Sponsor, Committee on Agriculture & Natural Resources: Exempting certain law enforcement officers from the hunter education training program. Reported by Committee on Natural Resources & Parks

HJM 4010 Prime Sponsor, Representative Morris: Requesting that the Blanchard State Forest be renamed the "Harriet A. Spanel-Blanchard State Forest." Reported by Committee on Natural Resources & Parks

Referred to Committee on Rules for second reading.

MAJORITY recommendation: Do pass. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 21, 2017

SGA 9055 THEODORE R WILLHITE, reappointed on January 1, 2015, for the term ending December 31, 2017, as Member of the Recreation and Conservation Funding Board. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 21, 2017

SGA 9058 PATRICIA T. LANTZ, reappointed on January 1, 2015, for the term ending December 31, 2020, as Member of the Parks and Recreation Commission. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 21, 2017

SGA 9122 PHIL ROCKEFELLER, reappointed on August 4, 2015, for the term ending July 15, 2019, as Member of the Salmon Recovery Funding Board. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 21, 2017

SGA 9131 DON BONKER, reappointed on June 15, 2015, for the term ending June 12, 2019, as Member of the Columbia River Gorge Commission. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 21, 2017

SGA 9187 PHILIP ANDERSON, appointed on July 28, 2016, for the term ending June 30, 2019, as Member of the Pacific States Marine Fisheries Commission. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

SGA 9224 MARK O BROWN, reappointed on November 29, 2016, for the term ending December 31, 2022, as Member of the Parks and Recreation Commission. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 21, 2017

SGA 9225 STEVEN S MILNER, reappointed on November 29, 2016, for the term ending December 31, 2022, as Member of the Parks and Recreation Commission. Reported by Committee on Natural Resources & Parks

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato and McCoy.

Referred to Committee on Rules for second reading.

March 23, 2017

SGA 9254 GLORIA PAPIEZ, appointed on March 20, 2017, for the term ending at the pleasure of the Governor, as Director of the Department of Financial Institutions - Agency Head. Reported by Committee on Financial Institutions & Insurance

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Angel, Chair; Mullet, Ranking Minority Member; Fortunato; Hobbs and Kuderer.

Referred to Committee on Rules for second reading.

#### MOTION

On motion of Senator Fain, the recommendations of the Standing Committees were accepted and all measures listed on the Standing Committee report were referred to the committees as designated.

#### MOTION

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

#### MESSAGE FROM THE GOVERNOR GUBERNATORIAL APPOINTMENTS

March 21, 2017

TO THE HONORABLE, THE SENATE OF THE STATE OF WASHINGTON

Ladies and Gentlemen:

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

DAVID W. GRAYBILL, appointed March 19, 2015, for the term ending December 31, 2020, as Member of the Fish and Wildlife Commission.

Sincerely,  
JAY INSLEE, Governor

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Referred to Committee on Natural Resources & Parks as Senate Gubernatorial Appointment No. 9255.

March 22, 2017

TO THE HONORABLE, THE SENATE OF THE STATE OF WASHINGTON

Ladies and Gentlemen:

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

ALAN BURKE, appointed March 22, 2017, for the term beginning April 1, 2017 and ending January 12, 2018, as Member of the State Board of Education.

Sincerely,  
JAY INSLEE, Governor

Referred to Committee on Early Learning & K-12 Education as Senate Gubernatorial Appointment No. 9256.

March 22, 2017

TO THE HONORABLE, THE SENATE OF THE STATE OF WASHINGTON

Ladies and Gentlemen:

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

AMY L. FROST, appointed March 22, 2017, for the term ending June 30, 2019, as Member of the Professional Educator Standards Board.

Sincerely,  
JAY INSLEE, Governor

Referred to Committee on Early Learning & K-12 Education as Senate Gubernatorial Appointment No. 9257.

MOTION

On motion of Senator Fain, all appointees listed on the Gubernatorial Appointments report were referred to the committees as designated.

MOTION

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

MESSAGE FROM THE HOUSE

March 23, 2017

MR. PRESIDENT:

The Speaker has signed:

SUBSTITUTE HOUSE BILL NO. 2106, and the same is herewith transmitted.

BERNARD DEAN, Chief Clerk

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:

SUBSTITUTE HOUSE BILL NO. 2106.

MOTION

At 12:04 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 3:53 p.m. by President Pro Tempore Sheldon. The Secretary called the roll and announced to the President Pro Tempore that all Senators were present.

PERSONAL PRIVILEGE

Senator Frockt: “Thank you Mr. President. I am pleased, this afternoon, to stand on behalf of the Senate, on behalf of both sides, to welcome the thirty-four presidents of our thirty-four community and technical colleges in Washington here who are visiting today for meetings and conferences. I spoke with Dr. Brown from North Seattle, my President in my area, and they are working on some very innovative policy issues and some ways to deliver the amazing education that so many of our students in this state need and deserve. And as you know, Mr. President, we have every year over 380,000 students come through our community and technical colleges from every corner of the state. And one of the most amazing things about our system, our award winning system, is that our thirty-four colleges are in every corner of the state. They are not isolated and so they effect everyone of our districts. Whether you’re in a more Republican district or Democratic district, liberal or conservative, the community colleges are pillars of our community and we count on them to produce the workforce of the twenty-first century that we need and deserve. So these are outstanding educational leaders who are every day preparing our young people to be entrepreneurs, and engineers, and teachers, and all of the things we ask them to do and they are vital to the economic life of our state as a whole and, of course to the many many students that they serve and create additional economic opportunities for. So, these are great educational and outstanding leaders and I wanted to just say on behalf of the entire Senate, to welcome them to Olympia. We look forward to working with them and we are working together to come up with the right funding models on both sides of the aisle so that when we are done on April 25, that they will have the resources they need to meet the mission and the task we have given them here in Washington. Thank you very much Mr. President. I understand we will be recognizing some of these presidents individually but I want to thank you for the time this afternoon to recognize the Community and Technical College presidents.”

PERSONAL PRIVILEGE

Senator Wellman: “Thank you so much. I had the opportunity a while ago to head up a company that handled the facilities management and the back end registration for the continuing education programs of our community and technical colleges. And they are vital to our business growth. They handle many of the relationships between students and business. They educate many of our employees for many businesses. They create special programs to be able to deliver them for businesses. In addition, as you know, in the 21<sup>st</sup> century, we are lifelong learners, so going back to school and having that ability to go back to our community colleges for continuing education is really vital. So I am delighted to see them here. They play such a vital part of our business and economic vitality.

INTRODUCTION OF SPECIAL GUESTS

The President Pro Tempore welcomed and introduced the following representatives of the Community and Technical College System who were seated in the gallery: President Ron

Langrell, Bates Technical College; Interim President Jill Wakefield, Bellevue College; President Kimberly Perry, Bellingham Technical College; President Terry Leas, Big Bend Community College; President Eric Murray, Cascadia College; President Bob Mohrbacher, Centralia College; President Bob Knight, Clark College; President Joyce Loveday, Clover Park Technical College; Interim President Lee Thornton, Columbia Basin College; President Jean Hernandez, Edmonds Community College; President David Beyer, Everett Community College; President Jim Minkler, Grays Harbor College; Interim President Scott Morgan, Green River College; Acting President Jeff Wagnitz, Highline College; President Amy Morrison Goings, Lake Washington Institute of Technology; President Chris Bailey, Lower Columbia College; President Warren Brown, North Seattle College; President David Mitchell, Olympic College; President Luke Robins, Peninsula College; President Denise Yochum, Pierce College Fort Steilacoom; President Marty Cavalluzzi, Pierce College Puyallup; President Kevin McCarthy, Renton Technical College; President Sheila Edwards Lange, Seattle Central College; President Cheryl Roberts, Shoreline Community College; President Tom Keegan, Skagit Valley College; President Timothy Stokes, South Puget Sound Community College; President Gary Oertli, South Seattle College; President Ryan Carstens, Spokane Community College; President Janet Gullickson, Spokane Falls Community College; Acting Co-President Mary Chikwinya, Tacoma Community College; President Derek Brandes, Walla Walla Community College; President Jim Richardson, Wenatchee Valley College; President Kathi Hiyane-Brown, Whatcom Community College; President Linda Kaminski, Yakima Valley College; Chancellor Michelle Johnson, Pierce College – District 11; Chancellor Shouan Pan, Seattle Colleges – District 6; and Chancellor Christine Johnson, Community Colleges of Spokane – District 17.

#### MOTION

At 4:01 p.m., on motion of Senator Fain, the Senate was declared to be at ease for the purpose of caucuses.

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#### EVENING SESSION

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The Senate was called to order at 5:43 p.m. by President Pro Tempore Sheldon.

#### MOTION

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

#### THIRD READING

#### CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

#### MOTION

Senator Bailey moved that Jay M. Balasbas, Gubernatorial Appointment No. 9250, be confirmed as a member of the Utilities and Transportation Commission.

Senators Bailey, Lias, Rossi, Rivers, Carlyle and King spoke in favor of passage of the motion.

#### APPOINTMENT OF JAY M. BALASBAS

The President Pro Tempore declared the question before the Senate to be the confirmation of Jay M. Balasbas, Gubernatorial Appointment No. 9250, as a member of the Utilities and Transportation Commission.

The Secretary called the roll on the confirmation of Jay M. Balasbas, Gubernatorial Appointment No. 9250, as a member of the Utilities and Transportation Commission and the appointment was confirmed by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Billig, Braun, Brown, Carlyle, Chase, Cleveland, Conway, Darneille, Ericksen, Fain, Fortunato, Frockt, Hasegawa, Hawkins, Hobbs, Honeyford, Hunt, Keiser, King, Kuderer, Lias, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Palumbo, Pearson, Pedersen, Ranker, Rivers, Rolfes, Rossi, Saldaña, Schoesler, Sheldon, Short, Takko, Van De Wege, Walsh, Warnick, Wellman, Wilson and Zeiger

Jay M. Balasbas, Gubernatorial Appointment No. 9250, having received the constitutional majority was declared confirmed as a member of the Utilities and Transportation Commission.

#### MOTION

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

#### SECOND READING

SENATE BILL NO. 5815, by Senators Rivers, Cleveland, Becker and Ranker

Concerning the hospital safety net assessment.

#### MOTIONS

On motion of Senator Rivers, Substitute Senate Bill No. 5815 was substituted for Senate Bill No. 5815 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Rivers, the rules were suspended, Substitute Senate Bill No. 5815 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Rivers spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5815.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5815 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Becker, Billig, Braun, Brown, Carlyle, Chase, Cleveland, Conway, Darneille, Fain, Fortunato, Frockt, Hasegawa, Hawkins, Hobbs, Honeyford, Hunt, Keiser, King, Kuderer, Lias, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Palumbo, Pearson, Pedersen, Ranker, Rivers, Rolfes, Rossi, Saldaña, Schoesler, Sheldon, Short, Takko, Van De Wege, Walsh, Warnick, Wellman, Wilson and Zeiger

Voting nay: Senators Baumgartner and Ericksen

SUBSTITUTE SENATE BILL NO. 5815, 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



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SENATE BILL NO. 5715, by Senators Rivers, Keiser, Cleveland, Becker, Hunt, Billig, Bailey and Kuderer

MOTION

Limiting nursing home direct care payment adjustments to the lowest case mix weights in the reduced physical function groups and authorizing upward adjustments to case mix weights in the cognitive and behavior groups.

Senator Lias demanded a roll call vote.

The President Pro Tempore declared that one-sixth of the members supported the demand and the demand was sustained.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment no. 142 by Senator Billig on page 1, line 16 to Substitute Senate Bill No. 5898.

The measure was read the second time.

MOTION

ROLL CALL

On motion of Senator Rivers, the rules were suspended, Senate Bill No. 5715 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

Senators Rivers and Cleveland spoke in favor of passage of the bill.

Voting yea: Senators Billig, Carlyle, Chase, Cleveland, Conway, Darneille, Frockt, Hasegawa, Hobbs, Hunt, Keiser, Kuderer, Lias, McCoy, Mullet, Nelson, Palumbo, Pedersen, Ranker, Rolfes, Saldaña, Takko, Van De Wege and Wellman

The President Pro Tempore declared the question before the Senate to be the final passage of Senate Bill No. 5715.

Voting nay: Senators Angel, Bailey, Baumgartner, Becker, Braun, Brown, Ericksen, Fain, Fortunato, Hawkins, Honeyford, King, Miloscia, O'Ban, Padden, Pearson, Rivers, Rossi, Schoesler, Sheldon, Short, Walsh, Warnick, Wilson and Zeiger

ROLL CALL

MOTION

The Secretary called the roll on the final passage of Senate Bill No. 5715 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Senator Darneille moved that the following floor striking amendment no. 143 by Senator Darneille be adopted:

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Billig, Braun, Brown, Carlyle, Chase, Cleveland, Conway, Darneille, Ericksen, Fain, Fortunato, Frockt, Hasegawa, Hawkins, Hobbs, Honeyford, Hunt, Keiser, King, Kuderer, Lias, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Palumbo, Pearson, Pedersen, Ranker, Rivers, Rolfes, Rossi, Saldaña, Schoesler, Sheldon, Short, Takko, Van De Wege, Walsh, Warnick, Wellman, Wilson and Zeiger

On page 2, strike lines 3 through 9.

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

SENATE BILL NO. 5715, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

Senator Darneille spoke in favor of adoption of the striking amendment.

SECOND READING

Senator Braun spoke against adoption of the striking amendment.

SENATE BILL NO. 5898, by Senator Braun

The President Pro Tempore declared the question before the Senate to be the adoption of floor striking amendment no. 143 by Senator Darneille on page 2 to Substitute Senate Bill No. 5898.

Concerning eligibility for public assistance programs.

The motion by Senator Darneille did not carry and floor striking amendment no. 143 was not adopted by voice vote.

MOTION

MOTION

On motion of Senator Braun, 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.

On motion of Senator Braun, 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 Braun spoke in favor of passage of the bill.

Senators Billig and Darneille spoke against passage of the bill.

MOTION

Senator Billig moved that the following floor amendment no. 142 by Senator Billig be adopted.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5898.

ROLL CALL

On page 1, line 16, after "(2)" strike the remainder of line 16 through line 2 on page 2 and insert the following:

"As recommended by Public Law 113-186, authorizations for the working connections child care subsidy shall be effective for twelve months beginning July 1, 2016, unless an earlier date is provided in the omnibus appropriations act."

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, 25; Nays, 24; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Braun, Brown, Ericksen, Fain, Fortunato, Hawkins, Honeyford, King, Miloscia, O'Ban, Padden, Pearson, Rivers, Rossi, Schoesler, Sheldon, Short, Walsh, Warnick, Wilson and Zeiger

Senator Billig spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

Voting nay: Senators Billig, Carlyle, Chase, Cleveland, Conway, Darneille, Frockt, Hasegawa, Hobbs, Hunt, Keiser, Kuderer, Liias, McCoy, Mullet, Nelson, Palumbo, Pedersen, Ranker, Rolfes, Saldaña, Takko, Van De Wege and Wellman

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. 5901, by Senator Braun

Concerning eligibility for the working connections child care and early childhood education and assistance programs.

#### MOTIONS

On motion of Senator Braun, Substitute Senate Bill No. 5901 was substituted for Senate Bill No. 5901 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Braun, the rules were suspended, Substitute Senate Bill No. 5901 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Braun and Fain spoke in favor of passage of the bill.

Senators Billig, Takko and Keiser spoke against passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5901.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5901 and the bill passed the Senate by the following vote: Yeas, 25; Nays, 24; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Braun, Brown, Ericksen, Fain, Fortunato, Hawkins, Honeyford, King, Miloscia, O'Ban, Padden, Pearson, Rivers, Rossi, Schoesler, Sheldon, Short, Walsh, Warnick, Wilson and Zeiger

Voting nay: Senators Billig, Carlyle, Chase, Cleveland, Conway, Darneille, Frockt, Hasegawa, Hobbs, Hunt, Keiser, Kuderer, Liias, McCoy, Mullet, Nelson, Palumbo, Pedersen, Ranker, Rolfes, Saldaña, Takko, Van De Wege and Wellman

SUBSTITUTE SENATE BILL NO. 5901, 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. 5875, by Senator Braun

Relating to education.

#### MOTION

On motion of Senator Braun, Substitute Senate Bill No. 5875 was substituted for Senate Bill No. 5875 and the substitute bill was placed on the second reading and read the second time.

#### MOTION

Senator Carlyle moved that the following floor amendment no. 158 by Senators Carlyle, Kuderer and Palumbo be adopted:

On page 1, after line 5, insert the following:

#### "Part I

#### Findings and Intent

NEW SECTION. **Sec. 101.** (1) The legislature finds that states fail to collect more than twenty-three billion dollars annually in sales taxes from remote sales over the internet and through catalogues. The legislature further finds that Washington and its local governments will lose out on an estimated three hundred fifty-three million dollars in sales and use taxes in fiscal year 2018 from remote sales, reducing funds that would otherwise be available for the public education system, health care services, infrastructure, and other vital public services.

(2) The legislature recognizes that states may not impose sales or use tax collection obligations on an out-of-state business unless the business has a substantial nexus with the taxing state. The legislature also recognizes that under the United States supreme court's decision in *National Bellas Hess v. Dep't of Revenue of Ill.*, 386 U.S. 753 (1967), substantial nexus under the commerce clause requires a physical presence by the seller in the taxing state. Relying on the doctrine of stare decisis, the United States supreme court reaffirmed the physical presence nexus standard twenty-five years later in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

(3) The legislature further finds that the basis of the physical presence nexus standard was primarily justified by the complexity and burden on mail order sellers and other out-of-state sellers in complying with the sales tax laws in numerous jurisdictions at the state and local level all across the country. The legislature further finds that the supreme court's concerns underlying the *Bellas Hess* decision have been effectively addressed by advances in technology and simplified tax laws. For example, Washington and most other states with sales taxes allow or require electronic reporting and payment of the tax. Also, several states, including Washington, offer free online sales tax rate lookup tools. A number of private companies offer automated sales tax compliance solutions. In addition, sales tax laws have been simplified in many states, including Washington, through participation in the streamlined sales and use tax project and compliance with the streamlined sales and use tax agreement.

(4) The legislature further finds that *Bellas Hess* was decided one year before the first plans were developed for the computer network that became the basis of the internet. The legislature further finds that since *Quill* was decided e-commerce has grown substantially, generating retail sales of over three hundred forty-one billion dollars in 2015, which have been growing at a rate of about fifteen percent for the last five years. The legislature further finds that like their brick and mortar competitors, online businesses receive benefits and opportunities provided by their market states, such as transportation networks, infrastructure, laws providing protection of business interests, access to the courts to protect valuable rights, and a regulated marketplace. However, the legislature finds that under the current physical presence nexus standard, online only sellers have an unfair competitive advantage over in state brick and mortar stores to the detriment of main street retailers. Online only businesses have no geographical limitations to their marketplace; no costs of maintaining local physical retail stores, such as infrastructure costs, employee costs, and property taxes; and may not have to collect sales tax on sales to customers in states in which they do not have a physical presence, all of which lead to their ability to price their goods at a lower cost to consumers. The legislature further finds that even if the physical presence nexus standard was once a wise rule of law, it is no longer justifiable.

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(5) The legislature further finds that the supreme court in its *Quill* decision implicitly invited the United States congress to resolve whether and to what extent states may impose a sales tax collection obligation on remote sellers. The legislature further finds that there is overwhelming support among the public, states, and municipalities, and many national and local associations representing brick and mortar businesses for federal legislation requiring remote sellers to collect and remit retail sales tax. The legislature further finds that despite such broad-based support, congress has failed to enact such legislation.

(6) The legislature agrees with Justice Kennedy's concurring opinion in the *Direct Marketing Association v. Brohl* decision (135 S. Ct. 1124) that the court's *Quill* holding is "inflicting extreme harm and unfairness on the States," and that "there is a powerful case to be made that a retailer doing extensive business within a State has a sufficiently 'substantial nexus' to justify imposing some minor tax-collection duty, even if that business is done through mail or the Internet." Justice Kennedy stated that "it is unwise to delay any longer a reconsideration of the Court's holding in *Quill*," and he closed his opinion by inviting a direct challenge to *Quill* and *Bellas Hess*, saying that "The legal system should find an appropriate case for this Court to reexamine *Quill* and *Bellas Hess*."

(7) The legislature finds that because Washington is unique in that it relies so heavily on sales tax to fund education and other vital state services, and because Washington has frequently been at the forefront of advancing technology and tax policy, it is incumbent upon this state to lead the way to a more fair and equitable modern marketplace where online businesses and brick and mortar businesses can compete based on quality of products and other nontax factors, which benefits all consumers. The legislature recognizes that the fast pace of technological change seen with the rapid growth of electronic commerce puts pressure on states to update their tax codes just as this state did (a) in 2007 in adopting Senate Bill No. 5089, which enacted significant simplifications in sales and use administration and brought Washington into full compliance with the streamlined sales and use tax agreement, (b) in 2009 in adopting Engrossed Substitute House Bill No. 2075 addressing the excise taxation of digital products, and (c) in 2010 in adopting economic nexus and market-based apportionment for business and occupation tax purposes in Second Engrossed Substitute Senate Bill No. 6143. The legislature finds that making such changes is not radical or to be unexpected, but is a rational means to avoid an ever shrinking tax base resulting from an outdated tax code that has not kept up with significant changes in technology and the economy.

(8) The legislature finds that several states, including Alabama, South Dakota, and Tennessee have taken measures to adopt an "economic nexus" standard with respect to the collection of sales tax. The legislature further finds that other states are considering adopting similar rules or legislation.

(9) The legislature also finds that Colorado adopted a law requiring out-of-state retailers that do not collect Colorado's sales tax to report tax-related information to their Colorado customers and the Colorado department of revenue. The legislature further finds that in 2016 the United States court of appeals for the tenth circuit upheld that law.

(10) Therefore, the legislature intends by this act to address the significant harm and unfairness brought about by the physical presence nexus rule by testing the boundaries of the rule. This act also sets up a legal challenge to the physical presence nexus rule that could potentially lead to the United States supreme court reevaluating *Bellas Hess* and *Quill* or congress enacting legislation authorizing and establishing the requirements for states to impose a sales tax collection duty on remote sellers. To

achieve these objectives, part II of this act establishes clear statutory guidelines for determining when sellers are required to collect Washington's sales tax. These guidelines clarify the extent of the traditional physical presence standard and also adopt an "economic nexus" standard under which a remote seller would establish a substantial nexus with this state solely by making a meaningful amount of sales into this state. Part II of this act also extends the economic nexus standard for the business and occupation tax imposed on retail sales taxed under RCW 82.04.250(1) and 82.04.257(1). Part III of this act adopts a sales and use tax notice and reporting law based on the multistate tax commission's draft model sales and use tax notice reporting statute, which is similar to Colorado's sales and use tax notice reporting law.

(11) The legislature recognizes that the enactment of part II of this act places remote sellers in a complicated position, precisely because existing constitutional doctrine calls certain provisions of part II of this act into question. Accordingly, the legislature intends to clarify that the obligations created by this law on sellers with a substantial nexus with this state under section 206(1)(b) of this act would be appropriately stayed by the courts until the constitutionality of section 206(1)(b) of this act has been clearly established by a binding judgment, including, for example, a decision from the supreme court of the United States abrogating its existing doctrine, or a final judgment applicable to a particular taxpayer.

(12) The legislature finds that the declaratory judgment action authorized in section 211 of this act is warranted by existing law, by good faith arguments for the extension, modification, or reversal of existing law, or the establishment of new law.

## Part II

### Nexus for Excise Tax Purposes

**Sec. 201.** RCW 82.04.066 and 2015 3rd sp.s. c 5 s 203 are each amended to read as follows:

"Engaging within this state" and "engaging within the state," when used in connection with any apportionable activity as defined in RCW 82.04.460 or ((wholesale sales)) selling activity taxable under RCW 82.04.250(1), 82.04.257(1)<sub>2</sub>, or 82.04.270, means that a person generates gross income of the business from sources within this state, such as customers or intangible property located in this state, regardless of whether the person is physically present in this state.

**Sec. 202.** RCW 82.04.067 and 2016 c 137 s 2 are each amended to read as follows:

(1) A person engaging in business is deemed to have substantial nexus with this state if, in the current or immediately preceding calendar year, the person is:

- (a) An individual and is a resident or domiciliary of this state;
- (b) A business entity and is organized or commercially domiciled in this state; or
- (c) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and ~~((in the immediately preceding tax year))~~ the person had:
  - (i) More than ~~((fifty))~~ fifty-three thousand dollars of property in this state;
  - (ii) More than ~~((fifty))~~ fifty-three thousand dollars of payroll in this state;
  - (iii) More than two hundred ~~((fifty))~~ sixty-seven thousand dollars of receipts from this state; or
  - (iv) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

(2)(a) Property counting toward the thresholds in subsection (1)(c)(i) and (iv) of this section is the average value of the taxpayer's property, including intangible property, owned or

rented and used in this state during the current or immediately preceding ((tax)) calendar year.

(b)(i) Property owned by the taxpayer, other than loans and credit card receivables owned by the taxpayer, is valued at its original cost basis. Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(ii) Property rented by the taxpayer is valued at eight times the net annual rental rate. For purposes of this subsection, "net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(c) The average value of property must be determined by averaging the values at the beginning and ending of the ((tax)) applicable calendar year; but the department may require the averaging of monthly values during the ((tax)) applicable calendar year if reasonably required to properly reflect the average value of the taxpayer's property.

(d)(i) For purposes of this subsection (2), loans and credit card receivables are deemed owned and used in this state as follows:

(A) Loans secured by real property, personal property, or both real and personal property are deemed owned and used in the state if the real property or personal property securing the loan is located within this state. If the property securing the loan is located both within this state and one or more other states, the loan is deemed owned and used in this state if more than fifty percent of the fair market value of the real or personal property is located within this state. If more than fifty percent of the fair market value of the real or personal property is not located within any one state, then the loan is deemed owned and used in this state if the borrower is located in this state. The determination of whether the real or personal property securing a loan is located within this state must be made, as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded.

(B) Loans not secured by real or personal property are deemed owned and used in this state if the borrower is located in this state.

(C) Credit card receivables are deemed owned and used in this state if the billing address of the cardholder is in this state.

(ii)(A) Except as otherwise provided in (d)(ii)(B) of this subsection (2), the definitions in the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, apply to this section.

(B) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(e) Notwithstanding anything else to the contrary in this subsection, property counting toward the thresholds in subsection (1)(c)(i) and (iv) of this section does not include a person's ownership of, or rights in, computer software as defined in RCW 82.04.215, including computer software used in providing a digital automated service; master copies of software; and digital goods and digital codes residing on servers located in this state.

(3)(a) Payroll counting toward the thresholds in subsection (1)(c)(ii) and (iv) of this section is the total amount paid by the taxpayer for compensation in this state during the immediately preceding tax year plus nonemployee compensation paid to representative third parties in this state. Nonemployee compensation paid to representative third parties includes the gross amount paid to nonemployees who represent the taxpayer

in interactions with the taxpayer's clients and includes sales commissions.

(b) Employee compensation is paid in this state if the compensation is properly reportable to this state for unemployment compensation tax purposes, regardless of whether the compensation was actually reported to this state.

(c) Nonemployee compensation is paid in this state if the service performed by the representative third party occurs entirely or primarily within this state.

(d) For purposes of this subsection, "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees or nonemployees and defined as gross income under 26 U.S.C. Sec. 61 of the federal internal revenue code of 1986, as existing on June 1, 2010.

(4) Receipts counting toward the thresholds in subsection (1)(c)(iii) and (iv) of this section are:

(a) Those amounts included in the numerator of the receipts factor under RCW 82.04.462;

(b) For financial institutions, those amounts included in the numerator of the receipts factor under the rule adopted by the department as authorized in RCW 82.04.460(2); and

(c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or 82.04.270 (~~with respect to wholesale sales~~), the gross proceeds of sales taxable under those statutory provisions and sourced to this state in accordance with RCW 82.32.730.

(5)(a) Each December, the department must review the cumulative percentage change in the consumer price index. The department must adjust the thresholds in subsection (1)(c)(i) through (iii) of this section if the consumer price index has changed by five percent or more since the later of June 1, 2010, or the date that the thresholds were last adjusted under this subsection. For purposes of determining the cumulative percentage change in the consumer price index, the department must compare the consumer price index available as of December 1st of the current year with the consumer price index as of the later of June 1, 2010, or the date that the thresholds were last adjusted under this subsection. The thresholds must be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds must be rounded to the nearest one thousand dollars. Any adjustment will apply to tax periods that begin after the adjustment is made.

(b) As used in this subsection, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from the bureau of labor statistics of the United States department of labor.

(6)(a)(i) Except as provided in (a)(iii) of this subsection (6), subsections (1) through (5) of this section only apply with respect to the taxes on persons engaged in apportionable activities as defined in RCW 82.04.460 or making wholesale sales taxable under RCW 82.04.257(1) or 82.04.270.

(ii) Subject to the limitation in RCW 82.32.531, for purposes of the taxes imposed under this chapter on ((any)) the business of making sales at retail or any other activity not included in the definition of apportionable activities in RCW 82.04.460, other than the business of making wholesale sales taxed under RCW 82.04.257(1) or 82.04.270, ((except as provided in RCW 82.32.531,)) a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state during the tax year, which need only be demonstrably more than a slightest presence.

(iii) For purposes of the taxes imposed under this chapter on the business of making sales at retail taxable under RCW 82.04.250(1) or 82.04.257(1), a person is also deemed to have a substantial nexus with this state if the person's receipts from this state, pursuant to subsection (4)(c) of this section, meet either

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critereon in subsection (1)(c)(iii) or (iv) of this section, as adjusted under subsection (5) of this section.

(b) For purposes of this subsection, a person is physically present in this state if the person has property or employees in this state.

(c)(i) A person is also physically present in this state for the purposes of this subsection if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

(ii) A remote seller as defined in RCW 82.08.052 is presumed to be engaged in activities in this state that are significantly associated with the remote seller's ability to establish or maintain a market for its products in this state if the remote seller is presumed to have a substantial nexus with this state under RCW 82.08.052. The presumption in this subsection (6)(c)(ii) may be rebutted as provided in RCW 82.08.052. To the extent that the presumption in RCW 82.08.052 is no longer operative pursuant to RCW 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer operative. ~~((Nothing in this section may be construed to affect in any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5) or to narrow the scope of the terms "agent" or "other representative" in this subsection (6)(c).))~~

**Sec. 203.** RCW 82.04.220 and 2011 1st sp.s. c 20 s 101 are each amended to read as follows:

(1) There is levied and collected from every person that has a substantial nexus with this state a tax for the act or privilege of engaging in business activities. The tax is measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

~~(2)(a) A person who has a substantial nexus with this state in ((any tax year under the provisions of RCW 82.04.067 will be deemed to have a substantial nexus with this state for the following tax year))~~ the current calendar year under the provisions of RCW 82.04.067, based solely on the person's property, payroll, or receipts in this state during the current calendar year, is subject to the tax imposed under this chapter for the current calendar year only on business activity occurring on and after the date that the person established a substantial nexus with this state in the current calendar year.

(b) This subsection (2) does not apply to any person who also had a substantial nexus with this state (i) during the immediately preceding calendar year under RCW 82.04.067, or (ii) during the current calendar year under RCW 82.04.067 (1) (a) or (b) or (6) (a)(ii) or (c).

NEW SECTION. **Sec. 204.** RCW 82.04.424 (Exemptions—Certain in-state activities) and 2015 3rd sp.s. c 5 s 206 & 2003 c 76 s 2 are each repealed.

NEW SECTION. **Sec. 205.** A new section is added to chapter 82.08 RCW to be codified between RCW 82.08.050 and 82.08.052 to read as follows:

A seller with a substantial nexus with this state must comply with the provisions of this chapter.

NEW SECTION. **Sec. 206.** A new section is added to chapter 82.08 RCW to be codified between RCW 82.08.052 and 82.08.054 to read as follows:

(1) A seller has a substantial nexus with this state during a calendar year for the purposes of collecting the taxes imposed under this chapter if, during the current or immediately preceding calendar year:

(a) The seller had its property or employees in this state for the seller's business purposes; or

(b) The seller's receipts from retail sales in this state, pursuant to RCW 82.04.067(4), meet either criterion in RCW 82.04.067(1)(c) (iii) or (iv), as adjusted under RCW 82.04.067(5).

(2) A seller also has a substantial nexus with this state during a calendar year for the purposes of collecting the taxes imposed under this chapter if the seller's total gross proceeds of sales at retail sourced to this state under RCW 82.32.730 exceed ten thousand dollars during the current or immediately preceding calendar year and at any time during such current or immediately preceding calendar year:

(a)(i) The seller offers its products for sale through one or more marketplaces operated by any marketplace facilitator that has a substantial nexus with this state; or

(ii) The seller or another person, as the case may be, including an affiliated person, other than a common carrier acting solely as a common carrier, engages in or performs any of the following activities in this state, but not including the activities described in RCW 82.08.052:

(A) Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name as the seller;

(B) Uses its employees, agents, representatives, or independent contractors in this state to promote or facilitate sales by the seller to purchasers in this state;

(C) Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in this state;

(D) Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the seller;

(E) Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in this state;

(F) Facilitates the sale of tangible personal property to purchasers in this state by allowing the seller's purchasers in this state to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or any other place of business maintained by that person in this state;

(G) Shares management, business systems, business practices, or employees with the seller or, in the case of an affiliated person, engages in intercompany transactions related to the activities occurring with the seller to establish or maintain the seller's market in this state; or

(H) Conducts any other activities in this state that are significantly associated with the seller's ability to establish and maintain a market in this state for the seller's sales of products to purchasers in this state; or

(b)(i) The seller is under contract with a payment processor or merchant bank, or accepts credit cards issued either by a financial institution under a license from a credit card association or by an entity that also authorizes purchases and settles with consumers and merchants, if the payment processor, merchant bank, credit card association, or credit card issuer has a substantial nexus with this state for purposes of collecting the taxes imposed under this chapter.

(ii) Pursuant to RCW 82.32.330(3)(u), the department may disclose the identity of payment processors, credit card associations, credit card issuers described in (b)(i) of this subsection (2), and merchant banks that have a substantial nexus with this state for purposes of collecting the taxes imposed under this chapter.

(3)(a) For purposes of subsection (2)(a)(i) of this section, a marketplace facilitator is deemed to have a substantial nexus with this state during a calendar year if:

(i) The marketplace facilitator or any affiliated person maintained a physical presence in this state during any portion of the current or immediately preceding calendar year to engage in

any of the activities described in subsection (5)(a)(i) or (ii) of this section; or

(ii) The marketplace facilitator generated more than ten thousand dollars of gross proceeds of sales in the current or immediately preceding calendar year from retail sales made through its physical or electronic marketplace by sellers that are physically located in this state. For purposes of this subsection (3)(a)(ii), a seller is presumed to be physically located in this state if the address for the seller maintained in the business records of the marketplace facilitator is in this state.

(b) Pursuant to RCW 82.32.330(3)(u), the department may disclose the identity of marketplace facilitators that have a substantial nexus with this state for purposes of collecting the taxes imposed under this chapter.

(4) For purposes of this section, persons are "affiliated persons" with respect to each other where one of the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons who are affiliated with respect to each other.

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

(a) "Marketplace facilitator" means a person that contracts with sellers to facilitate, for consideration, the sale of the seller's products through a physical or electronic marketplace operated by the person, and engages, either directly or indirectly, through one or more affiliated persons, in:

(i) Any of the following:

(A) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;

(B) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;

(C) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or

(D) Software development or research and development activities related to any of the activities described in (a)(i)(A) through (C) or (ii)(A) through (H) of this subsection (5), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(ii) Any of the following activities with respect to the seller's products:

(A) Payment processing services;

(B) Fulfillment or storage services;

(C) Listing products for sale;

(D) Setting prices;

(E) Branding sales as those of the marketplace facilitator;

(F) Order taking;

(G) Advertising or promotion; or

(H) Providing customer service or accepting or assisting with returns or exchanges.

(b) "Merchant bank" means a financial institution or any other member of a credit card network that allows the seller to accept credit card payments and is responsible for depositing transaction proceeds into the seller's designated account.

(c) "Payment processor" means a person that contracts directly with a seller to provide settlement for the seller's credit card, debit card, or other payment transactions.

(d) "Product" means any property or service that is sold in a sale at retail as defined in RCW 82.04.050.

(6) This section is subject to RCW 82.32.762.

**NEW SECTION. Sec. 207.** A new section is added to chapter 82.08 RCW to be codified between section 206 of this act and RCW 82.08.054 to read as follows:

(1) For purposes of this chapter, a marketplace facilitator is deemed to be an agent of any marketplace seller making retail

sales through the marketplace facilitator's physical or electronic marketplace. A marketplace facilitator with a substantial nexus with this state must collect and remit to the department the taxes imposed under this chapter on all taxable retail sales made through the marketplace facilitator's marketplace and sourced to this state under RCW 82.32.730, whether as principal or as the agent of a marketplace seller.

(2) A marketplace facilitator is relieved of liability under this chapter for failure to collect the correct amount of tax to the extent that the marketplace facilitator can show to the department's satisfaction that the error was due to incorrect information given to the marketplace facilitator by the marketplace seller, unless the marketplace facilitator and marketplace seller are affiliated persons. Where the marketplace facilitator is relieved of liability under this subsection (2), the marketplace seller is solely liable for the amount of uncollected tax due.

(3)(a) A marketplace facilitator is relieved of liability under this chapter for the failure to collect tax on taxable retail sales to the extent that the marketplace facilitator can show to the department's satisfaction that:

(i) The taxable retail sale was made through the marketplace facilitator's marketplace;

(ii) The taxable retail sale was made solely as the agent of a marketplace seller, and the marketplace facilitator and marketplace seller are not affiliated persons; and

(iii) The failure to collect sales tax was not due to an error in sourcing the sale under RCW 82.32.730.

(b) Where the marketplace facilitator is relieved of liability under this subsection (3), the marketplace seller is also relieved of liability for the amount of uncollected tax due, subject to the limitations in subsection (4) of this section.

(4) A marketplace seller with a substantial nexus with this state is relieved of its obligation to collect the taxes imposed under this chapter on all taxable retail sales through a marketplace operated by a marketplace facilitator if the marketplace seller has obtained documentation from the marketplace facilitator indicating that the marketplace facilitator is registered with the department and will collect all applicable taxes due under this chapter on all taxable retail sales made on behalf of the marketplace seller through the marketplace operated by the marketplace facilitator. The documentation required by this subsection (4) must be provided in a form and manner prescribed by or acceptable to the department. This subsection (4) does not relieve a marketplace seller from liability for uncollected taxes due under this chapter resulting from a marketplace facilitator's failure to collect the proper amount of tax due when the error was due to incorrect information given to the marketplace facilitator by the marketplace seller.

(5) Nothing in this section affects the obligation of any purchaser to remit sales or use tax as to any applicable taxable transaction in which the seller or the seller's agent does not collect and remit sales tax.

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

(a) "Affiliated person" has the same meaning as in section 206 of this act.

(b) "Marketplace facilitator" has the same meaning as in section 206 of this act.

(c) "Marketplace seller" means a seller that makes retail sales through any physical or electronic marketplace operated by a marketplace facilitator, regardless of whether the seller is required to be registered with the department as provided in RCW 82.32.030.

(7) This section is subject to RCW 82.32.762.

**Sec. 208.** RCW 82.08.050 and 2010 c 112 s 8 are each amended to read as follows:

(1)(a) The tax imposed in this chapter must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department under the provisions of RCW 82.08.060.

(b) Sellers, including marketplace facilitators as defined in section 206 of this act, establishing a substantial nexus with this state during the current calendar year based solely on the provisions of section 206 (1)(b), (2), or (3)(a)(ii) of this act, and who did not have a substantial nexus with this state during the immediately preceding calendar year for purposes of collecting the taxes imposed under this chapter, must begin collecting state and local sales taxes on taxable retail sales sourced to this state beginning on the first day of the calendar month that is at least thirty days from the date that the person established a substantial nexus with this state.

(2) The tax required by this chapter, to be collected by the seller, is deemed to be held in trust by the seller until paid to the department. Any seller who appropriates or converts the tax collected to the seller's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) Except as otherwise provided in this section, if any seller fails to collect the tax imposed in this chapter or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

(4) Sellers are not relieved from personal liability for the amount of the tax unless they maintain proper records of exempt or nontaxable transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket exemption certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(d) Sellers are relieved from personal liability for the amount of tax if they obtain a copy of a direct pay permit issued under RCW 82.32.087.

(8) The amount of tax, until paid by the buyer to the seller or to the department, constitutes a debt from the buyer to the seller. Any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) Except as otherwise provided in this subsection, the tax required by this chapter to be collected by the seller must be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. Except as otherwise provided in this subsection, for purposes of determining the tax due from the buyer to the seller and from the seller to the department it must be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter. But if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price may not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax. If the department proceeds directly against the buyer for collection of the tax as authorized in this subsection, the department may add a penalty of ten percent of the unpaid tax to the amount of the tax due for failure of the buyer to pay the tax to the seller, regardless of when the tax may be collected by the department. In addition to the penalty authorized in this subsection, all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, apply. For the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made will be considered as the due date of the tax.

~~(11) ((Notwithstanding subsections (1) through (10) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:~~

~~(a) The person's activities in this state, whether conducted directly or through another person, are limited to:~~

~~(i) The storage, dissemination, or display of advertising;~~

~~(ii) The taking of orders; or~~

~~(iii) The processing of payments; and~~

~~(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.~~

~~(12) Subsection (11) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or~~

~~(b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.~~

~~(13) For purposes of this section:)) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.~~

(a) "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales tax. An exemption certificate includes a reseller permit or other documentation authorized in RCW 82.04.470 furnished by a buyer to a seller to substantiate a wholesale sale; and

(b) "Seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller.

**Sec. 209.** RCW 82.08.052 and 2015 3rd sp.s. c 5 s 202 are each amended to read as follows:

(1) For purposes of this chapter, a remote seller is presumed to have a substantial nexus with this state and is obligated to collect retail sales tax during the current calendar year if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet web site or otherwise, to the remote seller, if the cumulative gross receipts from sales by the remote seller to Washington customers (in this state) who are referred to the remote seller by all residents with this type of an agreement with the remote seller exceed ten thousand dollars during the current or immediately preceding calendar year. This presumption may be rebutted by proof that the resident with whom the remote seller has an agreement did not engage in any solicitation in this state on behalf of the remote seller that would satisfy the nexus requirement of the United States Constitution during the calendar year in question. Proof may be shown by (a) establishing, in a manner acceptable to the department, that (i) each in-state person with whom the remote seller has an agreement is prohibited from engaging in any solicitation activities in this state that refer potential customers to the remote seller, and (ii) such in-state person or persons have complied with that prohibition; or (b) any other means as may be approved by the department.

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

(a) "Remote seller" means a seller that makes retail sales in this state through one or more agreements described in subsection (1) of this section, and the seller's other physical presence in this state, if any, is not sufficient to establish a retail sales or use tax collection obligation under the commerce clause of the United States Constitution.

(b) "Washington customer" means a purchaser of goods or services that are received in this state by the purchaser or the purchaser's donee. "Washington customer" also means a purchaser that provides a seller with an address in this state during the consummation of the sale, if the location where the goods or services are received by the purchaser or the purchaser's donee is not known.

(3) ((Nothing in this section may be construed to affect in any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5).

(4)) This section is subject to RCW 82.32.762.

**Sec. 210.** RCW 82.12.040 and 2015 c 169 s 9 are each amended to read as follows:

(1) Every person who ~~((maintains in this state a place of business or a stock of goods, or engages in business activities within this state;))~~ has a substantial nexus with this state based on RCW 82.08.052 or section 206 of this act must obtain from the department a certificate of registration, and must, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or

(g) or (6)((b)) (c), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. ~~((For the purposes of this chapter, the phrase "maintains in this state a place of business" includes the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department must in rules specify activities which constitute engaging in business activity within this state, and must keep the rules current with future court interpretations of the Constitution of the United States.))~~

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)((b)) (c), of his or her principals for use in this state, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose is deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter is deemed to be held in trust by the retailer until paid to the department, and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the state for the amount of such tax, unless the seller has taken from the buyer a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter is guilty of a misdemeanor.

(5) ~~((Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:~~

(a) ~~The person's activities in this state, whether conducted directly or through another person, are limited to:~~

(i) ~~The storage, dissemination, or display of advertising;~~

(ii) ~~The taking of orders; or~~

(iii) ~~The processing of payments; and~~

(b) ~~The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.~~

(6) ~~Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.~~

(7)) ~~Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax~~



imposed by this chapter if the person would have been obligated to collect retail sales tax on the sale absent a specific exemption provided in chapter 82.08 RCW, and there is no corresponding use tax exemption in this chapter. Nothing in this subsection ((7)) (5) may be construed as relieving purchasers from liability for reporting and remitting the tax due under this chapter directly to the department.

((8)) (6) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the state is prohibited under the Constitution or laws of the United States from requiring the person to collect the tax imposed by this chapter.

((9)) (7) Notwithstanding subsections (1) through (4) of this section, any licensed dealer facilitating a firearm sale or transfer between two unlicensed persons by conducting background checks under chapter 9.41 RCW is not obligated to collect the tax imposed by this chapter.

NEW SECTION. **Sec. 211.** A new section is added to chapter 82.32 RCW to read as follows:

(1) Notwithstanding any other provision of law, and whether or not the department initiates an audit or other tax collection procedure, the department may bring a declaratory judgment action under chapter 7.24 RCW, regardless of any other remedy available to the department, against any person the department believes has a substantial nexus with this state under section 206(1)(b) of this act to establish that the obligation to remit sales tax is applicable and valid under state and federal law.

(2) The filing of the declaratory judgment action by the department as authorized in this section prohibits the department, during the pendency of the action and any subsequent appeal, from enforcing the tax collection obligations of chapter 82.08 RCW against any remote seller who does not affirmatively consent or otherwise remit sales tax to the department on a voluntary basis. The prohibition in this subsection does not apply if there is a previous judgment from a court establishing the validity of the tax collection obligations of chapter 82.08 RCW with respect to the particular taxpayer.

(3) Notwithstanding any other provisions of state law, attorneys' fees may not be awarded to any party in any action brought pursuant to this section or any appeal from any action brought pursuant to this section.

(4) For purposes of this section, "remote seller" means any seller that makes retail sales in this state but does not have a physical presence in this state.

NEW SECTION. **Sec. 212.** A new section is added to chapter 82.32 RCW to read as follows:

(1) A taxpayer that, for the purposes of the tax collection obligations in chapter 82.08 RCW, has a substantial nexus with this state solely under the provisions of section 206(1)(b) of this act and is complying with the requirements of chapter 82.08 RCW, voluntarily or otherwise, may only seek a recovery of sales taxes, penalties, or interest from the department by following the recovery procedures established under RCW 82.32.060. However, no claim may be granted on the basis that the taxpayer lacked a physical presence in the state and complied with the tax collection provisions of chapter 82.08 RCW voluntarily while covered by the prohibition on enforcement provided in section 211 of this act.

(2) Neither the state nor any seller who remits sales tax voluntarily or otherwise under this act is liable to a purchaser who claims that the sales tax has been over collected because a provision of this act is later deemed unlawful.

(3) Nothing in this act affects the obligation of any purchaser from this state to remit sales or use tax as to any applicable taxable transaction in which the seller does not collect and remit sales tax.

**Sec. 213.** RCW 82.32.762 and 2015 3rd sp.s. c 5 s 205 are each amended to read as follows:

(1) If the department determines that a change, taking effect after ((September 1, 2015)) the effective date of this section, in the streamlined sales and use tax agreement or federal law creates a conflict with any provision of RCW 82.08.052, section 206 of this act, or section 207 of this act, such conflicting provision or provisions of RCW 82.08.052, section 206 of this act, or section 207 of this act, including any related provisions that would not function as originally intended, have no further force and effect as of the date the change in the streamlined sales and use tax agreement or federal law becomes effective.

(2) For purposes of this section:

(a) A change in federal law conflicts with RCW 82.08.052, section 206 of this act, or section 207 of this act if the change clearly allows states to impose greater sales and use tax collection obligations on remote sellers than provided for, or clearly prevents states from imposing sales and use tax collection obligations on remote sellers to the extent provided for, under RCW 82.08.052, section 206 of this act, or section 207 of this act.

(b) A change in the streamlined sales and use tax agreement conflicts with RCW 82.08.052, section 206 of this act, or section 207 of this act if one or more provisions of RCW 82.08.052, section 206 of this act, or section 207 of this act causes this state to be found out of compliance with the streamlined sales and use tax agreement by its governing board.

(3) If the department makes a determination under this section that a change in federal law or the streamlined sales and use tax agreement conflicts with one or more provisions of RCW 82.08.052, section 206 of this act, or section 207 of this act, the department:

(a) May adopt rules in accordance with chapter 34.05 RCW that are consistent with the streamlined sales and use tax agreement and that impose sales and use tax collection obligations on remote sellers to the fullest extent allowed under state and federal law; and

(b) Must include information on its web site informing taxpayers and the public (i) of the provision or provisions of RCW 82.08.052, section 206 of this act, or section 207 of this act that will have no further force and effect, (ii) when such change will become effective, and (iii) about how to participate in any rule making conducted by the department in accordance with (a) of this subsection (3).

(4) For purposes of this section, "remote seller" has the same meaning as in RCW 82.08.052.

**Part III**

**Sales and Use Tax Notice and Reporting Requirements**

NEW SECTION. **Sec. 301.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Consumer" has the same meaning as in chapters 82.04, 82.08, and 82.12 RCW.

(2) "Department" has the same meaning as in RCW 82.02.010.

(3) "Product" has the same meaning as in RCW 82.32.023.

(4) "Purchaser" means any consumer who purchases or leases a product sourced to this state under RCW 82.32.730.

(5) "Retail sale" has the same meaning as in RCW 82.04.050.

(6) "Sale" has the same meaning as in RCW 82.04.040.

(7) "Seller" has the same meaning as in RCW 82.08.010, and includes a marketplace facilitator as defined in section 206 of this act.

NEW SECTION. **Sec. 302.** (1) Except as otherwise provided in subsection (5) of this section, a seller who does not collect the tax imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale must comply with the notice and reporting

requirements of this section. For taxable retail sales made through a marketplace facilitator or other agent, the marketplace facilitator or other agent must comply with the notice and reporting requirements of this section, and the principal is not subject to the notice and reporting requirements of this section with respect to those sales.

(2) A seller subject to the notice and reporting requirements of this section must provide a notice to each consumer at the time of each taxable retail sale.

(a) The notice under this subsection (2) must include the following information:

(i) A statement that neither sales nor use tax is being collected or remitted upon the sale;

(ii) A statement that the consumer may be required to remit sales or use tax directly to the department; and

(iii) Instructions for obtaining additional information from the department regarding whether and how to remit the sales or use tax to the department.

(b) The notice under this subsection (2) must be prominently displayed on all invoices and order forms, including, where applicable, electronic and catalogue invoices and order forms, and upon each sales receipt or similar document provided to the purchaser, whether in paper or electronic form. No indication may be made that sales or use tax is not imposed upon the transaction, unless:

(i) Such indication is followed immediately with the notice required by this subsection (2); or

(ii) The transaction with respect to which the indication is given is exempt from sales and use tax pursuant to law.

(3) A seller subject to the notice and reporting requirements of this section must, no later than January 31st of each year, provide a report to each consumer for whom the seller was required to provide a notice under subsection (2) of this section.

(a) The report under this subsection (3) must include:

(i) A statement that the seller did not collect sales or use tax on the consumer's transactions with the seller and that the consumer may be required to remit such tax directly to the department;

(ii) A list, by date, generally indicating the type of product purchased or leased during the immediately preceding calendar year by the consumer from the seller sourced to this state under RCW 82.32.730 and the price of each product;

(iii) Instructions for obtaining additional information from the department regarding whether and how to remit the sales or use tax to the department;

(iv) A statement that the seller is required to submit a report to the department pursuant to subsection (4) of this section stating the total dollar amount of the consumer's purchases from the seller; and

(v) Any information as the department may reasonably require.

(b) The report required under this subsection (3) must be sent to the consumer's billing address, or if unknown, the consumer's shipping address, in an envelope marked prominently with words indicating important tax information is enclosed. If no billing or shipping address is known, the report must be sent electronically to the consumer's last known email address with a subject heading indicating important tax information is enclosed.

(4) A seller subject to the notice and reporting requirements of this section must, no later than January 31st of each year, file a report with the department.

(a) The report under this subsection (4) must include, with respect to each consumer to whom the seller is required to provide a report under subsection (3) of this section by January 31st of the current calendar year:

(i) The consumer's name;

(ii) The billing address and, if different, the last known mailing address;

(iii) The shipping address for each product sold or leased to such consumer for delivery to a location in this state during the immediately preceding calendar year; and

(iv) The total dollar amount of all such purchases by such consumer.

(b) The report under this subsection (4) must be filed electronically in a form and manner required by the department.

(5) The following exemptions to the notice and reporting requirements of this section apply:

(a) A seller who made less than two hundred thousand dollars in total worldwide gross retail sales during the immediately preceding calendar year is not required to file reports under subsections (3) and (4) of this section in the current calendar year.

(b) A seller who made less than one hundred thousand dollars in total worldwide gross retail sales during the immediately preceding calendar year is not required to provide notice under subsection (2) of this section with respect to retail sales made in the current calendar year.

(c) A seller who made less than one hundred thousand dollars in total gross retail sales sourced to this state under RCW 82.32.730 during the immediately preceding calendar year is not required to file reports under subsections (3) and (4) of this section in the current calendar year.

(d) A seller who made less than fifty thousand dollars in total gross retail sales sourced to this state under RCW 82.32.730 during the immediately preceding calendar year is not required to provide notice under subsection (2) of this section with respect to retail sales made in the current calendar year.

(e) A seller who is registered with the department to collect and remit sales and use tax, and who makes a reasonable effort to comply with the requirements of RCW 82.08.050 and 82.12.040, is not required to provide notice or file reports under this section.

**NEW SECTION. Sec. 303.** (1) The following penalties apply to any seller who fails to provide notices and reports as required by section 302 of this act:

(a) The department must assess a penalty against any seller who fails to provide notice as required by section 302(2) of this act, in addition to any other applicable penalties, in the amount of five dollars for each such failure.

(b) The department must assess a penalty against any seller who fails to provide a report as required by section 302(3) of this act, in addition to any other applicable penalty, in the amount of ten dollars for each such failure.

(c) The department must assess a penalty against any seller who fails to file a report as required by section 302(4) of this act, in addition to any other applicable penalty, equal to ten dollars times the number of such consumers that should have been included on such report.

(2) When assessing a penalty under this section, the department may use any reasonable sampling or estimation technique where necessary or appropriate to determine the number of failures in any calendar year.

(3) Interest accrues on the amount of the total penalty that has been assessed under this section until the total penalty amount is paid in full. Interest imposed under this section must be computed and assessed as provided in RCW 82.32.050 as if the penalty imposed under this subsection were a tax liability.

(4) The department must notify a seller by mail, or electronically as provided in RCW 82.32.135, of the amount of any penalty and interest due under this section. Amounts due under this section must be paid in full within thirty days from the date of the notice, or within such further time as the department may provide in its sole discretion.

(5)(a)(i) A seller is entitled to a conditional waiver of penalties and interest imposed under this section if the seller enters into a written agreement with the department committing to fully

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comply with all notice and reporting requirements of this chapter beginning by a date acceptable to the department.

(ii) The department may grant a waiver of penalties and interest under this subsection (5)(a) for penalties and interest assessed for a seller's failure to comply with the notice and reporting requirements for one or more violations.

(iii) The department may not grant more than one request by a seller for a waiver of penalties and interest under this subsection (5)(a).

(iv) The department must reassess penalties and interest conditionally waived under this subsection (5)(a) if the department finds that, after the date that the seller agreed to fully comply with the notice and reporting requirements of this chapter, the seller failed to:

(A) Provide notice under section 302(2) of this act to at least ninety-five percent of the consumers entitled to such notice in any given calendar year or portion of the initial calendar year in which the agreement required under this subsection was in effect if the agreement was in effect for less than the entire calendar year;

(B) Timely provide the reports required under section 302(3) of this act to all consumers who received notice from the seller under section 302(2) of this act during any calendar year, unless the department finds that any such failure was due to circumstances beyond the seller's control; or

(C) Timely provide the reports required under section 302(4) of this act during any calendar year, unless the department finds that any such failure was due to circumstances beyond the seller's control.

(v) The department may not reassess penalties and interest conditionally waived under this subsection (5)(a) more than four calendar years following the calendar year in which the department granted the conditional waiver under this subsection (5)(a).

(vi) The provisions of subsection (4) of this section apply to penalties and interest reassessed under this subsection (5)(a). The department may add additional interest on penalties reassessed under this subsection (5)(a) only if the total amount of penalties reassessed under this subsection (5)(a) is not paid in full by the date due. Additional interest authorized under this subsection (5)(a)(vi) applies beginning on the day immediately following the day that the reassessed penalties were due and accrues until the total amount of reassessed penalties are paid in full.

(b) The department must waive penalties and interest imposed under this section if the department determines that the failure of the seller to fully comply with the notice or reporting requirements was due to circumstances beyond the seller's control.

(c) A request for a waiver of penalties and interest under this subsection must be received by the department in writing and before the penalties and interest for which a waiver is requested are due pursuant to subsection (4) of this section. The department must deny any request for a waiver of penalties and interest that does not fully comply with the provisions of this subsection (5)(c).

**NEW SECTION. Sec. 304.** Chapter 82.32 RCW applies to the administration of this chapter.

**NEW SECTION. Sec. 305.** (1) Except as otherwise provided in this section, taxes imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale and payable by a consumer directly to the department are due, on returns prescribed by the department, by March 1st of the calendar year immediately following the calendar year in which the taxable retail sale occurred.

(2) This section does not apply to the reporting and payment of taxes imposed under chapters 82.08 and 82.12 RCW:

(a) On the retail sale or use of motor vehicles, vessels, or aircraft; or

(b) By consumers who are engaged in business, unless the department has relieved the consumer of the requirement to file returns pursuant to RCW 82.32.045(4).

**NEW SECTION. Sec. 306.** Nothing in this chapter relieves sellers or consumers who are subject to chapter 82.08 or 82.12 RCW from any responsibilities imposed under those chapters. Nor does anything in this chapter prevent the department from administering and enforcing the taxes imposed under chapter 82.08 or 82.12 RCW with respect to any seller or consumer who is subject to such taxes.

**Sec. 307.** RCW 82.32.045 and 2010 1st sp.s. c 23 s 1103 are each amended to read as follows:

(1) Except as otherwise provided in this chapter or chapter 82.- ~~RCW (the new chapter created in section 404 of this act)~~, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on forms prescribed by the department, are due monthly within twenty-five days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) The department of revenue may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

(4) Notwithstanding subsections (1) and (2) of this section, the department may relieve any person of the requirement to file returns if the following conditions are met:

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than:

(i) Twenty-eight thousand dollars per year; or

(ii) Forty-six thousand six hundred sixty-seven dollars per year for persons generating at least fifty percent of their taxable amount from activities taxable under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twenty-four thousand dollars per year; and

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect.

#### Part IV

##### Additional Revisions to Educational Reforms in Substitute Senate Bill No. 5607"

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

On page 5, line 17, after "~~((eighty))~~" strike "fifty-five" and insert "thirty-nine"

On page 10, after line 24, insert the following:

#### "Part V

##### Miscellaneous

**NEW SECTION. Sec. 501.** (1) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of this act or the application of the provision to other persons or circumstances is not affected.

(2) If the department of revenue is prevented from enforcing chapters 82.04, 82.08, and 82.12 RCW against persons without a

physical presence in this state because any provision of this act or its application to any person or circumstance is held invalid, the department of revenue must impose such provisions to the fullest extent allowed under the Constitution and laws of the United States.

**NEW SECTION. Sec. 502.** The tax collection, reporting, and payment obligations imposed by this act apply prospectively only.

**NEW SECTION. Sec. 503.** For purposes of determining whether a person engaged in the business of making sales at retail has a substantial nexus with this state under the provisions of RCW 82.04.067(6)(a)(iii) or section 206 (1)(b), (2), or (3)(a)(ii) of this act for taxable periods beginning on the effective date of this section through December 31, 2017, the person's gross proceeds of sales are based on the entire 2017 calendar year.

**NEW SECTION. Sec. 504.** Sections 301 through 306 of this act constitute a new chapter in Title 82 RCW."

On page 1, line 2 of the title, after "RCW" insert "82.04.066, 82.04.067, 82.04.220, 82.08.050, 82.08.052, 82.12.040, 82.32.762, 82.32.045," and on line 3 of the title, after "28A.320.--;" strike "and" and on line 4 of the title, after "(uncodified)" insert "; adding new sections to chapter 82.08 RCW; adding new sections to chapter 82.32 RCW; adding a new chapter to Title 82 RCW; creating new sections; repealing RCW 82.04.424; and prescribing penalties"

Senators Carlyle and Hasegawa spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of floor amendment no. 158 by Senators Carlyle, Kuderer and Palumbo on page 1, after line 5 to Substitute Senate Bill No. 5875.

The motion by Senator Carlyle did not carry and floor amendment no. 158 was not adopted by voice vote.

#### MOTION

Senator Rolfes moved that the following floor amendment no. 146 by Senator Rolfes be adopted:

On page 2, at the beginning of line 31, strike "local effort levy" and insert "~~((local effort levy))~~ new state property tax"

On page 5, line 14, after "levy a" strike "local effort levy" and insert "~~((local effort levy))~~ new state property tax"

On page 5, line 22, after "biennium." strike "Local effort levy" and insert "~~((Local effort levy))~~ New state property"

On page 5, line 26, after "The" strike "local effort levy" and insert "~~((local effort levy))~~ new state property tax"

On page 10, after line 16, insert the following:

"**Sec. 5.** 2017 c ... (SSB 5607) s 101 (uncodified) is amended to read as follows:

(1) The legislature finds that in recent years, the long running K-12 funding debate has narrowly focused on the overreliance by school districts on local school levies, which are neither regular nor dependable. This narrow focus overlooks a number of other deficiencies and inequities in the current K-12 funding structure. The legislature further finds that the current system unfairly drives more money to wealthier districts, on a per pupil basis, for low-income, special education, and transitional bilingual students than to poor districts. The legislature further finds that the current funding structure lacks transparency due to an overly complicated staffing model. The legislature further finds that the overall level of financial resources available to property-rich districts greatly exceeds the overall level of resources available to property-poor

districts. The legislature further finds that the current funding structure does not incorporate any significant adjustment to reflect regional cost differences, which leads to other inequities. The legislature further finds that while the primary focus of the legislature is to address the funding aspects of K-12 education, the system should be viewed holistically by evaluating and incorporating broader reforms to ensure that the students of our state are receiving the best possible education.

(2)(a) Based on the foregoing, the legislature finds that a quality K-12 funding structure should focus on four broad objectives: Ampleness, dependability, equity, and transparency.

(b) The legislature further finds that ampleness envelops several core issues. First, an ample K-12 funding structure should pay for the actual cost of providing the state's program of basic education. Second, an ample K-12 funding structure recognizes that different children, for example low-income students or English language learners, require different levels of resources.

(c) The legislature further finds that a dependable funding structure involves a binding and unwavering guarantee by the state that does not fluctuate with short-term economic changes.

(d) The legislature further finds that an equitable K-12 funding structure guarantees a uniform foundational level of financial resources for all school districts coupled with an additional recognition that the cost to pay for educational services is different in different parts of the state. The legislature further finds that an equitable K-12 funding structure reflects a reality that the residents of different school districts have different abilities to financially contribute to the funding of the students residing within their districts.

(e) The legislature further finds that a transparent K-12 funding structure is simple and straightforward, and thereby allows the public to more easily understand how their tax dollars are being spent, which increases accountability.

(3) Based on the foregoing, the legislature intends to create an ample, dependable, equitable, and transparent K-12 funding structure that benefits our state and students. The revised funding structure in chapter . . . (SSB 5607), Laws of 2017 is set to take effect with the 2018-19 school year and includes the following major elements:

(a) A basic per pupil guarantee of ten thousand dollars per student. This basic per pupil guarantee is set at a level necessary to exceed the entire projected cost under current law of state general apportionment funding, state levy equalization funding, state pupil transportation funding, and all local school district maintenance and operation levies by approximately one hundred twenty-six million dollars;

(b) A state-required local contribution, referred to as a local effort levy, to be applied towards the basic per pupil guarantee. The levy would be uniformly imposed in every school district at a rate specified in the omnibus appropriations act, but not exceeding one dollar and eighty cents per thousand dollars of assessed value. In essence, the ~~((local effort levy))~~ new state property tax would be applied to the total cost of the basic per pupil guarantee in each school district, with the state backfilling the difference in order to meet the state guarantee. There is a minimum state contribution that requires the state to pay for at least forty percent of the basic per pupil guarantee. The property tax rate would be lowered in future years, as undedicated state revenues become available. A small school hold-harmless provision is included. Under this provision, for any school district that is estimated to receive less funding through the basic per pupil guarantee than projected under current law for the state and local funding sources the basic per pupil guarantee is replacing, the district will receive the higher amount;

(c) An additional seven thousand five hundred dollars per pupil guarantee for special education students;

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(d) An additional one thousand dollars per pupil guarantee for transitional bilingual students, which is estimated to generate approximately ten million more dollars than what transitional bilingual funding is projected to yield under current law;

(e) An additional two to five thousand dollars per pupil guarantee for students in poverty, which is estimated to generate approximately one hundred fifty million more dollars than what funding for poverty students is projected to yield under current law;

(f) A one thousand dollar per pupil guarantee for highly capable students, which would double the estimated enhanced funding level for this program under current law;

(g) A five hundred dollar per pupil guarantee for career and technical education students and students enrolled in skills centers, which would double the estimated enhanced funding level for these programs under current law;

(h) A one thousand five hundred dollar per pupil guarantee for homeless students, which is estimated to generate approximately fourteen million dollars;

(i) A housing allowance for certificated instructional, certificated administrative, and classified staff in districts where the average home value is above the statewide average. The housing allowance would be up to ten thousand dollars per person, depending on the school district;

(j) A twelve thousand five hundred dollar teacher recruitment and retention incentive for certificated instructional and certificated administrative staff in school districts where the poverty rate exceeds twenty percent; and

(k) After all other funding calculations are completed, if the total per pupil funding amount for a school district is less than twelve thousand five hundred dollars when including local, state, and federal revenues, the per pupil amount is increased to twelve thousand five hundred dollars.

(4) The legislature finds that this new funding system, which places students at the center of its structure, meets the four foundational objectives:

(a) Ample – The system provides funds at a significantly higher level per student than the basic education program currently in place. The state provided program of basic education will provide over twelve thousand five hundred dollars on average per pupil for school districts across the state, translating to over two hundred fifty thousand dollars for a classroom of twenty students;

(b) Dependable – The system provides a binding and unwavering guarantee to finance basic education on a guaranteed per pupil basis and eliminates the unconstitutional reliance on unreliable and unfair local excess levies to provide that funding;

(c) Equitable – The system eliminates the current inequitable funding found throughout the state of Washington, and instead, provides a guaranteed level of funding for every pupil based on the pupil's educational characteristics; and

(d) Transparent – The system is transparent and straightforward, thereby allowing the public to more easily understand how its tax dollars are spent and bring about increased accountability.

(5) Finally, the legislature finds these changes, along with reforms in the rest of chapter . . . (SSB 5607), Laws of 2017, are intended and expected to improve the educational opportunities and outcomes of children throughout the state.

**Sec. 6.** RCW 84.55.--- and 2017 c ... (SSB 5607) s 211 are each amended to read as follows:

(1) For purposes of RCW 84.55.010, 84.55.015, 84.55.020, and 84.55.030, "regular property tax levy rate," "regular property tax rate," and "property tax rate" mean, with respect to impacted taxing districts, the regular property tax levy rate that would have applied if the state property tax levy, through the ~~((local effort~~

~~levy))~~ new state property tax authorized in RCW 84.52.065(2), had not been increased by legislative action after January 1, 2018.

(2) This section applies beginning with taxes levied for collection in 2019 and for taxes levied for collection in subsequent years through 2028.

(3) The department may adopt rules as the department considers necessary to implement this section, consistent with the purpose of those sections as described in section 212, chapter . . . (SSB 5607), Laws of 2017.

(4) This section expires July 1, 2028.

**Sec. 7.** 2017 c ... (SSB 5607) s 212 (uncodified) is amended to read as follows:

The legislature's purpose in enacting RCW 84.52.--- and 84.55.--- (sections 210 and 211, chapter . . . (SSB 5607), Laws of 2017) is to mitigate the negative financial effects of the ~~((local effort levies))~~ new state property tax on local taxing districts resulting from legislative action after January 1, 2017.

**Sec. 8.** RCW 84.36.381 and 2017 c ... (SSB 5607) s 213 are each amended to read as follows:

A person is exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing. However, any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant may receive an exemption on more than one residence in any year. Moreover, confinement of the person to a hospital, nursing home, assisted living facility, or adult family home does not disqualify the claim of exemption if:

(a) The residence is temporarily unoccupied;

(b) The residence is occupied by a spouse or a domestic partner and/or a person financially dependent on the claimant for support; or

(c) The residence is rented for the purpose of paying nursing home, hospital, assisted living facility, or adult family home costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or state registered domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant, and any lease for life is deemed a life estate;

(3)(a) The person claiming the exemption must be:

(i) Sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability; or

(ii) A veteran of the armed forces of the United States entitled to and receiving compensation from the United States department of veterans affairs at a total disability rating for a service-connected disability.

(b) However, any surviving spouse or surviving domestic partner of a person who was receiving an exemption at the time of the person's death will qualify if the surviving spouse or surviving domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person is exempt from an obligation to pay is calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse or the person's domestic partner, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of forty thousand dollars or less is exempt from all excess property taxes and the ~~((local effort levy))~~ new state property tax imposed under RCW 84.52.065(2); and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less but greater than thirty thousand dollars is exempt from all regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less is exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6)(a) For a person who otherwise qualifies under this section and has a combined disposable income of forty thousand dollars or less, the valuation of the residence is the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation must be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification is the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence is the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

(b) In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

(c) This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property must be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made.

**Sec. 9.** RCW 84.36.630 and 2017 c ... (SSB 5607) s 214 are each amended to read as follows:

(1) All machinery and equipment owned by a farmer that is personal property is exempt from property taxes levied for any state purpose, including the ~~((local effort levy))~~ new state property tax imposed under RCW 84.52.065(2), if it is used exclusively in growing and producing agricultural products

during the calendar year for which the claim for exemption is made.

(2) "Farmer" and "agricultural product" have the same meaning as defined in RCW 82.04.213.

(3) A claim for exemption under this section must be filed with the county assessor together with the statement required under RCW 84.40.190, for exemption from taxes payable the following year. The claim must be made solely upon forms as prescribed and furnished by the department of revenue."

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

On page 1, line 3 of the title, after "84.52.---," strike "and 28A.320.---" and insert "28A.320.---, 84.55.---, 84.36.381, and 84.36.630"

On page 1, line 3 of the title, after "(SSB 5607)" strike "s" and insert "ss 101, 212, and"

Senators Rolfes, Liias, Kuderer and Chase spoke in favor of adoption of the amendment.

Senator Fain spoke on adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

#### MOTION

Senator Baumgartner demanded that the previous question be put.

The President Pro Tempore, with consent of the Senate, declared the debate concluded.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 146 by Senator Rolfes on page 2, line 31 to Substitute Senate Bill No. 5875.

The motion by Senator Rolfes did not carry and floor amendment no. 146 was not adopted by voice vote.

#### MOTION

Senator Braun moved that the following floor amendment no. 144 by Senator Braun be adopted:

On page 4, line 30, after "2018" insert "that are attributable to the 2018-19 school year"

On page 9, at the beginning of line 12, strike all material through "2027." and insert "~~((10)) This section expires July 1, 2027.~~"

Senator Braun spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of floor amendment no. 144 by Senator Braun on page 4, line 30 to Substitute Senate Bill No. 5875.

The motion by Senator Braun carried and floor amendment no. 144 was adopted by voice vote.

#### MOTION

Senator Carlyle moved that the following floor amendment no. 159 by Senators Carlyle and Palumbo be adopted:

On page 10, after line 16, insert the following:

**"Sec. 5.** RCW 84.52.0531 and 2017 c . . . (SSB 5607) s 301 are each amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b), (c), and (d) of this subsection minus (e) of this subsection:

(a) The district's levy base as defined in subsection (3) of this section multiplied by the district's maximum levy percentage as defined in subsection (4) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) Except for nonhigh districts under (d) of this subsection, for districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (4) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The levy bases of nonhigh districts participating in an innovation academy cooperative established under RCW 28A.340.080 shall be adjusted by the office of the superintendent of public instruction to reflect each district's proportional share of student enrollment in the cooperative;

(e) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar years 1998 ~~(and thereafter)~~ through 2019, a district's levy base shall be the sum of allocations in (a) through (d) of this subsection received by the district for the prior school year, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (d) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.---(4)(a) (section 102 (4)(a), chapter . . . (SSB 5607), Laws of 2017);

(b) State and federal categorical allocations for the following programs:

- (i) Special education;
- (ii) Education of highly capable students;
- (iii) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;
- (iv) Food services; and
- (v) Statewide block grant programs;

(c) Any other state allocations under RCW 28A.150.---, 28A.400.---, and 28A.405.--- (sections 102, 504, and 506, chapter . . . (SSB 5607), Laws of 2017); and

(d) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

~~(4) ((A district's maximum levy percentage shall be ten percent))~~ Districts are not subject to the limitations of this section beginning in calendar year ((2020)) 2019 and every year thereafter; however, districts must have their levies approved by the office of the superintendent of public instruction as provided in RCW 84.52.053 to ensure that maintenance and operation levies are not used for basic education programs.

(5) For the purposes of this section, "prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(6) For the purposes of this section, "current school year" means the year immediately following the prior school year.

(7) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(8) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

**Sec. 6.** RCW 84.52.053 and 2017 c ... (SSB 5607) s 303 are each amended to read as follows:

(1) The limitations imposed by RCW 84.52.050 through 84.52.056, and 84.52.043 shall not prevent the levy of taxes by school districts, when authorized so to do by the voters of such school district in the manner and for the purposes and number of years allowable under Article VII, section 2(a) of the Constitution of this state. Elections for such taxes shall be held in the year in which the levy is made or, in the case of propositions authorizing two-year through four-year levies for maintenance and operation support of a school district, authorizing two-year levies for transportation vehicle funds established in RCW 28A.160.130, or authorizing two-year through six-year levies to support the construction, modernization, or remodeling of school facilities, which includes the purposes of RCW 28A.320.330(2) (f) and (g), in the year in which the first annual levy is made.

(2)(a) Once additional tax levies have been authorized for maintenance and operation support of a school district for a two-year through four-year period as provided under subsection (1) of this section, no further additional tax levies for maintenance and operation support of the district for that period may be authorized, except for additional levies to provide for subsequently enacted increases affecting the district's levy base or maximum levy percentage. ~~((School districts may not impose a levy for maintenance and operation support for taxes due and payable in calendar year 2019.))~~

(b) Notwithstanding (a) of this subsection, any school district that is required to annex or receive territory pursuant to a dissolution of a financially insolvent school district pursuant to RCW 28A.315.225 may call either a replacement or supplemental levy election within the school district, including the territory annexed or transferred, as follows:

(i) An election for a proposition authorizing two-year through four-year levies for maintenance and operation support of a school district may be called and held before the effective date of dissolution to replace existing maintenance and operation levies and to provide for increases due to the dissolution.

(ii) An election for a proposition authorizing additional tax levies may be called and held before the effective date of dissolution to provide for increases due to the dissolution.

(iii) In the event a replacement levy election under (b)(i) of this subsection is held but does not pass, the affected school district

may subsequently hold a supplemental levy election pursuant to (b)(ii) of this subsection if the supplemental levy election is held before the effective date of dissolution. In the event a supplemental levy election is held under (b)(ii) of this subsection but does not pass, the affected school district may subsequently hold a replacement levy election pursuant to (b)(i) of this subsection if the replacement levy election is held before the effective date of dissolution. Failure of a replacement levy or supplemental levy election does not affect any previously approved and existing maintenance and operation levy within the affected school district or districts.

(c) For the purpose of applying the limitation of this subsection (2), a two-year through six-year levy to support the construction, modernization, or remodeling of school facilities shall not be deemed to be a tax levy for maintenance and operation support of a school district.

(3) A special election may be called and the time therefor fixed by the board of school directors, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no."

(4) To ensure that maintenance and operation levies are not used for basic education programs, beginning with ballot propositions submitted to the voters in calendar year 2019, districts must provide a report to the office of the superintendent of public instruction detailing the programs and activities to be funded through a proposed levy for maintenance and operation support. The report must be submitted to, and approved by, the office of the superintendent of public instruction prior to the election for the proposition.

**NEW SECTION. Sec. 7.** Section 5 of this act takes effect January 1, 2019."

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

On page 1, line 3 of the title, after "84.52.---," strike "and 28A.320.---; and" and insert "28A.320.---, 84.52.0531, and 84.52.053;" and on line 4 of the title, after "(uncodified)" insert ";" and providing an effective date"

Senators Carlyle, Kuderer and Liias spoke in favor of adoption of the amendment.

Senators Braun, Fain and Hasegawa spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 159 by Senators Carlyle and Palumbo on page 10, after line 16 to Substitute Senate Bill No. 5875.

A division was demanded.

The motion by Senator Carlyle did not carry and floor amendment no. 159 was not adopted by a rising vote.

#### PERSONAL PRIVILEGE

Senator Ranker: "Thank you very much Mr. President. This institution has a long history of being respectful to each other and the speeches that are being given. And I personally know that I, and others, feel that when so many members are off the floor watching a basketball game and not paying attention to the work being done on the floor, and some very important speeches, and some of these speeches we may disagree with, but we still need to respect. But when there is that much cheering and such, and we all love Gonzaga, actually I am more of a Husky guy, but anyway, the point is that is not appropriate. And it really takes

away from our institution and who we are representing our constituents, and I would like us to pay more attention to the work at hand and less attention to a basketball game."

#### MOTION

Senator Carlyle moved that the following floor amendment no. 160 by Senators Carlyle, Chase, Kuderer and Palumbo be adopted:

On page 10, after line 24, insert the following:

**"NEW SECTION. Sec. 6.** A new section is added to chapter 82.32 RCW to read as follows:

(1) An additional tax is imposed on businesses who own parcels of real property valued at five million dollars or more. The tax is equal to the amount of the property tax reduction on each parcel of real property valued at over five million dollars owned by the business realized of the levy in RCW 84.52.065(2)(a) (section 2(2)(a) of this act). Any business that realized an increase in property tax, as a result the levy in RCW 84.52.065(2)(a) (section 2(2)(a) of this act), on a parcel of real property valued at five million dollars or more is exempt from the tax imposed under this section.

(2) In order to determine whether a business has an increase or a decrease in property tax as a result of RCW 84.52.065(2)(a) (section 2(2)(a) of this act), beginning with the levy of taxes for collection in 2019, the department must do a comparison, for all parcels owned by businesses valued at over five million dollars, comparing the property tax owed from RCW 84.52.065(2)(a) (section 2(2)(a) of this act) and the taxes that would otherwise be due from the levy in RCW 84.52.053 at the rate that existed on January 1, 2017.

(3) This chapter applies to this section except as otherwise provided in this section. The tax imposed by this section must be paid annually by May 25th. The department must adopt rules necessary to implement and collect the tax imposed under this section.

(4) Taxes collected under this section must be deposited into the education levy contingency account hereby created in the state treasury. Funds in the account must first be used to reimburse local school districts from lost revenue from the levy in RCW 84.52.065(2)(a) (section 2(2)(a) of this act) as a result the amendments in section 7 of this act. Any additional funds must be distributed to the local school districts ratably based on the number of students to fund items not defined as basic education. Expenditures from the account must be appropriated.

**Sec. 7.** RCW 84.36.381 and 2015 3rd sp.s. c 30 s 2 are each amended to read as follows:

A person is exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing. However, any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant may receive an exemption on more than one residence in any year. Moreover, confinement of the person to a hospital, nursing home, assisted living facility, or adult family home does not disqualify the claim of exemption if:

(a) The residence is temporarily unoccupied;

(b) The residence is occupied by a spouse or a domestic partner and/or a person financially dependent on the claimant for support; or



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(c) The residence is rented for the purpose of paying nursing home, hospital, assisted living facility, or adult family home costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or state registered domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant, and any lease for life is deemed a life estate;

(3)(a) The person claiming the exemption must be:

(i) Sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability; or

(ii) A veteran of the armed forces of the United States entitled to and receiving compensation from the United States department of veterans affairs at a total disability rating for a service-connected disability.

(b) However, any surviving spouse or surviving domestic partner of a person who was receiving an exemption at the time of the person's death will qualify if the surviving spouse or surviving domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person is exempt from an obligation to pay is calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse or the person's domestic partner, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of forty thousand dollars or less is exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less but greater than thirty thousand dollars is exempt from all regular property taxes, except for the levy in RCW 84.52.065(2)(a) (section 2(2)(a) of this act), on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; ((or)

(ii) A person who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less is exempt from all regular property taxes, except for the levy in RCW 84.52.065(2)(a) (section 2(2)(a) of this act), on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(iii) A person who otherwise qualifies under this section and has a combined disposable income of fifty-seven thousand dollars

or less but greater than fifty-two thousand dollars is exempt from the levy in RCW 84.52.065(2)(a) (section 2(2)(a) of this act) on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(iv) A person who otherwise qualifies under this section and has a combined disposable income of fifty-two thousand dollars or less is exempt from the levy in RCW 84.52.065(2)(a) (section 2(2)(a) of this act), on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6)(a) For a person who otherwise qualifies under this section and has a combined disposable income of forty thousand dollars or less, the valuation of the residence is the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation must be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification is the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence is the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

(b) In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

(c) This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property must be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made."

On page 1, line 3 of the title, after "84.52.---," strike "and 28A.320.---; and" and insert ", 28A.320.---, and 84.36.381;"

On page 1, line 4 of the title, after "(unmodified)" insert "; and adding a new section to chapter 82.32 RCW"

Senators Carlyle and Liias spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 160 by Senators Carlyle, Chase, Kuderer and Palumbo on page 10, after line 24 to Substitute Senate Bill No. 5875.

The motion by Senator Carlyle did not carry and floor amendment no. 160 was not adopted by a rising vote.

MOTION

On motion of Senator Braun, the rules were suspended, Engrossed Substitute Senate Bill No. 5875 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Braun and Fain spoke in favor of passage of the bill.

Senators Ranker, Pedersen, Carlyle, Mullet, McCoy and Kuderer spoke against passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5875.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5875 and the bill passed the Senate by the following vote: Yeas, 25; Nays, 24; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Braun, Brown, Erickson, Fain, Fortunato, Hawkins, Honeyford, King, Miloscia, O'Ban, Padden, Pearson, Rivers, Rossi, Schoesler, Sheldon, Short, Walsh, Warnick, Wilson and Zeiger

Voting nay: Senators Billig, Carlyle, Chase, Cleveland, Conway, Darneille, Frockt, Hasegawa, Hobbs, Hunt, Keiser, Kuderer, Liias, McCoy, Mullet, Nelson, Palumbo, Pedersen, Ranker, Rolfes, Saldaña, Takko, Van De Wege and Wellman

ENGROSSED SUBSTITUTE SENATE BILL NO. 5875, 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. 5894, by Senators O'Ban, Darneille, Braun, Becker, Rossi, Brown, Miloscia, Cleveland, Ranker, Chase, Warnick, Keiser, Hunt, Hasegawa, Wellman and Zeiger

Concerning behavioral health system reform.

#### MOTION

On motion of Senator O'Ban, Substitute Senate Bill No. 5894 was substituted for Senate Bill No. 5894 and the substitute bill was placed on the second reading and read the second time.

#### MOTION

Senator O'Ban moved that the following floor striking amendment no. 161 by Senators Darneille and O'Ban be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** This act establishes the path of reform for the state behavioral health system over upcoming biennia concerning provision of long-term psychiatric care. Over the ensuing years Washington must transition purchasing of long-term involuntary psychiatric care to a regionally based system under a managed care framework which is responsive to the needs of the community and accountable for quality and patient outcomes. During this time state hospital practices must be modernized and state hospital resources focused on service to forensic and higher acuity civil patients. Treatment for patients under long-term civil commitment must be transitioned into a managed care framework over a time frame coinciding with the integration of physical and behavioral health care, after which the state hospitals must provide civil commitment services as part of a network of geographically diverse facilities certified to provide long-term involuntary civil treatment. Many components are required for the success of this vision. The state must establish the foundation for growth of long-term involuntary treatment capacity in the community and for performance measurement and data collection which enables an acuity-informed comparison of the costs and outcomes achieved in alternative certified community facilities. New community placement options must be established for persons with complex needs related to long-term care and developmental disabilities. Other critical measures improve availability and streamline filing procedures for assisted outpatient mental health treatment, deploy crisis walk-in centers and clubhouses, and expedite the movement of low-level,

nonviolent defendants with severe mental illness through the criminal justice system.

#### Part I

#### Integrating Risk for Long-Term Civil Involuntary Treatment Into Managed Care

**NEW SECTION. Sec. 101.** A new section is added to chapter 71.24 RCW to read as follows:

(1) To promote the development of effective community-based resources for treatment and prevention and align the system financial structure with the goal of reducing inpatient utilization concurrent with the integration of physical and behavioral health care, the authority shall integrate risk for long-term involuntary civil treatment provided by state hospitals into managed care contracts by January 1, 2020.

(2) The office of financial management shall engage a consultant to create a state psychiatric hospital managed care risk model to be submitted to the governor and select committee on quality improvement in state hospitals by December 31, 2017. The design of this model shall support placing full integration managed care entities at risk for the long-term involuntary civil treatment benefit effective January 1, 2020.

(3) The risk model must include analysis and recommendations to address the following:

(a) Necessary fiscal or actuarial analysis to determine how much of the state hospital budget to place in the capitation base;

(b) Steps to develop capacity within the state hospitals to contract with risk-bearing managed care entities by January 1, 2020, as part of a network of regional providers of long-term civil treatment and to collaborate effectively with managed care entities on development of patient treatment plans and discharge decisions;

(c) Special considerations related to the application of the managed care model to civilly committed patients subject to RCW 71.05.325, 71.05.330(2), 71.05.425, 71.05.280(3)(b), and patients civilly committed under chapter 10.77 RCW. Analysis should consider the level of risk observed with these patients and the comparative advantages of reasonable alternative approaches. Patients undergoing competency evaluation and competency restoration treatment are excluded from the risk model;

(d) Performance metrics and other contract structures available to hold:

(i) Managed care entities accountable to uphold the legal requirements of the civil commitment system and the public policy outcomes intended under RCW 71.05.010, 71.05.012, and 10.77.2101; and

(ii) Providers of long-term civil treatment, including state hospitals, accountable for performance, including consideration of the interaction between performance conditions and collective bargaining agreements; and

(e) The availability of options for incentives for the aging and long-term support administration and developmental disability administration to ensure that long-term involuntary treatment patients with specialized needs move to the appropriate level of care within a reasonable time period.

(4) The risk model must be designed to allow managed care entities to contract with any certified provider capable of providing the level of inpatient psychiatric care required under civil commitment within a fixed capitation rate, placing the entity at risk for all hospital utilization above the capitation base.

(5) The contracts for consultant services in this section are exempt from the competitive solicitation requirements in RCW 39.26.125.

#### Part II

#### Development of Community Long-Term Involuntary Treatment Capacity

**NEW SECTION. Sec. 201.** A new section is added to chapter 71.24 RCW to read as follows:

(1) The state intends to develop new capacity for delivery of long-term treatment in the community in diverse regions of the state prior to the effective date of the integration of risk for long-term involuntary treatment into managed care, and to study the cost and outcomes associated with treatment in community facilities. In furtherance of this goal, the department shall purchase a portion of the state's long-term treatment capacity allocated to behavioral health organizations under RCW 71.24.310 in willing community facilities capable of providing alternatives to treatment in a state hospital. The state shall increase its purchasing of long-term involuntary treatment capacity in the community over time.

(2) The department shall:

(a) Work with willing community hospitals licensed under chapters 70.41 and 71.12 RCW and evaluation and treatment facilities certified under chapter 71.05 RCW to assess their capacity to become certified to provide long-term mental health placements and to meet the requirements of this chapter; and

(b) Enter into contracts and payment arrangements with such hospitals and evaluation and treatment facilities choosing to provide long-term mental health placements, to the extent that willing certified facilities are available. Nothing in this chapter requires any community hospital or evaluation and treatment facility to be certified to provide long-term mental health placements.

(3) The department must establish rules for the certification of facilities interested in providing care under this section.

(4) Contracts developed by the department to implement this section must be constructed to allow the department to obtain complete identification information and admission and discharge dates for patients served under this authority. Prior to requesting identification information and admission and discharge dates or reports from certified facilities, the department must determine that this information cannot be identified or obtained from existing data sources available to state agencies. In addition, until January 1, 2022, facilities certified by the department to provide community long-term involuntary treatment to adults shall report to the department:

(a) All instances where a patient on a ninety or one hundred eighty-day involuntary commitment order experiences an adverse event required to be reported to the department of health pursuant to chapter 70.56 RCW; and

(b) All hospital-based inpatient psychiatric service core measures reported to the joint commission or other accrediting body occurring from psychiatric departments, in the format in which the report was made to the joint commission.

**Sec. 202.** RCW 71.24.310 and 2014 c 225 s 40 are each amended to read as follows:

The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the behavioral health organization defined in RCW 71.24.025. For this reason, the legislature intends that the department and the behavioral health organizations shall work together to implement chapter 71.05 RCW as follows:

(1) By June 1, 2006, behavioral health organizations shall recommend to the department the number of state hospital beds that should be allocated for use by each behavioral health organization. The statewide total allocation shall not exceed the number of state hospital beds offering long-term inpatient care, as defined in this chapter, for which funding is provided in the biennial appropriations act.

(2) If there is consensus among the behavioral health organizations regarding the number of state hospital beds that

should be allocated for use by each behavioral health organization, the department shall contract with each behavioral health organization accordingly.

(3) If there is not consensus among the behavioral health organizations regarding the number of beds that should be allocated for use by each behavioral health organization, the department shall establish by emergency rule the number of state hospital beds that are available for use by each behavioral health organization. The emergency rule shall be effective September 1, 2006. The primary factor used in the allocation shall be the estimated number of adults with acute and chronic mental illness in each behavioral health organization area, based upon population-adjusted incidence and utilization.

(4) The allocation formula shall be updated at least every three years to reflect demographic changes, and new evidence regarding the incidence of acute and chronic mental illness and the need for long-term inpatient care. In the updates, the statewide total allocation shall include (a) all state hospital beds offering long-term inpatient care for which funding is provided in the biennial appropriations act; plus (b) the estimated equivalent number of beds or comparable diversion services contracted in accordance with subsection (5) of this section.

(5)(a) The department ~~((is encouraged to enter))~~ shall enter into performance-based contracts with ~~((behavioral health organizations))~~ facilities certified by the department to provide treatment to adults on a ninety or one hundred eighty-day inpatient involuntary commitment order to provide some or all of the behavioral health organization's allocated long-term inpatient treatment capacity in the community, rather than in the state hospital, to the extent that willing certified facilities and funding are available. The performance contracts shall specify the number of patient days of care available for use by the behavioral health organization in the state hospital and the number of patient days of care available for use by the behavioral health organization in a facility certified by the department to provide treatment to adults on a ninety or one hundred eighty-day inpatient involuntary commitment order, including hospitals licensed under chapters 70.41 and 71.12 RCW and evaluation and treatment facilities certified under chapter 71.05 RCW.

(b) A hospital licensed under chapter 70.41 or 71.12 RCW is not required to undergo certification to treat patients on ninety or one hundred eighty-day involuntary commitment orders in order to treat adults who are waiting for placement at either the state hospital or in certified facilities that voluntarily contract to provide treatment to patients on ninety or one hundred eighty-day involuntary commitment orders.

(6) If a behavioral health organization uses more state hospital patient days of care than it has been allocated under subsection (3) or (4) of this section, or than it has contracted to use under subsection (5) of this section, whichever is less, it shall reimburse the department for that care, except during the period of July 1, 2012, through December 31, 2013, where reimbursements may be temporarily altered per section 204, chapter 4, Laws of 2013 2nd sp. sess. The reimbursement rate per day shall be the hospital's total annual budget for long-term inpatient care, divided by the total patient days of care assumed in development of that budget.

(7) One-half of any reimbursements received pursuant to subsection (6) of this section shall be used to support the cost of operating the state hospital and, during the 2007-2009 fiscal biennium, implementing new services that will enable a behavioral health organization to reduce its utilization of the state hospital. The department shall distribute the remaining half of such reimbursements among behavioral health organizations that have used less than their allocated or contracted patient days of

care at that hospital, proportional to the number of patient days of care not used.

**NEW SECTION. Sec. 203.** A new section is added to chapter 71.05 RCW to read as follows:

Treatment under RCW 71.05.320 may be provided at a state hospital or any willing and able facility certified to provide ninety-day or one hundred eighty-day care. The order for such treatment must remand the person to the custody of the department or designee. A prepaid inpatient health plan, managed care organization, or the department, when responsible for the cost of care, may designate where treatment is to be provided, at a willing certified facility or a state hospital, after consultation with the facility currently providing treatment. The prepaid inpatient health plan, managed care organization, or the department, when responsible for the cost of care, may not require prior authorization for treatment under RCW 71.05.320. The designation of a treatment facility must not result in a delay of the transfer of the person to a state hospital or certified treatment facility if there is an open bed available at either the state hospital or a certified facility.

**Sec. 204.** RCW 71.05.320 and 2016 c 45 s 4 are each amended to read as follows:

(1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her ((to the custody of the department or to a facility certified for ninety day treatment by the department)) for a further period of intensive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated mental health professional, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another,

and (ii) as a result of mental disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm; or

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty day period whenever the petition presents prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the mental disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge ((from the state hospital)); or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient ((~~mental~~) behavioral) health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6)(a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment. An order for less restrictive alternative treatment must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

(b) At the end of the one hundred eighty day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant

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to the same procedures as the original one hundred eighty day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

**Sec. 205.** RCW 71.05.320 and 2016 sp.s. c 29 s 237 and 2016 c 45 s 4 are each reenacted and amended to read as follows:

(1)(a) Subject to (b) of this subsection, if the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment.

(b) If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. The court may only enter an order for commitment based on a substance use disorder if there is an available approved substance use disorder treatment program with adequate space for the person.

(c) If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court ~~((shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department))~~ must commit him or her for a period of treatment of up to ninety days or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the order for less restrictive treatment is based on a substance use disorder, treatment must be provided by an approved substance use disorder treatment program. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated crisis responder, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person

of another, or substantial damage upon the property of another, and (ii) as a result of a mental disorder, substance use disorder, or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder, substance use disorder, or developmental disability a likelihood of serious harm; or

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty day period whenever the petition presents prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the mental disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge ((from the state hospital)); or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient ~~((mental))~~ behavioral health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6)(a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, subject to subsection (1)(b) of this section, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment. An order for less restrictive alternative treatment must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

(b) At the end of the one hundred eighty day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional one hundred eighty day period of continued treatment is filed and heard in the same manner as

provided in this section. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

**Sec. 206.** RCW 71.05.320 and 2016 sp.s. c 29 s 238 are each amended to read as follows:

(1)(a) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment.

(b) If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court ~~((shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department))~~ must commit him or her for a period of treatment of up to ninety days or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the order for less restrictive treatment is based on a substance use disorder, treatment must be provided by an approved substance use disorder treatment program. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated crisis responder, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of a mental disorder, substance use disorder, or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder, substance use disorder, or developmental disability a likelihood of serious harm; or

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty day period whenever the petition presents prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the mental disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge ~~((from the state hospital))~~; or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient ~~((mental))~~ behavioral health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6)(a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment. An order for less restrictive alternative treatment must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

(b) At the end of the one hundred eighty day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

NEW SECTION. **Sec. 207.** The department of social and health services shall confer with the department of health and hospitals licensed under chapters 70.41 and 71.12 RCW to review laws and regulations and identify changes that may be necessary to address care delivery and cost-effective treatment for adults on ninety or one hundred eighty day commitment orders which may be different than the requirements for short-term psychiatric hospitalization. The department of social and health services shall report its findings to the select committee on quality improvement in state hospitals by November 1, 2017.

**Part III**

**State Hospital Short-Term Reforms**

NEW SECTION. **Sec. 301.** The legislature intends to expand capacity in the upcoming biennia for enhanced community placements for complex patients to decrease utilization of state hospitals and increase community stability. Capacity must be provided in settings such as nursing homes, assisted living facilities, adult family homes, enhanced service facilities, state-operated living alternatives, and supported housing for persons with developmental disabilities or long-term care needs. The funding must be administered by the department of social and health services.

NEW SECTION. **Sec. 302.** A new section is added to chapter 71.05 RCW to read as follows:

Discharge planning in state hospitals and certified community long-term involuntary treatment facilities must begin at admission. Discharge planning must be collaborative across state agencies and community providers, provide individualized treatment targeted towards known risks of rehospitalization or recidivism, and work ahead to resolve known discharge barriers that may prevent patients from leaving the state hospital or certified community long-term involuntary treatment facilities when they are deemed ready. To ensure effective discharge planning, state hospitals, certified long-term involuntary treatment facilities, and state agencies responsible for the cost of the community care long-term involuntary treatment patients must do the following:

(1) The aging and long-term support administration and developmental disabilities administration or their successor agencies must assume expanded responsibility beginning at admission for aiding its clients to transition from state hospitals and certified long-term involuntary treatment facilities into the community. This responsibility may include interfacing with behavioral health organizations and others to coordinate community treatment arrangements for multiagency clients. State hospitals and certified long-term treatment facilities must allow functional assessments to be conducted on individuals identified as potential clients before the patient is deemed eligible for discharge and allow necessary access for agency staff to implement the goals of this subsection;

(2) State hospitals and certified long-term involuntary treatment facilities must allow managed care entities responsible for the cost of a state hospital patient's community care appropriate access to the patient and patient records for purposes of coordinated care. Managed care entities must be allowed to make assessments, provide input into treatment and discharge

planning, and otherwise engage in appropriate rehabilitation case management activities; and

(3) State hospitals must screen patients upon admission for medical necessity for substance use disorder treatment and provide coordinated substance use disorder treatment services targeted to reduce rehospitalization or recidivism to patients with an identified need.

**Sec. 303.** RCW 71.05.365 and 2016 sp.s. c 37 s 15 are each amended to read as follows:

(1) When a person has been involuntarily committed for treatment to a state hospital for a period of ninety or one hundred eighty days, and the superintendent or professional person in charge of the state hospital determines that the person no longer requires active psychiatric treatment at an inpatient level of care, the behavioral health organization((s)) or full integration entity under RCW 71.24.380((s) or agency providing oversight of long-term care or developmental disability services that is responsible for resource management services for the person must work with the hospital to develop an individualized discharge plan and arrange for a transition to the community in accordance with the person's individualized discharge plan within fourteen days of the determination)) must establish an individualized discharge plan arranging for transition to an identified placement in the community within no more than fourteen days of the determination. The individualized discharge plan must provide for a date certain by which discharge must be completed.

(2) If the entity under subsection (1) of this section has not fulfilled the obligation to establish an individualized discharge plan for the patient, the entity must reimburse the department for days of care provided after the fourteenth day following determination that the person no longer requires active psychiatric treatment at an inpatient level of care, until an individualized discharge plan meeting the requirements of subsection (1) of this section is established. The reimbursement rate per day shall be the same reimbursement rate under RCW 71.24.310.

(3) The department must establish a process for appeal to the secretary or the secretary's designee when entities under subsection (1) of this section and the state hospital are unable to mutually agree within fourteen days about a specific patient's readiness for discharge, whether readiness for discharge is asserted by the state hospital or by the managed care entity. The managed care entity may use this process to request relief from a reimbursement obligation under subsection (2) of this section if the managed care entity is unable to establish a discharge plan due to the action or inaction of a third party outside its contracting authority or control, such as a state agency division responsible for a portion of the costs related to the community care needs of the person or the court.

(4) The requirements of this section are suspended when the risk for state hospital treatment or state-contracted inpatient treatment in a certified community long-term involuntary treatment facility is integrated into managed care contracts as provided under section 101 of this act.

NEW SECTION. **Sec. 304.** A new section is added to chapter 72.23 RCW to read as follows:

(1) The legislature finds that qualified psychiatric advanced registered nurse practitioners and physician assistants supervised by a psychiatrist have a role in participating in the direction of psychiatric treatment at state psychiatric hospitals consistent with practice at the top of their scope of license and capabilities, including sharing duties for prescribing psychiatric medication and other tasks historically performed by psychiatrists at the state hospitals. The department should take reasonable steps available to employ these professionals at state hospitals.

(2) The role of state hospital psychiatrists is expanded to provide supervision to physician assistants specializing in psychiatry and provide mentorship to psychiatric advanced registered nurse practitioners necessary to allow these professionals to practice at the top of their scope of license.

(3) In order to increase the use of psychiatric advanced registered nurse practitioners and physician assistants to perform work and tasks that are currently or have been historically performed by psychiatrists at the state hospitals, the department shall work with the University of Washington department of psychiatry and behavioral sciences and the appropriate department of Washington State University and appropriate schools of nursing to conduct an analysis and develop a plan to create a training and supervision program at western and eastern state hospitals for psychiatric advanced registered nurse practitioners and physician assistants. The plan shall include an appraisal of risks, barriers, and benefits to implementation as well as an implementation timeline. The department must report to the office of financial management and relevant policy and fiscal committees of the legislature on findings and recommendations by December 15, 2017.

#### Part IV

#### Improving Access to Assisted Outpatient Mental Health Treatment

**Sec. 401.** RCW 71.05.020 and 2016 c 155 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(8) "Department" means the department of social and health services;

(9) "Designated chemical dependency specialist" means a person designated by ~~((the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310))~~ a behavioral health organization as defined in RCW 71.24.025 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;

(10) "Designated crisis responder" means a mental health professional appointed by the county or the behavioral health organization to perform the duties specified in this chapter;

(11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;

(12) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(13) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(14) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(15) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. The department may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(18) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(19) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(20) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(21) "In need of assisted outpatient mental health treatment" means that a person, as a result of a mental disorder: (a) ~~((Has been committed by a court to detention for involuntary mental health treatment at least twice during the preceding thirty six months, or, if the person is currently committed for involuntary mental health treatment, the person has been committed to detention for involuntary mental health treatment at least once during the thirty six months preceding the date of initial detention~~



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~~of the current commitment cycle; (b)) Is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, ((in view of the person's treatment history or current behavior; (c) is unlikely to survive safely in the community without supervision; (d) is likely to benefit from less restrictive alternative treatment; and (e)) based on a history of nonadherence with treatment or in view of the person's current behavior; (b) is likely to benefit from less restrictive alternative treatment; and (c) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time((. For purposes of (a) of this subsection, time spent in a mental health facility or in confinement as a result of a criminal conviction is excluded from the thirty-six month calculation));~~

(22) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(23) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information;

(24) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(25) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public mental health service providers under RCW 71.05.130;

(26) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

(27) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(28) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated mental health professional;

(29) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(30) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(31) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community ((mental)) behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, and correctional facilities operated by state and local governments;

(32) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(33) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW;

(34) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(35) "Professional person" means a mental health professional and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(36) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(37) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(38) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(39) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(40) "Registration records" include all the records of the department, behavioral health organizations, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are

receiving or who at any time have received services for mental illness;

(41) "Release" means legal termination of the commitment under the provisions of this chapter;

(42) "Resource management services" has the meaning given in chapter 71.24 RCW;

(43) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(44) "Serious violent offense" has the same meaning as provided in RCW 9.94A.030;

(45) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(46) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(47) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by behavioral health organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, behavioral health organizations, or a treatment facility if the notes or records are not available to others;

(48) "Triage facility" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(49) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

**Sec. 402.** RCW 71.05.020 and 2016 sp.s. c 29 s 204 and 2016 c 155 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning;

(3) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

(5) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(6) "Chemical dependency" means:

(a) Alcoholism;

(b) Drug addiction; or

(c) Dependence on alcohol and one or more psychoactive chemicals, as the context requires;

(7) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW;

(8) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(9) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(10) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(11) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(12) "Department" means the department of social and health services;

(13) "Designated crisis responder" means a mental health professional appointed by the behavioral health organization to perform the duties specified in this chapter;

(14) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(15) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(16) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(17) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(18) "Drug addiction" means a disease, characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning;

(19) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. The department may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an

evaluation and treatment facility within the meaning of this chapter;

(20) "Gravely disabled" means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(21) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(22) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility, a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction;

(23) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(24) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(25) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information;

(26) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals;

(27) "In need of assisted outpatient ~~((mental))~~ behavioral health treatment" means that a person, as a result of a mental disorder or substance use disorder: (a) ~~((Has been committed by a court to detention for involuntary mental health treatment at least twice during the preceding thirty six months, or, if the person is currently committed for involuntary mental health treatment, the person has been committed to detention for involuntary mental health treatment at least once during the thirty six months preceding the date of initial detention of the current commitment cycle; (b)))~~ Is unlikely to voluntarily participate in outpatient

treatment without an order for less restrictive alternative treatment, ~~((in view of the person's treatment history or current behavior; (e) is unlikely to survive safely in the community without supervision; (d) is likely to benefit from less restrictive alternative treatment; and (e)))~~ based on a history of nonadherence with treatment or in view of the person's current behavior; (b) is likely to benefit from less restrictive alternative treatment; and (c) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time ~~((For purposes of (a) of this subsection, time spent in a mental health facility or in confinement as a result of a criminal conviction is excluded from the thirty six month calculation));~~

(28) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(29) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public mental health and substance use disorder service providers under RCW 71.05.130;

(30) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

(31) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(32) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(33) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

(34) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(35) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(36) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders or substance use disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure detoxification facilities as defined in this section, and correctional facilities operated by state and local governments;

(37) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(38) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW;

(39) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders;

(40) "Professional person" means a mental health professional or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(41) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(42) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(43) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(44) "Public agency" means any evaluation and treatment facility or institution, secure detoxification facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(45) "Registration records" include all the records of the department, behavioral health organizations, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness or substance use disorders;

(46) "Release" means legal termination of the commitment under the provisions of this chapter;

(47) "Resource management services" has the meaning given in chapter 71.24 RCW;

(48) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(49) "Secure detoxification facility" means a facility operated by either a public or private agency or by the program of an agency that:

- (a) Provides for intoxicated persons;
- (i) Evaluation and assessment, provided by certified chemical dependency professionals;
- (ii) Acute or subacute detoxification services; and
- (iii) Discharge assistance provided by certified chemical dependency professionals, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Includes security measures sufficient to protect the patients, staff, and community; and

(c) Is certified as such by the department;

(50) "Serious violent offense" has the same meaning as provided in RCW 9.94A.030;

(51) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(52) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(53) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(54) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by behavioral health organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, behavioral health organizations, or a treatment facility if the notes or records are not available to others;

(55) "Triage facility" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(56) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

**Sec. 403.** RCW 71.05.585 and 2016 c 45 s 5 are each amended to read as follows:

(1) Less restrictive alternative treatment, at a minimum, includes the following services:

(a) Assignment of a care coordinator;

(b) An intake evaluation with the provider of the less restrictive alternative treatment;

(c) A psychiatric evaluation;

(d) ~~(Medication management);~~

~~(e))~~ A schedule of regular contacts with the provider of the less restrictive alternative treatment services for the duration of the order;

~~((#))~~ ~~(e)~~ A transition plan addressing access to continued services at the expiration of the order; and

~~((#))~~ ~~(f)~~ An individual crisis plan.

(2) Less restrictive alternative treatment may additionally include requirements to participate in the following services:

(a) ~~Medication management;~~

(b) Psychotherapy;

~~((#))~~ ~~(c)~~ Nursing;

~~((#))~~ ~~(d)~~ Substance abuse counseling;

~~((#))~~ ~~(e)~~ Residential treatment; and

~~((e))~~ ~~(f)~~ Support for housing, benefits, education, and employment.

(3) Less restrictive alternative treatment must be administered by a provider that is certified or licensed to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.

(4) The care coordinator assigned to a person ordered to less restrictive alternative treatment must submit an individualized plan for the person's treatment services to the court that entered the order. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.

(5) For the purpose of this section, "care coordinator" means a clinical practitioner who coordinates the activities of less restrictive alternative treatment. The care coordinator coordinates activities with the designated mental health professionals necessary for enforcement and continuation of less restrictive alternative orders and is responsible for coordinating service activities with other agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

**Sec. 404.** RCW 71.05.585 and 2016 sp.s. c 29 s 241 and 2016 c 45 s 5 are each reenacted and amended to read as follows:

(1) Less restrictive alternative treatment, at a minimum, includes the following services:

- (a) Assignment of a care coordinator;
- (b) An intake evaluation with the provider of the less restrictive alternative treatment;
- (c) A psychiatric evaluation;
- (d) ~~(Medication management);~~
- ~~(e))~~ A schedule of regular contacts with the provider of the less restrictive alternative treatment services for the duration of the order;

~~((f))~~ ~~(e)~~ A transition plan addressing access to continued services at the expiration of the order; and

~~((g))~~ ~~(f)~~ An individual crisis plan.

(2) Less restrictive alternative treatment may additionally include requirements to participate in the following services:

- (a) Medication management;
- (b) Psychotherapy;
- ~~((b))~~ (c) Nursing;
- ~~((c))~~ (d) Substance abuse counseling;
- ~~((d))~~ (e) Residential treatment; and
- ~~((e))~~ ~~(f)~~ Support for housing, benefits, education, and employment.

(3) Less restrictive alternative treatment must be administered by a provider that is certified or licensed to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.

(4) The care coordinator assigned to a person ordered to less restrictive alternative treatment must submit an individualized plan for the person's treatment services to the court that entered the order. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.

(5) For the purpose of this section, "care coordinator" means a clinical practitioner who coordinates the activities of less restrictive alternative treatment. The care coordinator coordinates activities with the designated crisis responders that are necessary for enforcement and continuation of less restrictive alternative orders and is responsible for coordinating service activities with other agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

NEW SECTION. **Sec. 405.** A new section is added to chapter 71.05 RCW to read as follows:

This section establishes a process for initial evaluation and filing of a petition for assisted outpatient treatment, but however does not preclude the filing of a petition for assisted outpatient treatment following a period of inpatient detention in appropriate circumstances:

(1) The designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at a mental health facility.

(2) The designated mental health professional must investigate and evaluate the specific facts alleged and the reliability or credibility of any person providing information. The designated mental health professional may spend up to forty-eight hours to complete the investigation, provided that the person may not be held for investigation for any period except as authorized by RCW 71.05.050 or 71.05.153.

(3) If the designated mental health professional finds that the person is in need of assisted outpatient mental health treatment, they may file a petition requesting the court to enter an order for up to ninety days less restrictive alternative treatment. The petition must include:

- (a) A statement of the circumstances under which the person's condition was made known and stating that there is evidence, as a result of the designated mental health professional's personal observation or investigation, that the person is in need of assisted outpatient mental health treatment, and stating the specific facts known as a result of personal observation or investigation, upon which the designated mental health professional bases this belief;
- (b) The declaration of additional witnesses, if any, supporting the petition for assisted outpatient treatment;
- (c) A designation of retained counsel for the person or, if counsel is appointed, the name, business address, and telephone number of the attorney appointed to represent the person;
- (d) The name of an agency or facility which agreed to assume the responsibility of providing less restrictive alternative treatment if the petition is granted by the court;

(e) A summons to appear in court at a specific time and place within five judicial days for a probable cause hearing, except as provided in subsection (4) of this section.

(4) If the person is in the custody of jail or prison at the time of the investigation, a petition for assisted outpatient mental health treatment may be used to facilitate continuity of care after release from custody or the diversion of criminal charges as follows:

(a) If the petition is filed in anticipation of the person's release from custody, the summons may be for a date up to five judicial days following the person's anticipated release date, provided that a clear time and place for the hearing is provided; or

(b) The hearing may be held prior to the person's release from custody, provided that (i) the filing of the petition does not extend the time the person would otherwise spend in the custody of jail or prison; (ii) the charges or custody of the person is not a pretext to detain the person for the purpose of the involuntary commitment hearing; and (iii) the person's release from custody must be expected to swiftly follow the adjudication of the petition. In this circumstance, the time for hearing is shortened to three judicial days after the filing of the petition.

(5) The petition must be served upon the person and the person's counsel with a notice of applicable rights. Proof of service must be filed with the court.

(6) A petition for assisted outpatient treatment filed under this section must be adjudicated under RCW 71.05.240.

NEW SECTION. **Sec. 406.** A new section is added to chapter 71.05 RCW to read as follows:

This section establishes a process for initial evaluation and filing of a petition for assisted outpatient treatment, but however does not preclude the filing of a petition for assisted outpatient treatment following a period of inpatient detention in appropriate circumstances:

(1) The designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at a mental health facility.

(2) The designated mental health professional must investigate and evaluate the specific facts alleged and the reliability or credibility of any person providing information. The designated mental health professional may spend up to forty-eight hours to complete the investigation, provided that the person may not be held for investigation for any period except as authorized by RCW 71.05.050 or 71.05.153.

This section establishes a process for initial evaluation and filing of a petition for assisted outpatient treatment, but however does not preclude the filing of a petition for assisted outpatient treatment following a period of inpatient detention in appropriate circumstances:

(1) The designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at a mental health facility, secure detoxification facility, or approved substance use disorder treatment program.

(2) The designated crisis responder must investigate and evaluate the specific facts alleged and the reliability or credibility of any person providing information. The designated crisis responder may spend up to forty-eight hours to complete the investigation, provided that the person may not be held for investigation for any period except as authorized by RCW 71.05.050 or 71.05.153.

(3) If the designated crisis responder finds that the person is in need of assisted outpatient behavioral health treatment, they may file a petition requesting the court to enter an order for up to ninety days less restrictive alternative treatment. The petition must include:

(a) A statement of the circumstances under which the person's condition was made known and stating that there is evidence, as a result of the designated crisis responder's personal observation or investigation, that the person is in need of assisted outpatient behavioral health treatment, and stating the specific facts known as a result of personal observation or investigation, upon which the designated crisis responder bases this belief;

(b) The declaration of additional witnesses, if any, supporting the petition for assisted outpatient treatment;

(c) A designation of retained counsel for the person or, if counsel is appointed, the name, business address, and telephone number of the attorney appointed to represent the person;

(d) The name of an agency or facility which agreed to assume the responsibility of providing less restrictive alternative treatment if the petition is granted by the court;

(e) A summons to appear in court at a specific time and place within five judicial days for a probable cause hearing, except as provided in subsection (4) of this section.

(4) If the person is in the custody of jail or prison at the time of the investigation, a petition for assisted outpatient behavioral health treatment may be used to facilitate continuity of care after release from custody or the diversion of criminal charges as follows:

(a) If the petition is filed in anticipation of the person's release from custody, the summons may be for a date up to five judicial days following the person's anticipated release date, provided that a clear time and place for the hearing is provided; or

(b) The hearing may be held prior to the person's release from custody, provided that (i) the filing of the petition does not extend the time the person would otherwise spend in the custody of jail or prison; (ii) the charges or custody of the person is not a pretext to detain the person for the purpose of the involuntary commitment hearing; and (iii) the person's release from custody must be expected to swiftly follow the adjudication of the petition. In this circumstance, the time for hearing is shortened to three judicial days after the filing of the petition.

(5) The petition must be served upon the person and the person's counsel with a notice of applicable rights. Proof of service must be filed with the court.

(6) A petition for assisted outpatient treatment filed under this section must be adjudicated under RCW 71.05.240.

**Sec. 407.** RCW 71.05.150 and 2015 c 250 s 3 are each amended to read as follows:

(1)~~((a))~~) When a designated mental health professional receives information alleging that a person, as a result of a mental disorder: ~~((i))~~ (a) Presents a likelihood of serious harm; ~~((ii))~~ (b) is gravely disabled; or ~~((iii))~~ (c) is in need of assisted outpatient mental health treatment; the designated mental health professional may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention or involuntary outpatient evaluation, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention ~~((or involuntary outpatient evaluation. If the petition is filed solely on the grounds that the person is in need of assisted outpatient mental health treatment, the petition may only be for an involuntary outpatient evaluation. An involuntary outpatient evaluation may be conducted by any combination of licensed professionals authorized to petition for involuntary commitment under RCW 71.05.230 and must include involvement or consultation with the agency or facility which will provide monitoring or services under the proposed less restrictive alternative treatment order. If the petition is for an involuntary outpatient evaluation and the person is being held in a hospital emergency department, the person may be released once the hospital has satisfied federal and state legal requirements for appropriate screening and stabilization of patients.~~

~~((b))~~) under this section or a petition for involuntary outpatient treatment under section 405 of this act. Before filing the petition, the designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility, crisis stabilization unit, or triage facility.

(2)(a) An order to detain to a designated evaluation and treatment facility for not more than a seventy-two-hour evaluation and treatment period(~~, or an order for an involuntary outpatient evaluation.~~) may be issued by a judge of the superior court upon request of a designated mental health professional, whenever it appears to the satisfaction of a judge of the superior court:

(i) That there is probable cause to support the petition; and

(ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention ~~((or involuntary outpatient evaluation))~~, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated mental health professional shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention ~~((or involuntary outpatient evaluation))~~. After service on such person the designated mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The designated mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual

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accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated mental health professional may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention.

**Sec. 408.** RCW 71.05.150 and 2016 sp.s. c 29 s 210 are each amended to read as follows:

(1)((~~+~~)) When a designated crisis responder receives information alleging that a person, as a result of a mental disorder, substance use disorder, or both presents a likelihood of serious harm or is gravely disabled, or that a person is in need of assisted outpatient (~~mental~~) behavioral health treatment; the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention or involuntary outpatient evaluation, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention (~~or involuntary outpatient evaluation. If the petition is filed solely on the grounds that the person is in need of assisted outpatient mental health treatment, the petition may only be for an involuntary outpatient evaluation. An involuntary outpatient evaluation may be conducted by any combination of licensed professionals authorized to petition for involuntary commitment under RCW 71.05.230 and must include involvement or consultation with the agency or facility which will provide monitoring or services under the proposed less restrictive alternative treatment order. If the petition is for an involuntary outpatient evaluation and the person is being held in a hospital emergency department, the person may be released once the hospital has satisfied federal and state legal requirements for appropriate screening and stabilization of patients.~~

~~(b)) under this section or a petition for involuntary outpatient treatment under section 405 of this act.~~ Before filing the petition, the designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility, crisis stabilization unit, triage facility, or approved substance use disorder treatment program.

(2)(a) An order to detain a person with a mental disorder to a designated evaluation and treatment facility, or to detain a person with a substance use disorder to a secure detoxification facility or approved substance use disorder treatment program, for not more than a seventy-two-hour evaluation and treatment period(~~or an order for an involuntary outpatient evaluation,)~~) may be issued by a judge of the superior court upon request of a designated crisis responder, subject to (d) of this subsection, whenever it appears to the satisfaction of a judge of the superior court:

(i) That there is probable cause to support the petition; and  
(ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention (~~or involuntary outpatient evaluation~~), signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(d) A court may not issue an order to detain a person to a secure detoxification facility or approved substance use disorder treatment program unless there is an available secure detoxification facility or approved substance use disorder treatment program that has adequate space for the person.

(3) The designated crisis responder shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention (~~or involuntary outpatient evaluation~~). After service on such person the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program, and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention.

**Sec. 409.** RCW 71.05.150 and 2016 sp.s. c 29 s 211 are each amended to read as follows:

(1)((~~+~~)) When a designated crisis responder receives information alleging that a person, as a result of a mental disorder, substance use disorder, or both presents a likelihood of serious harm or is gravely disabled, or that a person is in need of assisted outpatient (~~mental~~) behavioral health treatment; the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention or involuntary outpatient evaluation, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention (~~or involuntary outpatient evaluation. If the petition is filed solely on the grounds that the person is in need of assisted outpatient mental health treatment, the petition may only be for an involuntary outpatient evaluation. An involuntary outpatient evaluation may be conducted by any combination of licensed professionals authorized to petition for involuntary commitment under RCW 71.05.230 and must include involvement or consultation with the agency or facility which will provide monitoring or services under the proposed less restrictive alternative treatment order. If the petition is for an involuntary outpatient evaluation and the person is being held in a hospital emergency department, the person may be released once the hospital has satisfied federal and state legal requirements for appropriate screening and stabilization of patients.~~

~~(b)) under this section or a petition for involuntary outpatient treatment under section 405 of this act.~~ Before filing the petition,

the designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility, crisis stabilization unit, triage facility, or approved substance use disorder treatment program.

(2)(a) An order to detain a person with a mental disorder to a designated evaluation and treatment facility, or to detain a person with a substance use disorder to a secure detoxification facility or approved substance use disorder treatment program, for not more than a seventy-two-hour evaluation and treatment period(~~(, or an order for an involuntary outpatient evaluation,))~~) may be issued by a judge of the superior court upon request of a designated crisis responder whenever it appears to the satisfaction of a judge of the superior court:

(i) That there is probable cause to support the petition; and  
(ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention (~~(or involuntary outpatient evaluation)~~), signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated crisis responder shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention (~~(or involuntary outpatient evaluation)~~). After service on such person the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program, and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention.

**Sec. 410.** RCW 71.05.230 and 2016 c 155 s 5 and 2016 c 45 s 1 are each reenacted and amended to read as follows:

A person detained (~~(or committed)~~) for seventy-two hour evaluation and treatment (~~(or for an outpatient evaluation for the purpose of filing a petition for a less restrictive alternative treatment order)~~) may be committed for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary

intensive treatment. A petition may only be filed if the following conditions are met:

(1) The professional staff of the (~~(agency or)~~) facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and results in a likelihood of serious harm, results in the person being gravely disabled, or results in the person being in need of assisted outpatient mental health treatment, and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The (~~(agency or)~~) facility providing intensive treatment (~~(or which proposes to supervise the less restrictive alternative)~~) is certified to provide such treatment by the department; and

(4) The professional staff of the (~~(agency or)~~) facility or the designated mental health professional has filed a petition with the court for a fourteen day involuntary detention or a ninety day less restrictive alternative. The petition must be signed either by:

(a) Two physicians;

(b) One physician and a mental health professional;

(c) One physician assistant and a mental health professional; or

(d) One psychiatric advanced registered nurse practitioner and a mental health professional. The persons signing the petition must have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient mental health treatment, and shall set forth any recommendations for less restrictive alternative treatment services; and

(5) A copy of the petition has been served on the detained (~~(or committed)~~) person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The petition reflects that the person was informed of the loss of firearm rights if involuntarily committed; and

(8) At the conclusion of the initial commitment period, the professional staff of the (~~(agency or)~~) facility or the designated mental health professional may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide less restrictive alternative treatment is other than the facility providing involuntary treatment, the outpatient facility so designated to provide less restrictive alternative treatment has agreed to assume such responsibility.

**Sec. 411.** RCW 71.05.230 and 2016 sp.s. c 29 s 230, 2016 c 155 s 5, and 2016 c 45 s 1 are each reenacted and amended to read as follows:

A person detained (~~(or committed)~~) for seventy-two hour evaluation and treatment (~~(or for an outpatient evaluation for the purpose of filing a petition for a less restrictive alternative treatment order)~~) may be committed for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative (~~(to involuntary~~



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intensive)) treatment. A petition may only be filed if the following conditions are met:

(1) The professional staff of the ((agency or)) facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder or substance use disorder and results in a likelihood of serious harm, results in the person being gravely disabled, or results in the person being in need of assisted outpatient ((mental)) behavioral health treatment, and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The ((agency or)) facility providing intensive treatment ((or which proposes to supervise the less restrictive alternative)) is certified to provide such treatment by the department; and

(4) The professional staff of the ((agency or)) facility or the designated crisis responder has filed a petition with the court for a fourteen day involuntary detention or a ninety day less restrictive alternative. The petition must be signed either by:

(a) Two physicians;

(b) One physician and a mental health professional;

(c) One physician assistant and a mental health professional; or

(d) One psychiatric advanced registered nurse practitioner and a mental health professional. The persons signing the petition must have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of a mental disorder or substance use disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of a mental disorder or as a result of a substance use disorder, presents a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient ((mental)) behavioral health treatment, and shall set forth any recommendations for less restrictive alternative treatment services; and

(5) A copy of the petition has been served on the detained or committed person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The petition reflects that the person was informed of the loss of firearm rights if involuntarily committed for mental health treatment; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated crisis responder may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide less restrictive alternative treatment is other than the facility providing involuntary treatment, the outpatient facility so designated to provide less restrictive alternative treatment has agreed to assume such responsibility.

**Sec. 412.** RCW 71.05.240 and 2016 c 45 s 2 are each amended to read as follows:

(1) If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within seventy-two hours of

the initial detention ((or involuntary outpatient evaluation)) of such person as determined in RCW 71.05.180, or at a time determined under section 405 of this act. If requested by the person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may also be continued subject to the conditions set forth in RCW 71.05.210 or subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours.

(2) The court at the time of the probable cause hearing and before an order of commitment is entered shall inform the person both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.05.230 will result in the loss of his or her firearm rights if the person is subsequently detained for involuntary treatment under this section.

(3) At the conclusion of the probable cause hearing:

(a) If the court finds by a preponderance of the evidence that such person, as the result of mental disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department. If the court finds that such person, as the result of a mental disorder, presents a likelihood of serious harm, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive alternative course of treatment for not to exceed ninety days;

(b) If the court finds by a preponderance of the evidence that such person, as the result of a mental disorder, is in need of assisted outpatient mental health treatment, and that the person does not present a likelihood of serious harm or grave disability, the court shall order an appropriate less restrictive alternative course of treatment not to exceed ninety days((, and may not order inpatient treatment;)).

((e)) (4) An order for less restrictive alternative treatment must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

((4)) (5) The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period or beyond the ninety days of less restrictive treatment is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. The court shall also state to the person and provide written notice that the person is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047.

**Sec. 413.** RCW 71.05.240 and 2016 sp.s. c 29 s 232 and 2016 c 45 s 2 are each reenacted and amended to read as follows:

(1) If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within seventy-two hours of the initial detention ((or involuntary outpatient evaluation)) of such person as determined in RCW 71.05.180, or at a time determined under section 405 of this act. If requested by the person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may also be continued subject to the conditions set forth in RCW 71.05.210 or subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours.

(2) If the petition is for mental health treatment, the court at the time of the probable cause hearing and before an order of commitment is entered shall inform the person both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.05.230 will result in the loss of his or her firearm rights if the person is subsequently detained for involuntary treatment under this section.

(3)(a) Subject to (b) of this subsection, at the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of a mental disorder or substance use disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department.

(b) Commitment for up to fourteen days based on a substance use disorder must be to either a secure detoxification facility or an approved substance use disorder treatment program. A court may only enter a commitment order based on a substance use disorder if there is an available secure detoxification facility or approved substance use disorder treatment program with adequate space for the person.

(c) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of a mental disorder or substance use disorder, presents a likelihood of serious harm, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive alternative course of treatment for not to exceed ninety days.

(d) If the court finds by a preponderance of the evidence that such person, as the result of a mental disorder, is in need of assisted outpatient ~~((mental))~~ behavioral health treatment, and that the person does not present a likelihood of serious harm or grave disability, the court shall order an appropriate less restrictive alternative course of treatment not to exceed ninety days ~~((, and may not order inpatient treatment))~~.

~~((e))~~ (4) An order for less restrictive alternative treatment must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

~~((4))~~ (5) The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period or beyond the ninety days of less restrictive treatment is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. If the commitment is for mental health treatment, the court shall also state to the person and provide written notice that the person is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047.

**Sec. 414.** RCW 71.05.240 and 2016 sp.s. c 29 s 233 are each amended to read as follows:

(1) If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within seventy-two hours of the initial detention ~~((or involuntary outpatient evaluation))~~ of such person as determined in RCW 71.05.180, or at a time determined under section 405 of this act. If requested by the person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may also be continued subject to the conditions set forth in RCW 71.05.210 or

subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours.

(2) If the petition is for mental health treatment, the court at the time of the probable cause hearing and before an order of commitment is entered shall inform the person both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.05.230 will result in the loss of his or her firearm rights if the person is subsequently detained for involuntary treatment under this section.

(3)(a) Subject to (b) of this subsection, at the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of a mental disorder or substance use disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department.

(b) Commitment for up to fourteen days based on a substance use disorder must be to either a secure detoxification facility or an approved substance use disorder treatment program.

(c) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of a mental disorder or substance use disorder, presents a likelihood of serious harm, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive alternative course of treatment for not to exceed ninety days.

(d) If the court finds by a preponderance of the evidence that such person, as the result of a mental disorder, is in need of assisted outpatient ~~((mental))~~ behavioral health treatment, and that the person does not present a likelihood of serious harm or grave disability, the court shall order an appropriate less restrictive alternative course of treatment not to exceed ninety days ~~((, and may not order inpatient treatment))~~.

~~((e))~~ (4) An order for less restrictive alternative treatment must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

~~((4))~~ (5) The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period or beyond the ninety days of less restrictive treatment is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. If the commitment is for mental health treatment, the court shall also state to the person and provide written notice that the person is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047.

**Sec. 415.** RCW 71.05.590 and 2015 c 250 s 13 are each amended to read as follows:

(1) An agency or facility designated to monitor or provide services under a less restrictive alternative or conditional release order or a designated mental health professional may take action to enforce, modify, or revoke a less restrictive alternative or conditional release order if the agency, facility, or designated mental health professional determines that:

(a) The person is failing to adhere to the terms and conditions of the court order;

(b) Substantial deterioration in the person's functioning has occurred;

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(c) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further evaluation, intervention, or treatment; or

(d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal autonomy, safety, recovery, and compliance. Available actions may include, but are not limited to, any of the following:

(a) To counsel, advise, or admonish the person as to their rights and responsibilities under the court order, and to offer appropriate incentives to motivate compliance;

(b) To increase the intensity of outpatient services provided to the person by increasing the frequency of contacts with the provider, referring the person for an assessment for assertive community services, or by other means;

(c) To request a court hearing for review and modification of the court order. The request must be made to the court with jurisdiction over the order and specify the circumstances that give rise to the request and what modification is being sought. The county prosecutor shall assist the agency or facility in requesting this hearing and issuing an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when court intervention is necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;

(d) To cause the person to be transported by a peace officer, designated mental health professional, or other means to the agency or facility monitoring or providing services under the court order, or to a triage facility, crisis stabilization unit, emergency department, or evaluation and treatment facility for up to twelve hours for the purpose of an evaluation to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of noncompliance or the failure of reasonable attempts at outreach and engagement, and may occur only when in the clinical judgment of a designated mental health professional or the professional person in charge of an agency or facility designated to monitor less restrictive alternative services temporary detention is appropriate. This subsection does not limit the ability or obligation to pursue revocation procedures under subsection (4) of this section in appropriate circumstances; and

(e) To initiate revocation procedures under subsection (4) of this section.

(3) The facility or agency designated to provide outpatient treatment shall notify the secretary or designated mental health professional when a person fails to adhere to terms and conditions of court ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

(4)(a) A designated mental health professional or the secretary may upon their own motion or notification by the facility or agency designated to provide outpatient care order a person subject to a court order under this section to be apprehended and taken into custody and temporary detention in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment, or initiate proceedings under this subsection (4) without ordering the apprehension and detention of the person.

(b) A person detained under this subsection (4) must be held until such time, not exceeding five days, as a hearing can be

scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been released. If the person is not detained, the hearing must be scheduled within five days of service on the person. The designated mental health professional or the secretary may modify or rescind the order at any time prior to commencement of the court hearing.

(c) The designated mental health professional or secretary shall notify the court that originally ordered commitment within two judicial days of a person's detention and file a revocation petition and order of apprehension and detention with the court and serve the person and their attorney, guardian, and conservator, if any. The person has the same rights with respect to notice, hearing, and counsel as in any involuntary treatment proceeding, except as specifically set forth in this section. There is no right to jury trial. The venue for proceedings regarding a petition for modification or revocation must be in the county in which the petition was filed.

(d) The issues for the court to determine are whether: (i) The person adhered to the terms and conditions of the court order; (ii) substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the above conditions apply, whether the court should reinstate or modify the person's less restrictive alternative or conditional release order or order the person's detention for inpatient treatment. The person may waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties. If the court orders detention for inpatient treatment, the treatment period may be for no longer than the period authorized in the original court order.

~~((e) Revocation proceedings under this subsection (4) are not allowable if the current commitment is solely based on the person being in need of assisted outpatient mental health treatment. In order to obtain a court order for detention for inpatient treatment under this circumstance, a petition must be filed under RCW 71.05.150 or 71.05.153.))~~

(5) In determining whether or not to take action under this section the designated mental health professional, agency, or facility must consider the factors specified under RCW 71.05.212 and the court must consider the factors specified under RCW 71.05.245 as they apply to the question of whether to enforce, modify, or revoke a court order for involuntary treatment.

**Sec. 416.** RCW 71.05.590 and 2016 sp.s. c 29 s 242 are each amended to read as follows:

(1) An agency or facility designated to monitor or provide services under a less restrictive alternative or conditional release order or a designated crisis responder may take action to enforce, modify, or revoke a less restrictive alternative or conditional release order if the agency, facility, or designated crisis responder determines that:

(a) The person is failing to adhere to the terms and conditions of the court order;

(b) Substantial deterioration in the person's functioning has occurred;

(c) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further evaluation, intervention, or treatment; or

(d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal autonomy, safety, recovery, and

compliance. Available actions may include, but are not limited to, any of the following:

(a) To counsel, advise, or admonish the person as to their rights and responsibilities under the court order, and to offer appropriate incentives to motivate compliance;

(b) To increase the intensity of outpatient services provided to the person by increasing the frequency of contacts with the provider, referring the person for an assessment for assertive community services, or by other means;

(c) To request a court hearing for review and modification of the court order. The request must be made to the court with jurisdiction over the order and specify the circumstances that give rise to the request and what modification is being sought. The county prosecutor shall assist the agency or facility in requesting this hearing and issuing an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when court intervention is necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;

(d) To cause the person to be transported by a peace officer, designated crisis responder, or other means to the agency or facility monitoring or providing services under the court order, or to a triage facility, crisis stabilization unit, emergency department, or to an evaluation and treatment facility if the person is committed for mental health treatment, or to a secure detoxification facility with available space or an approved substance use disorder treatment program with available space if the person is committed for substance use disorder treatment. The person may be detained at the facility for up to twelve hours for the purpose of an evaluation to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of noncompliance or the failure of reasonable attempts at outreach and engagement, and may occur only when in the clinical judgment of a designated crisis responder or the professional person in charge of an agency or facility designated to monitor less restrictive alternative services temporary detention is appropriate. This subsection does not limit the ability or obligation to pursue revocation procedures under subsection (4) of this section in appropriate circumstances; and

(e) To initiate revocation procedures under subsection (4) of this section.

(3) The facility or agency designated to provide outpatient treatment shall notify the secretary or designated crisis responder when a person fails to adhere to terms and conditions of court ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

(4)(a) A designated crisis responder or the secretary may upon their own motion or notification by the facility or agency designated to provide outpatient care order a person subject to a court order under this chapter to be apprehended and taken into custody and temporary detention in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment if the person is committed for mental health treatment, or, if the person is committed for substance use disorder treatment, in a secure detoxification facility or approved substance use disorder treatment program if either is available in or near the county in which he or she is receiving outpatient treatment and has adequate space. Proceedings under this subsection (4) may be initiated without ordering the apprehension and detention of the person.

(b) A person detained under this subsection (4) must be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been released. If the person is not detained, the hearing must be scheduled within five days of service on the person. The designated crisis responder or the secretary may modify or rescind the order at any time prior to commencement of the court hearing.

(c) The designated crisis responder or secretary shall notify the court that originally ordered commitment within two judicial days of a person's detention and file a revocation petition and order of apprehension and detention with the court and serve the person and their attorney, guardian, and conservator, if any. The person has the same rights with respect to notice, hearing, and counsel as in any involuntary treatment proceeding, except as specifically set forth in this section. There is no right to jury trial. The venue for proceedings regarding a petition for modification or revocation must be in the county in which the petition was filed.

(d) The issues for the court to determine are whether: (i) The person adhered to the terms and conditions of the court order; (ii) substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the above conditions apply, whether the court should reinstate or modify the person's less restrictive alternative or conditional release order or order the person's detention for inpatient treatment. The person may waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties. If the court orders detention for inpatient treatment, the treatment period may be for no longer than the period authorized in the original court order. A court may not issue an order to detain a person for inpatient treatment in a secure detoxification facility or approved substance use disorder treatment program under this subsection unless there is a secure detoxification facility or approved substance use disorder treatment program available and with adequate space for the person.

~~((e) Revocation proceedings under this subsection (4) are not allowable if the current commitment is solely based on the person being in need of assisted outpatient mental health treatment. In order to obtain a court order for detention for inpatient treatment under this circumstance, a petition must be filed under RCW 71.05.150 or 71.05.153.))~~

(5) In determining whether or not to take action under this section the designated crisis responder, agency, or facility must consider the factors specified under RCW 71.05.212 and the court must consider the factors specified under RCW 71.05.245 as they apply to the question of whether to enforce, modify, or revoke a court order for involuntary treatment.

**Sec. 417.** RCW 71.05.590 and 2016 sp.s. c 29 s 243 are each amended to read as follows:

(1) An agency or facility designated to monitor or provide services under a less restrictive alternative or conditional release order or a designated crisis responder may take action to enforce, modify, or revoke a less restrictive alternative or conditional release order if the agency, facility, or designated crisis responder determines that:

(a) The person is failing to adhere to the terms and conditions of the court order;

(b) Substantial deterioration in the person's functioning has occurred;

(c) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further evaluation, intervention, or treatment; or

(d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal autonomy, safety, recovery, and compliance. Available actions may include, but are not limited to, any of the following:

(a) To counsel, advise, or admonish the person as to their rights and responsibilities under the court order, and to offer appropriate incentives to motivate compliance;

(b) To increase the intensity of outpatient services provided to the person by increasing the frequency of contacts with the provider, referring the person for an assessment for assertive community services, or by other means;

(c) To request a court hearing for review and modification of the court order. The request must be made to the court with jurisdiction over the order and specify the circumstances that give rise to the request and what modification is being sought. The county prosecutor shall assist the agency or facility in requesting this hearing and issuing an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when court intervention is necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;

(d) To cause the person to be transported by a peace officer, designated crisis responder, or other means to the agency or facility monitoring or providing services under the court order, or to a triage facility, crisis stabilization unit, emergency department, or to an evaluation and treatment facility if the person is committed for mental health treatment, or to a secure detoxification facility or an approved substance use disorder treatment program if the person is committed for substance use disorder treatment. The person may be detained at the facility for up to twelve hours for the purpose of an evaluation to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of noncompliance or the failure of reasonable attempts at outreach and engagement, and may occur only when in the clinical judgment of a designated crisis responder or the professional person in charge of an agency or facility designated to monitor less restrictive alternative services temporary detention is appropriate. This subsection does not limit the ability or obligation to pursue revocation procedures under subsection (4) of this section in appropriate circumstances; and

(e) To initiate revocation procedures under subsection (4) of this section.

(3) The facility or agency designated to provide outpatient treatment shall notify the secretary or designated crisis responder when a person fails to adhere to terms and conditions of court ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

(4)(a) A designated crisis responder or the secretary may upon their own motion or notification by the facility or agency designated to provide outpatient care order a person subject to a court order under this chapter to be apprehended and taken into custody and temporary detention in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment if the person is committed for mental health treatment, or, if the person is committed for substance use disorder treatment, in a secure detoxification facility or approved substance use disorder treatment program if either is available in

or near the county in which he or she is receiving outpatient treatment. Proceedings under this subsection (4) may be initiated without ordering the apprehension and detention of the person.

(b) A person detained under this subsection (4) must be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been released. If the person is not detained, the hearing must be scheduled within five days of service on the person. The designated crisis responder or the secretary may modify or rescind the order at any time prior to commencement of the court hearing.

(c) The designated crisis responder or secretary shall notify the court that originally ordered commitment within two judicial days of a person's detention and file a revocation petition and order of apprehension and detention with the court and serve the person and their attorney, guardian, and conservator, if any. The person has the same rights with respect to notice, hearing, and counsel as in any involuntary treatment proceeding, except as specifically set forth in this section. There is no right to jury trial. The venue for proceedings regarding a petition for modification or revocation must be in the county in which the petition was filed.

(d) The issues for the court to determine are whether: (i) The person adhered to the terms and conditions of the court order; (ii) substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the above conditions apply, whether the court should reinstate or modify the person's less restrictive alternative or conditional release order or order the person's detention for inpatient treatment. The person may waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties. If the court orders detention for inpatient treatment, the treatment period may be for no longer than the period authorized in the original court order.

~~((c) Revocation proceedings under this subsection (4) are not allowable if the current commitment is solely based on the person being in need of assisted outpatient mental health treatment. In order to obtain a court order for detention for inpatient treatment under this circumstance, a petition must be filed under RCW 71.05.150 or 71.05.153.))~~

(5) In determining whether or not to take action under this section the designated crisis responder, agency, or facility must consider the factors specified under RCW 71.05.212 and the court must consider the factors specified under RCW 71.05.245 as they apply to the question of whether to enforce, modify, or revoke a court order for involuntary treatment.

**Sec. 418.** RCW 71.05.201 and 2016 sp.s. c 29 s 222 and 2016 c 107 s 1 are each reenacted and amended to read as follows:

(1) If a designated crisis responder decides not to detain a person for evaluation and treatment under RCW 71.05.150 or 71.05.153 or forty-eight hours have elapsed since a designated crisis responder received a request for investigation and the designated crisis responder has not taken action to have the person detained, an immediate family member or guardian or conservator of the person may petition the superior court for the person's initial detention.

(2)(a) The petition must be filed in the county in which the designated ((mental health professional)) crisis responder investigation occurred or was requested to occur and must be submitted on forms developed by the administrative office of the courts for this purpose. The petition must be accompanied by a sworn declaration from the petitioner, and other witnesses if desired, describing why the person should be detained for

evaluation and treatment. The description of why the person should be detained may contain, but is not limited to, the information identified in RCW 71.05.212.

(b) The petition must contain:

(i) A description of the relationship between the petitioner and the person; and

(ii) The date on which an investigation was requested from the designated crisis responder.

(3) The court shall, within one judicial day, review the petition to determine whether the petition raises sufficient evidence to support the allegation. If the court so finds, it shall provide a copy of the petition to the designated crisis responder agency with an order for the agency to provide the court, within one judicial day, with a written sworn statement describing the basis for the decision not to seek initial detention and a copy of all information material to the designated crisis responder's current decision.

(4) Following the filing of the petition and before the court reaches a decision, any person, including a mental health professional, may submit a sworn declaration to the court in support of or in opposition to initial detention.

(5) The court shall dismiss the petition at any time if it finds that a designated crisis responder has filed a petition for the person's initial detention under RCW 71.05.150 or 71.05.153 or that the person has voluntarily accepted appropriate treatment.

(6) The court must issue a final ruling on the petition within five judicial days after it is filed. After reviewing all of the information provided to the court, the court may enter an order for initial detention or an order instructing the designated crisis responder to file a petition for assisted outpatient behavioral health treatment if the court finds that: (a) There is probable cause to support a petition for detention or assisted outpatient behavioral health treatment; and (b) the person has refused or failed to accept appropriate evaluation and treatment voluntarily. The court shall transmit its final decision to the petitioner.

(7) If the court enters an order for initial detention, it shall provide the order to the designated crisis responder agency, which shall execute the order without delay. An order for initial detention under this section expires one hundred eighty days from issuance.

(8) Except as otherwise expressly stated in this chapter, all procedures must be followed as if the order had been entered under RCW 71.05.150. RCW 71.05.160 does not apply if detention was initiated under the process set forth in this section.

(9) For purposes of this section, "immediate family member" means a spouse, domestic partner, child, stepchild, parent, stepparent, grandparent, or sibling.

#### Part V

#### Reducing Demand for Forensic Services

NEW SECTION. **Sec. 501.** (1) The legislature intends to implement crisis walk-in centers, a new crisis service in Washington, to be deployed in high-need urban areas. A crisis walk-in center allows individuals to self-refer or be referred by emergency services or police and stay up to twenty-three hours under observation. Services with crisis walk-in centers generally include crisis stabilization and intervention, general counseling, peer support, medication management, education, and referral assistance. Studies indicate that these centers reduce hospital admissions and increase enrollment in community programs. The legislature intends for these centers to be geographically distributed around the state.

(2) The legislature intends to expand availability of clubhouses to provide community-based programs which promote rehabilitation, recovery, and reintegration services to adults with persistent mental illness. Clubhouses expanded under this section must show fidelity to the evidence-based model and be credentialed through clubhouse international.

**Sec. 502.** RCW 10.77.060 and 2012 c 256 s 3 are each amended to read as follows:

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

(b) The signed order of the court shall serve as authority for the evaluator to be given access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant. If the court is advised by any party that the defendant may have a developmental disability, the evaluation must be performed by a developmental disabilities professional.

(c) The evaluator shall assess the defendant in a jail, detention facility, in the community, or in court to determine whether a period of inpatient commitment will be necessary to complete an accurate evaluation. If inpatient commitment is needed, the signed order of the court shall serve as authority for the evaluator to request the jail or detention facility to transport the defendant to a hospital or secure mental health facility for a period of commitment not to exceed ((fifteen)) eight days from the time of admission to the facility. Otherwise, the evaluator shall complete the evaluation.

(d) The court may commit the defendant for evaluation to a hospital or secure mental health facility without an assessment if:

(i) The defendant is charged with murder in the first or second degree; (ii) the court finds that it is more likely than not that an evaluation in the jail will be inadequate to complete an accurate evaluation; or (iii) the court finds that an evaluation outside the jail setting is necessary for the health, safety, or welfare of the defendant. The court shall not order an initial inpatient evaluation for any purpose other than a competency evaluation.

(e) The order shall indicate whether, in the event the defendant is committed to a hospital or secure mental health facility for evaluation, all parties agree to waive the presence of the defendant or to the defendant's remote participation at a subsequent competency hearing or presentation of an agreed order if the recommendation of the evaluator is for continuation of the stay of criminal proceedings, or if the opinion of the evaluator is that the defendant remains incompetent and there is no remaining restoration period, and the hearing is held prior to the expiration of the authorized commitment period.

(f) When a defendant is ordered to be committed for inpatient evaluation under this subsection (1), the court may delay granting bail until the defendant has been evaluated for competency or sanity and appears before the court. Following the evaluation, in determining bail the court shall consider: (i) Recommendations of the evaluator regarding the defendant's competency, sanity, or diminished capacity; (ii) whether the defendant has a recent history of one or more violent acts; (iii) whether the defendant has previously been acquitted by reason of insanity or found incompetent; (iv) whether it is reasonably likely the defendant will fail to appear for a future court hearing; and (v) whether the defendant is a threat to public safety.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the evaluation authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file his or her own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon

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the request of the defendant assist him or her in obtaining an expert or professional person.

(3) The report of the evaluation shall include the following:

(a) A description of the nature of the evaluation;

(b) A diagnosis or description of the current mental status of the defendant;

(c) If the defendant suffers from a mental disease or defect, or has a developmental disability, an opinion as to competency;

(d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, and an evaluation and report by an expert or professional person has been provided concluding that the defendant was criminally insane at the time of the alleged offense, an opinion as to the defendant's sanity at the time of the act, and an opinion as to whether the defendant presents a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, provided that no opinion shall be rendered under this subsection (3)(d) unless the evaluator or court determines that the defendant is competent to stand trial;

(e) When directed by the court, if an evaluation and report by an expert or professional person has been provided concluding that the defendant lacked the capacity at the time of the offense to form the mental state necessary to commit the charged offense, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(f) An opinion as to whether the defendant should be evaluated by a designated mental health professional under chapter 71.05 RCW.

(4) The secretary may execute such agreements as appropriate and necessary to implement this section and may choose to designate more than one evaluator.

**Sec. 503.** RCW 10.77.060 and 2016 sp.s. c 29 s 408 are each amended to read as follows:

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

(b) The signed order of the court shall serve as authority for the evaluator to be given access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant. If the court is advised by any party that the defendant may have a developmental disability, the evaluation must be performed by a developmental disabilities professional.

(c) The evaluator shall assess the defendant in a jail, detention facility, in the community, or in court to determine whether a period of inpatient commitment will be necessary to complete an accurate evaluation. If inpatient commitment is needed, the signed order of the court shall serve as authority for the evaluator to request the jail or detention facility to transport the defendant to a hospital or secure mental health facility for a period of commitment not to exceed ((fifteen)) eight days from the time of admission to the facility. Otherwise, the evaluator shall complete the evaluation.

(d) The court may commit the defendant for evaluation to a hospital or secure mental health facility without an assessment if: (i) The defendant is charged with murder in the first or second degree; (ii) the court finds that it is more likely than not that an evaluation in the jail will be inadequate to complete an accurate evaluation; or (iii) the court finds that an evaluation outside the

jail setting is necessary for the health, safety, or welfare of the defendant. The court shall not order an initial inpatient evaluation for any purpose other than a competency evaluation.

(e) The order shall indicate whether, in the event the defendant is committed to a hospital or secure mental health facility for evaluation, all parties agree to waive the presence of the defendant or to the defendant's remote participation at a subsequent competency hearing or presentation of an agreed order if the recommendation of the evaluator is for continuation of the stay of criminal proceedings, or if the opinion of the evaluator is that the defendant remains incompetent and there is no remaining restoration period, and the hearing is held prior to the expiration of the authorized commitment period.

(f) When a defendant is ordered to be committed for inpatient evaluation under this subsection (1), the court may delay granting bail until the defendant has been evaluated for competency or sanity and appears before the court. Following the evaluation, in determining bail the court shall consider: (i) Recommendations of the evaluator regarding the defendant's competency, sanity, or diminished capacity; (ii) whether the defendant has a recent history of one or more violent acts; (iii) whether the defendant has previously been acquitted by reason of insanity or found incompetent; (iv) whether it is reasonably likely the defendant will fail to appear for a future court hearing; and (v) whether the defendant is a threat to public safety.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the evaluation authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file his or her own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon the request of the defendant assist him or her in obtaining an expert or professional person.

(3) The report of the evaluation shall include the following:

(a) A description of the nature of the evaluation;

(b) A diagnosis or description of the current mental status of the defendant;

(c) If the defendant suffers from a mental disease or defect, or has a developmental disability, an opinion as to competency;

(d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, and an evaluation and report by an expert or professional person has been provided concluding that the defendant was criminally insane at the time of the alleged offense, an opinion as to the defendant's sanity at the time of the act, and an opinion as to whether the defendant presents a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, provided that no opinion shall be rendered under this subsection (3)(d) unless the evaluator or court determines that the defendant is competent to stand trial;

(e) When directed by the court, if an evaluation and report by an expert or professional person has been provided concluding that the defendant lacked the capacity at the time of the offense to form the mental state necessary to commit the charged offense, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(f) An opinion as to whether the defendant should be evaluated by a designated crisis responder under chapter 71.05 RCW.

(4) The secretary may execute such agreements as appropriate and necessary to implement this section and may choose to designate more than one evaluator.

**Part VI**  
**Addressing Managed Care Entities to Provide Fully Integrated Care**

NEW SECTION. **Sec. 601.** (1) The health care authority shall establish a work group to examine options for the structuring of integration of physical and behavioral health services by 2020. The work group shall identify multiple options for structuring the services delivery and financing for integrating behavioral health services. Among the various structures for consideration, the work group shall examine:

(a) A model in which the health care authority contracts directly and separately with both a managed care organization to provide behavioral health services in the regional service area and a county administrative service organization to provide crisis services and nonmedicaid services; and

(b) A model in which the health care authority approves an organization operated by the county governments within a regional service area to function as the coordinating entity for any managed care organization that provides fully integrated medical care within the regional service area. The organization's activities shall include coordinating a network of behavioral health providers, operating a health information technology infrastructure, providing crisis services, and providing nonmedicaid services.

(2) The work group shall consist of no more than fifteen members and shall include a representative of the health care authority, a representative of the department of social and health services, representatives of behavioral health organizations, representatives of managed care organizations, representatives of behavioral health providers, representatives of counties, and representatives from each caucus in the house and senate. The director of the health care authority, or his or her designee, shall serve as the chair.

(3) By December 1, 2017, and in compliance with RCW 43.01.036, the work group shall submit a report to the legislature and the governor. The report shall identify recommendations for reducing barriers to the full integration of behavioral health and physical health. The report shall provide a description of the different alternative delivery and financing structure options that shall be made available to regional service areas and allow counties within the regional service areas to select the most appropriate structure to meet the needs of the communities within the regional service area.

NEW SECTION. **Sec. 602.** The health care authority and department of social and health services shall work with the committees and processes established under RCW 70.320.020 and 41.05.690 to define which measures will be used to define value in integrated managed care contracts and how the process of clinical integration will be measured. These processes must ensure that adequate value and accountability terms are employed to align integrated managed care objectives with public policy objectives historically served by behavioral health organizations and to detect and provide disincentives against cost shifting onto crisis systems and jails.

**Part VII**  
**Data Measurement**

NEW SECTION. **Sec. 701.** A new section is added to chapter 71.24 RCW to read as follows:

The Washington state institute for public policy shall evaluate changes and the effectiveness of specific investments within the adult behavioral health system. The goal for the effort is to provide policymakers with additional information to aid in decision making on an ongoing basis. Therefore, the institute shall consult with the relevant legislative and agency staff when identifying research questions and establishing evaluation

timelines. The institute shall provide a report to the appropriate committees of the legislature upon completion of each evaluation.

**Part VIII**  
**Miscellaneous Provisions**

NEW SECTION. **Sec. 801.** Sections 205, 402, 404, 406, 408, 411, 413, 416, 418, and 503 of this act take effect April 1, 2018.

NEW SECTION. **Sec. 802.** Sections 204, 401, 403, 405, 407, 410, 412, 415, and 502 of this act expire April 1, 2018.

NEW SECTION. **Sec. 803.** Section 303 of this act takes effect July 1, 2018.

NEW SECTION. **Sec. 804.** Sections 206, 409, 414, and 417 of this act take effect July 1, 2026.

NEW SECTION. **Sec. 805.** Sections 205, 408, 413, and 416 of this act expire July 1, 2026."

On page 1, line 1 of the title, after "reform;" strike the remainder of the title and insert "amending RCW 71.24.310, 71.05.320, 71.05.320, 71.05.365, 71.05.585, 71.05.150, 71.05.150, 71.05.150, 71.05.240, 71.05.240, 71.05.590, 71.05.590, 71.05.590, 10.77.060, and 10.77.060; reenacting and amending RCW 71.05.320, 71.05.020, 71.05.020, 71.05.585, 71.05.230, 71.05.230, 71.05.240, and 71.05.201; adding new sections to chapter 71.24 RCW; adding new sections to chapter 71.05 RCW; adding a new section to chapter 72.23 RCW; creating new sections; providing effective dates; and providing expiration dates."

**MOTION**

Senator Ranker moved that the following floor amendment no. 168 by Senator Ranker to floor amendment no. 161 be adopted:

On page 73, after line 15, insert the following:

"**Sec. 801.** 2016 1st sp.s. c 36 s 201 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

(1) The appropriations to the department of social and health services in this act shall be expended for the programs and in the amounts specified in this act. Appropriations made in this act to the department of social and health services shall initially be allotted as required by this act. Subsequent allotment modifications shall not include transfers of moneys between sections of this act except as expressly provided in this act, nor shall allotment modifications permit moneys that are provided solely for a specified purpose to be used for other than that purpose.

(2) The department of social and health services shall not initiate any services that require expenditure of state general fund moneys unless expressly authorized in this act or other law. The department may seek, receive, and spend, under RCW 43.79.260 through 43.79.282, federal moneys not anticipated in this act as long as the federal funding does not require expenditure of state moneys for the program in excess of amounts anticipated in this act. If the department receives unanticipated unrestricted federal moneys, those moneys shall be spent for services authorized in this act or in any other legislation providing appropriation authority, and an equal amount of appropriated state general fund moneys shall lapse. Upon the lapsing of any moneys under this subsection, the office of financial management shall notify the legislative fiscal committees. As used in this subsection, "unrestricted federal moneys" includes block grants and other funds that federal law does not require to be spent on specifically defined projects or matched on a formula basis by state funds.



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(3) The legislature finds that medicaid payment rates, as calculated by the department pursuant to the appropriations in this act, bear a reasonable relationship to the costs incurred by efficiently and economically operated facilities for providing quality services and will be sufficient to enlist enough providers so that care and services are available to the extent that such care and services are available to the general population in the geographic area. The legislature finds that cost reports, payment data from the federal government, historical utilization, economic data, and clinical input constitute reliable data upon which to determine the payment rates.

(4) The department shall to the maximum extent practicable use the same system for delivery of spoken-language interpreter services for social services appointments as the one established for medical appointments in the health care authority. When contracting directly with an individual to deliver spoken language interpreter services, the department shall only contract with language access providers who are working at a location in the state and who are state-certified or state-authorized, except that when such a provider is not available, the department may use a language access provider who meets other certifications or standards deemed to meet state standards, including interpreters in other states.

(5) Information technology projects or investments and proposed projects or investments impacting time capture, payroll and payment processes and systems, eligibility, case management, and authorization systems within the department of social and health services are subject to technical oversight by the office of the chief information officer.

(6)(a) The department shall facilitate enrollment under the medicaid expansion for clients applying for or receiving state funded services from the department and its contractors. Prior to open enrollment, the department shall coordinate with the health care authority to provide referrals to the Washington health benefit exchange for clients that will be ineligible for medicaid.

(b) To facilitate a single point of entry across public and medical assistance programs, and to maximize the use of federal funding, the health care authority, the department of social and health services, and the health benefit exchange will coordinate efforts to expand HealthPlanfinder access to public assistance and medical eligibility staff. No later than October 1, 2015, the department shall complete medicaid applications in the HealthPlanfinder for households receiving or applying for public assistance benefits.

(c) The department, in coordination with the health care authority, shall pursue a federal waiver to use supplemental nutrition assistance program eligibility, aged, blind, or disabled program eligibility, or temporary assistance for needy families eligibility, to enroll eligible persons into medicaid.

(7) In accordance with RCW 71.24.380, the health care authority and the department are authorized to purchase medical and behavioral health services through integrated contracts upon request of all of the county authorities in a regional service area to become an early adopter of fully integrated purchasing of medical and behavioral health services. The department may combine and transfer such amounts appropriated under sections 204, 208, and 213 of this act as may be necessary to fund early adopter contracts. The amount of medicaid funding transferred from each program may not exceed the average per capita cost assumed in this act for individuals covered by that program, actuarially adjusted for the health condition of persons enrolled, times the number of clients enrolled. The amount of non-medicaid funding transferred from sections 204 and 208 may not exceed the amount that would have been contracted with a behavioral health organization if the county authorities had not requested to

become an early adopter of fully integrated purchasing. These limits do not apply to the amounts provided in section 204(1)(s) of this act. If any funding that this act provides solely for a specific purpose is transferred under this subsection, that funding must be used consistently with the provisions and conditions for which it was provided.

(8) In accordance with RCW 71.24.380, the department is authorized to purchase mental health and substance use disorder services through integrated contracts with behavioral health organizations. The department may combine and transfer such amounts appropriated under sections 204 and 208 of this act as may be necessary to finance these behavioral health organization contracts. If any funding that this act provides solely for a specific purpose is transferred under this subsection, that funding must be used consistently with the provisions and conditions for which it was provided.

(9)(a) The appropriations to the department of social and health services in this act shall be expended for the programs and in the amounts specified in this act. However, after May 1, ~~((2016))~~ 2017, unless prohibited by this act, the department may transfer general fund—state appropriations for fiscal year ~~((2016))~~ 2017 among programs after approval by the director of financial management. However, the department shall not transfer state moneys that are provided solely for a specified purpose except as expressly provided in (b) of this subsection.

(b) To the extent that transfers under (a) of this subsection are insufficient to fund actual expenditures in excess of fiscal year ~~((2016))~~ 2017 caseload forecasts and utilization assumptions in the long-term care, foster care, adoptions support, medical personal care, and child support programs, the department may transfer state moneys that are provided solely for a specified purpose. The department shall not transfer funds, and the director of financial management shall not approve the transfer, unless the transfer is consistent with the objective of conserving, to the maximum extent possible, the expenditure of state funds. The director of financial management shall notify the appropriate fiscal committees of the senate and house of representatives in writing seven days prior to approving any allotment modifications or transfers under this subsection. The written notification shall include a narrative explanation and justification of the changes, along with expenditures and allotments by budget unit and appropriation, both before and after any allotment modifications or transfers.

(10) To facilitate the authority provided in subsection (7) and (8) of this section, and to ensure a new accounting structure is in place as of July 1, 2017, the department is authorized to create a new program for accounting purposes only that combines the mental health program and alcohol and substance abuse program allotments and expenditures."

**NEW SECTION. Sec. 802.** The sum of forty three million nine hundred eighty five thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2017, from the general fund to the department of social and health services for critical and necessary expenditures state hospitals.

**NEW SECTION. Sec. 803.** Sections 801 and 802 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

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

Senators Ranker and Darneille spoke in favor of adoption of the amendment to the amendment.

Senators O'Ban and Becker spoke against adoption of the amendment to the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 168 by Senator Ranker on page 73, after line 15 to floor striking amendment no. 161.

The motion by Senator Ranker did not carry and floor amendment no. 168 was not adopted by voice vote.

Senator O'Ban spoke in favor of adoption of the striking amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor striking amendment no. 161 by Senators Darneille and O'Ban to Substitute Senate Bill No. 5894.

The motion by Senator O'Ban carried and floor striking amendment no. 161 was adopted by voice vote.

#### MOTION

On motion of Senator O'Ban, the rules were suspended, Engrossed Substitute Senate Bill No. 5894 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators O'Ban and Darneille spoke in favor of passage of the bill.

Senator Conway spoke against passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5894.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5894 and the bill passed the Senate by the following vote: Yeas, 37; Nays, 12; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Braun, Brown, Carlyle, Cleveland, Darneille, Ericksen, Fain, Fortunato, Frockt, Hawkins, Hobbs, Honeyford, Keiser, King, Kuderer, Miloscia, Mullet, O'Ban, Padden, Palumbo, Pearson, Pedersen, Rivers, Rossi, Schoesler, Sheldon, Short, Takko, Van De Wege, Walsh, Warnick, Wilson and Zeiger

Voting nay: Senators Billig, Chase, Conway, Hasegawa, Hunt, Liias, McCoy, Nelson, Ranker, Rolfes, Saldaña and Wellman

ENGROSSED SUBSTITUTE SENATE BILL NO. 5894, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

Senator Honeyford, Vice President Pro Tempore, assumed the Chair.

#### SECOND READING

SENATE BILL NO. 5902, by Senators Braun and Wilson

Addressing enrollments in postsecondary certification and degree programs with an emphasis in science, technology, engineering, and mathematics.

The measure was read the second time.

#### MOTION

On motion of Senator Braun, the rules were suspended, Senate Bill No. 5902 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Braun and Frockt spoke in favor of passage of the bill.

The Vice President Pro Tempore declared the question before the Senate to be the final passage of Senate Bill No. 5902.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5902 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Billig, Braun, Brown, Carlyle, Chase, Cleveland, Conway, Darneille, Ericksen, Fain, Fortunato, Frockt, Hawkins, Hobbs, Honeyford, Keiser, King, Kuderer, Liias, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Palumbo, Pearson, Pedersen, Ranker, Rivers, Rolfes, Rossi, Saldaña, Schoesler, Sheldon, Short, Takko, Van De Wege, Walsh, Warnick, Wellman, Wilson and Zeiger

Voting nay: Senators Hasegawa and Hunt

SENATE BILL NO. 5902, 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. 5895, by Senator Braun

Making expenditures from the budget stabilization account for catastrophic wildfire events in fiscal year 2017.

The measure was read the second time.

#### MOTION

On motion of Senator Braun, the rules were suspended, Senate Bill No. 5895 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.

The Vice President Pro Tempore declared the question before the Senate to be the final passage of Senate Bill No. 5895.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5895 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Billig, Braun, Brown, Carlyle, Chase, Cleveland, Conway, Darneille, Ericksen, Fain, Fortunato, Frockt, Hawkins, Hobbs, Honeyford, Hunt, Keiser, King, Kuderer, Liias, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Palumbo, Pearson, Pedersen, Ranker, Rivers, Rolfes, Rossi, Saldaña, Schoesler, Sheldon, Short, Takko, Van De Wege, Walsh, Warnick, Wellman, Wilson and Zeiger

Voting nay: Senator Hasegawa

SENATE BILL NO. 5895, 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.

SENATE BILL NO. 5891, by Senators Zeiger and Conway

Eliminating the use of the high school science assessment as a graduation prerequisite.

The measure was read the second time.

MOTION

Senator Zeiger moved that the following floor striking amendment no. 140 by Senator Zeiger be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 806. RCW 28A.655.061 and 2015 3rd sp.s. c 42 s 2 are each amended to read as follows:

(1) The high school assessment system shall include but need not be limited to the statewide student assessment, opportunities for a student to retake the content areas of the assessment in which the student was not successful, and, if approved by the legislature pursuant to subsection (10) of this section, one or more objective alternative assessments for a student to demonstrate achievement of state academic standards. The objective alternative assessments for each content area shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment for each content area.

(2) Subject to the conditions in this section, a certificate of academic achievement shall be obtained and is evidence that the students have successfully met the state standard in the content areas included in the certificate. With the exception of students satisfying the provisions of RCW 28A.155.045 or 28A.655.0611, acquisition of the certificate is required for graduation from a public high school but is not the only requirement for graduation.

(3)(a) Beginning with the graduating class of 2008 through the graduating class of 2015, with the exception of students satisfying the provisions of RCW 28A.155.045, a student who meets the state standards on the reading, writing, and mathematics high school statewide student assessment shall earn a certificate of academic achievement. The mathematics assessment shall be the end-of-course assessment for the first year of high school mathematics that assesses the standards common to algebra I and integrated mathematics I or the end-of-course assessment for the second year of high school mathematics that assesses standards common to geometry and integrated mathematics II.

(b) As the state transitions from reading and writing assessments to an English language arts assessment and from end-of-course assessments to a comprehensive assessment for high school mathematics, a student in a graduating class of 2016 through 2018 shall earn a certificate of academic achievement if the student meets the state standard as follows:

(i) Students in the graduating class of 2016 may use the results from:

(A) The reading and writing assessment or the English language arts assessment developed with the multistate consortium; and

(B) The end-of-course assessment for the first year of high school mathematics, the end-of-course assessment for the second year of high school mathematics, or the comprehensive mathematics assessment developed with the multistate consortium.

(ii) Students in the graduating classes of 2017 and 2018 may use the results from:

(A) The tenth grade English language arts assessment developed by the superintendent of public instruction using

resources from the multistate consortium or the English language arts assessment developed with the multistate consortium; and

(B) The end-of-course assessment for the first year of high school mathematics, the end-of-course assessment for the second year of high school mathematics, or the comprehensive mathematics assessment developed with the multistate consortium.

(c) Beginning with the graduating class of 2019, a student who meets the state standards on the high school English language arts assessment developed with the multistate consortium and the comprehensive mathematics assessment developed with the multistate consortium shall earn a certificate of academic achievement.

(d) If a student does not successfully meet the state standards in one or more content areas required for the certificate of academic achievement, then the student may retake the assessment in the content area at least twice a year at no cost to the student. If the student successfully meets the state standards on a retake of the assessment then the student shall earn a certificate of academic achievement. Once objective alternative assessments are authorized pursuant to subsection (10) of this section, a student may use the objective alternative assessments to demonstrate that the student successfully meets the state standards for that content area if the student has taken the statewide student assessment at least once. If the student successfully meets the state standards on the objective alternative assessments then the student shall earn a certificate of academic achievement.

(4) Beginning with the graduating class of ((2017)) 2021, a student must meet the state standards in science in addition to the other content areas required under subsection (3) of this section on the statewide student assessment, a retake, or the objective alternative assessments in order to earn a certificate of academic achievement. The assessment under this subsection must be a comprehensive assessment of the science essential academic learning requirements adopted by the superintendent of public instruction in 2013.

(5) The state board of education may not require the acquisition of the certificate of academic achievement for students in home-based instruction under chapter 28A.200 RCW, for students enrolled in private schools under chapter 28A.195 RCW, or for students satisfying the provisions of RCW 28A.155.045.

(6) A student may retain and use the highest result from each successfully completed content area of the high school assessment.

(7) School districts must make available to students the following options:

(a) To retake the statewide student assessment at least twice a year in the content areas in which the student did not meet the state standards if the student is enrolled in a public school; or

(b) To retake the statewide student assessment at least twice a year in the content areas in which the student did not meet the state standards if the student is enrolled in a high school completion program at a community or technical college. The superintendent of public instruction and the state board for community and technical colleges shall jointly identify means by which students in these programs can be assessed.

(8) Students who achieve the standard in a content area of the high school assessment but who wish to improve their results shall pay for retaking the assessment, using a uniform cost determined by the superintendent of public instruction.

(9) Opportunities to retake the assessment at least twice a year shall be available to each school district.

(10)(a) The office of the superintendent of public instruction shall develop options for implementing objective alternative

assessments, which may include an appeals process for students' scores, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment and be objective in its determination of student achievement of the state standards. Before any objective alternative assessments in addition to those authorized in RCW 28A.655.065 or (b) of this subsection are used by a student to demonstrate that the student has met the state standards in a content area required to obtain a certificate, the legislature shall formally approve the use of any objective alternative assessments through the omnibus appropriations act or by statute or concurrent resolution.

(b)(i) A student's score on the mathematics, reading or English, or writing portion of the SAT or the ACT may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state standards for the certificate of academic achievement. The state board of education shall identify the scores students must achieve on the relevant portion of the SAT or ACT to meet or exceed the state standard in the relevant content area on the statewide student assessment. A student's score on the science portion of the ACT or the science subject area tests of the SAT may be used as an objective alternative assessment under this section as soon as the state board of education determines that sufficient data is available to identify reliable equivalent scores for the science content area of the statewide student assessment. After the first scores are established, the state board may increase but not decrease the scores required for students to meet or exceed the state standards.

(ii) A student who scores at least a three on the grading scale of one to five for selected AP examinations may use the score as an objective alternative assessment under this section for demonstrating that a student has met or exceeded state standards for the certificate of academic achievement. A score of three on the AP examinations in calculus or statistics may be used as an alternative assessment for the mathematics portion of the statewide student assessment. A score of three on the AP examinations in English language and composition may be used as an alternative assessment for the writing portion of the statewide student assessment; and for the English language arts portion of the assessment developed with the multistate consortium, once established in the 2014-15 school year. A score of three on the AP examinations in English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics may be used as an alternative assessment for the reading portion of the statewide student assessment; and for the English language arts portion of the assessment developed with the multistate consortium, once established in the 2014-15 school year. A score of three on the AP examination in biology, physics, chemistry, or environmental science may be used as an alternative assessment for the science portion of the statewide student assessment.

(iii) A student who scores at least a four on selected externally administered international baccalaureate (IB) examinations may use the score as an objective alternative assessment under this section for demonstrating that the student has met or exceeded state standards for the certificate of academic achievement. A score of four on the higher level IB examinations for any of the IB English language and literature courses or for any of the IB individuals and societies courses may be used as an alternative assessment for the reading, writing, or English language arts portions of the statewide student assessment. A score of four on the higher level IB examinations for any of the IB mathematics courses may be used as an alternative assessment for the

mathematics portion of the statewide student assessment. A score of four on the higher level IB examinations for IB biology, chemistry, or physics may be used as an alternative assessment for the science portion of the statewide student assessment.

(11) To help assure continued progress in academic achievement as a foundation for high school graduation and to assure that students are on track for high school graduation, each school district shall prepare plans for and notify students and their parents or legal guardians as provided in this subsection. Student learning plans are required for eighth grade students who were not successful on any or all of the content areas of the state assessment during the previous school year or who may not be on track to graduate due to credit deficiencies or absences. The parent or legal guardian shall be notified about the information in the student learning plan, preferably through a parent conference and at least annually. To the extent feasible, schools serving English language learner students and their parents shall translate the plan into the primary language of the family. The plan shall include the following information as applicable:

- (a) The student's results on the state assessment;
- (b) If the student is in the transitional bilingual program, the score on his or her Washington language proficiency test II;
- (c) Any credit deficiencies;
- (d) The student's attendance rates over the previous two years;
- (e) The student's progress toward meeting state and local graduation requirements;
- (f) The courses, competencies, and other steps needed to be taken by the student to meet state academic standards and stay on track for graduation;
- (g) Remediation strategies and alternative education options available to students, including informing students of the option to continue to receive instructional services after grade twelve or until the age of twenty-one;
- (h) The alternative assessment options available to students under this section and RCW 28A.655.065;
- (i) School district programs, high school courses, and career and technical education options available for students to meet graduation requirements; and
- (j) Available programs offered through skill centers or community and technical colleges, including the college high school diploma options under RCW 28B.50.535.

NEW SECTION. Sec. 807. This act applies to students in the graduating class of 2017 and subsequent graduating classes.

NEW SECTION. Sec. 808. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

On page On page 1, line 2 of the title, after "prerequisite;" strike the remainder of the title and insert "amending RCW 28A.655.061; creating a new section; and declaring an emergency."

#### MOTION

Senator Billig moved that the following floor amendment no. 166 by Senator Billig to floor striking amendment no. 140 be adopted:

Beginning on page 1, line 3 of the amendment, strike all of section 1 and insert the following:

"**Sec. 809.** RCW 28A.655.061 and 2015 3rd sp.s. c 42 s 2 are each amended to read as follows:

(1) The high school assessment system shall include but need not be limited to the statewide student assessment, opportunities for a student to retake the content areas of the assessment in which

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the student was not successful, and, if approved by the legislature pursuant to subsection ~~((14))~~ (9) of this section, one or more objective alternative assessments for a student to demonstrate achievement of state academic standards. The objective alternative assessments for each content area shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment for each content area.

(2) Subject to the conditions in this section, a certificate of academic achievement shall be obtained and is evidence that the students have successfully met the state standard in the content areas included in the certificate. With the exception of students satisfying the provisions of RCW 28A.155.045 or 28A.655.0611, acquisition of the certificate is required for graduation from a public high school but is not the only requirement for graduation.

(3)(a) Beginning with the graduating class of 2008 through the graduating class of 2015, with the exception of students satisfying the provisions of RCW 28A.155.045, a student who meets the state standards on the reading, writing, and mathematics high school statewide student assessment shall earn a certificate of academic achievement. The mathematics assessment shall be the end-of-course assessment for the first year of high school mathematics that assesses the standards common to algebra I and integrated mathematics I or the end-of-course assessment for the second year of high school mathematics that assesses standards common to geometry and integrated mathematics II.

(b) As the state transitions from reading and writing assessments to an English language arts assessment and from end-of-course assessments to a comprehensive assessment for high school mathematics, a student in a graduating class of 2016 through 2018 shall earn a certificate of academic achievement if the student meets the state standard as follows:

(i) Students in the graduating class of 2016 may use the results from:

(A) The reading and writing assessment or the English language arts assessment developed with the multistate consortium; and

(B) The end-of-course assessment for the first year of high school mathematics, the end-of-course assessment for the second year of high school mathematics, or the comprehensive mathematics assessment developed with the multistate consortium.

(ii) Students in the graduating classes of 2017 and 2018 may use the results from:

(A) The tenth grade English language arts assessment developed by the superintendent of public instruction using resources from the multistate consortium or the English language arts assessment developed with the multistate consortium; and

(B) The end-of-course assessment for the first year of high school mathematics, the end-of-course assessment for the second year of high school mathematics, or the comprehensive mathematics assessment developed with the multistate consortium.

(c) Beginning with the graduating class of 2019, a student who meets the state standards on the high school English language arts assessment developed with the multistate consortium and the comprehensive mathematics assessment developed with the multistate consortium shall earn a certificate of academic achievement.

(d) If a student does not successfully meet the state standards in one or more content areas required for the certificate of academic achievement, then the student may retake the assessment in the content area at least twice a year at no cost to the student. If the student successfully meets the state standards on a retake of the assessment then the student shall earn a

certificate of academic achievement. Once objective alternative assessments are authorized pursuant to subsection ~~((14))~~ (9) of this section, a student may use the objective alternative assessments to demonstrate that the student successfully meets the state standards for that content area if the student has taken the statewide student assessment at least once. If the student successfully meets the state standards on the objective alternative assessments then the student shall earn a certificate of academic achievement.

~~(4) ((Beginning with the graduating class of 2017, a student must meet the state standards in science in addition to the other content areas required under subsection (3) of this section on the statewide student assessment, a retake, or the objective alternative assessments in order to earn a certificate of academic achievement.~~

~~(5))~~ The state board of education may not require the acquisition of the certificate of academic achievement for students in home-based instruction under chapter 28A.200 RCW, for students enrolled in private schools under chapter 28A.195 RCW, or for students satisfying the provisions of RCW 28A.155.045.

~~((6))~~ (5) A student may retain and use the highest result from each successfully completed content area of the high school assessment.

~~((7))~~ (6) School districts must make available to students the following options:

(a) To retake the statewide student assessment at least twice a year in the content areas in which the student did not meet the state standards if the student is enrolled in a public school; or

(b) To retake the statewide student assessment at least twice a year in the content areas in which the student did not meet the state standards if the student is enrolled in a high school completion program at a community or technical college. The superintendent of public instruction and the state board for community and technical colleges shall jointly identify means by which students in these programs can be assessed.

~~((8))~~ (7) Students who achieve the standard in a content area of the high school assessment but who wish to improve their results shall pay for retaking the assessment, using a uniform cost determined by the superintendent of public instruction.

~~((9))~~ (8) Opportunities to retake the assessment at least twice a year shall be available to each school district.

~~((10))~~ (9)(a) The office of the superintendent of public instruction shall develop options for implementing objective alternative assessments, which may include an appeals process for students' scores, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment and be objective in its determination of student achievement of the state standards. Before any objective alternative assessments in addition to those authorized in RCW 28A.655.065 or (b) of this subsection are used by a student to demonstrate that the student has met the state standards in a content area required to obtain a certificate, the legislature shall formally approve the use of any objective alternative assessments through the omnibus appropriations act or by statute or concurrent resolution.

(b)(i) A student's score on the mathematics, reading or English, or writing portion of the SAT or the ACT may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state standards for the certificate of academic achievement. The state board of education shall identify the scores students must achieve on the relevant portion of the SAT or ACT to meet or exceed the

state standard in the relevant content area on the statewide student assessment. ~~((A student's score on the science portion of the ACT or the science subject area tests of the SAT may be used as an objective alternative assessment under this section as soon as the state board of education determines that sufficient data is available to identify reliable equivalent scores for the science content area of the statewide student assessment.))~~ After the first scores are established, the state board may increase but not decrease the scores required for students to meet or exceed the state standards.

(ii) A student who scores at least a three on the grading scale of one to five for selected AP examinations may use the score as an objective alternative assessment under this section for demonstrating that a student has met or exceeded state standards for the certificate of academic achievement. A score of three on the AP examinations in calculus or statistics may be used as an alternative assessment for the mathematics portion of the statewide student assessment. A score of three on the AP examinations in English language and composition may be used as an alternative assessment for the writing portion of the statewide student assessment; and for the English language arts portion of the assessment developed with the multistate consortium, once established in the 2014-15 school year. A score of three on the AP examinations in English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics may be used as an alternative assessment for the reading portion of the statewide student assessment; and for the English language arts portion of the assessment developed with the multistate consortium, once established in the 2014-15 school year. ~~((A score of three on the AP examination in biology, physics, chemistry, or environmental science may be used as an alternative assessment for the science portion of the statewide student assessment.))~~

(iii) A student who scores at least a four on selected externally administered international baccalaureate (IB) examinations may use the score as an objective alternative assessment under this section for demonstrating that the student has met or exceeded state standards for the certificate of academic achievement. A score of four on the higher level IB examinations for any of the IB English language and literature courses or for any of the IB individuals and societies courses may be used as an alternative assessment for the reading, writing, or English language arts portions of the statewide student assessment. A score of four on the higher level IB examinations for any of the IB mathematics courses may be used as an alternative assessment for the mathematics portion of the statewide student assessment. ~~((A score of four on the higher level IB examinations for IB biology, chemistry, or physics may be used as an alternative assessment for the science portion of the statewide student assessment.))~~

~~((1))~~ (10) To help assure continued progress in academic achievement as a foundation for high school graduation and to assure that students are on track for high school graduation, each school district shall prepare plans for and notify students and their parents or legal guardians as provided in this subsection. Student learning plans are required for eighth grade students who were not successful on any or all of the content areas of the state assessment during the previous school year or who may not be on track to graduate due to credit deficiencies or absences. The parent or legal guardian shall be notified about the information in the student learning plan, preferably through a parent conference and at least annually. To the extent feasible, schools serving English language learner students and their parents shall translate the plan into the primary language of the family. The plan shall include the following information as applicable:

- (a) The student's results on the state assessment;
- (b) If the student is in the transitional bilingual program, the score on his or her Washington language proficiency test II;
- (c) Any credit deficiencies;
- (d) The student's attendance rates over the previous two years;
- (e) The student's progress toward meeting state and local graduation requirements;
- (f) The courses, competencies, and other steps needed to be taken by the student to meet state academic standards and stay on track for graduation;
- (g) Remediation strategies and alternative education options available to students, including informing students of the option to continue to receive instructional services after grade twelve or until the age of twenty-one;
- (h) The alternative assessment options available to students under this section and RCW 28A.655.065;
- (i) School district programs, high school courses, and career and technical education options available for students to meet graduation requirements; and
- (j) Available programs offered through skill centers or community and technical colleges, including the college high school diploma options under RCW 28B.50.535.

**Sec. 810.** RCW 28A.655.065 and 2009 c 556 s 19 are each amended to read as follows:

(1) The legislature has made a commitment to rigorous academic standards for receipt of a high school diploma. The primary way that students will demonstrate that they meet the standards in reading, writing, and mathematics ~~((and science))~~ is through the ~~((Washington))~~ statewide student assessment ~~((of student learning))~~. Only objective assessments that are comparable in rigor to the state assessment are authorized as an alternative assessment. Before seeking an alternative assessment, the legislature expects students to make a genuine effort to meet state standards, through regular and consistent attendance at school and participation in extended learning and other assistance programs.

(2) Under RCW 28A.655.061, beginning in the 2006-07 school year, the superintendent of public instruction shall implement objective alternative assessment methods as provided in this section for students to demonstrate achievement of the state standards in content areas in which the student has not yet met the standard on the high school ~~((Washington))~~ statewide student assessment ~~((of student learning))~~. A student may access an alternative if the student meets applicable eligibility criteria in RCW 28A.655.061 and this section and other eligibility criteria established by the superintendent of public instruction, including but not limited to attendance criteria and participation in the remediation or supplemental instruction contained in the student learning plan developed under RCW 28A.655.061. A school district may waive attendance and/or remediation criteria for special, unavoidable circumstances.

(3) For the purposes of this section, "applicant" means a student seeking to use one of the alternative assessment methods in this section.

(4) One alternative assessment method shall be a combination of the applicant's grades in applicable courses and the applicant's highest score on the high school ~~((Washington))~~ statewide student assessment ~~((of student learning))~~, as provided in this subsection. A student is eligible to apply for the alternative assessment method under this subsection (4) if the student has a cumulative grade point average of at least 3.2 on a four point grading scale. The superintendent of public instruction shall determine which high school courses are applicable to the alternative assessment method and shall issue guidelines to school districts.

(a) Using guidelines prepared by the superintendent of public instruction, a school district shall identify the group of students in

the same school as the applicant who took the same high school courses as the applicant in the applicable content area. From the group of students identified in this manner, the district shall select the comparison cohort that shall be those students who met or slightly exceeded the state standard on the ~~((Washington))~~ statewide student assessment ~~((of student learning))~~.

(b) The district shall compare the applicant's grades in high school courses in the applicable content area to the grades of students in the comparison cohort for the same high school courses. If the applicant's grades are equal to or above the mean grades of the comparison cohort, the applicant shall be deemed to have met the state standard on the alternative assessment.

(c) An applicant may not use the alternative assessment under this subsection (4) if there are fewer than six students in the comparison cohort.

(5) The superintendent of public instruction shall develop an alternative assessment method that shall be an evaluation of a collection of work samples prepared and submitted by the applicant. Effective September 1, 2009, collection of work samples may be submitted only in content areas where meeting the state standard on the high school assessment is required for purposes of graduation.

(a) The superintendent of public instruction shall develop guidelines for the types and number of work samples in each content area that may be submitted as a collection of evidence that the applicant has met the state standard in that content area. Work samples may be collected from academic, career and technical, or remedial courses and may include performance tasks as well as written products. The superintendent shall submit the guidelines for approval by the state board of education.

(b) The superintendent shall develop protocols for submission of the collection of work samples that include affidavits from the applicant's teachers and school district that the samples are the work of the applicant and a requirement that a portion of the samples be prepared under the direct supervision of a classroom teacher. The superintendent shall submit the protocols for approval by the state board of education.

(c) The superintendent shall develop uniform scoring criteria for evaluating the collection of work samples and submit the scoring criteria for approval by the state board of education. Collections shall be scored at the state level or regionally by a panel of educators selected and trained by the superintendent to ensure objectivity, reliability, and rigor in the evaluation. An educator may not score work samples submitted by applicants from the educator's school district. If the panel awards an applicant's collection of work samples the minimum required score, the applicant shall be deemed to have met the state standard on the alternative assessment.

(d) Using an open and public process that includes consultation with district superintendents, school principals, and other educators, the state board of education shall consider the guidelines, protocols, scoring criteria, and other information regarding the collection of work samples submitted by the superintendent of public instruction. The collection of work samples may be implemented as an alternative assessment after the state board of education has approved the guidelines, protocols, and scoring criteria and determined that the collection of work samples: (i) Will meet professionally accepted standards for a valid and reliable measure of the grade level expectations and the essential academic learning requirements; and (ii) is comparable to or exceeds the rigor of the skills and knowledge that a student must demonstrate on the ~~((Washington))~~ statewide student assessment ~~((of student learning))~~ in the applicable content area. The state board shall make an approval decision and

determination no later than December 1, 2006, and thereafter may increase the required rigor of the collection of work samples.

(e) By September of 2006, the superintendent of public instruction shall develop informational materials for parents, teachers, and students regarding the collection of work samples and the status of its development as an alternative assessment method. The materials shall provide specific guidance regarding the type and number of work samples likely to be required, include examples of work that meets the state learning standards, and describe the scoring criteria and process for the collection. The materials shall also encourage students in the graduating class of 2008 to begin creating a collection if they believe they may seek to use the collection once it is implemented as an alternative assessment.

(6)(a) For students enrolled in a career and technical education program approved under RCW 28A.700.030, the superintendent of public instruction shall develop additional guidelines for collections of work samples that are tailored to different career and technical programs. The additional guidelines shall:

(i) Provide multiple examples of work samples that are related to the particular career and technical program;

(ii) Permit work samples based on completed activities or projects where demonstration of academic knowledge is inferred; and

(iii) Provide multiple examples of work samples drawn from career and technical courses.

(b) The purpose of the additional guidelines is to provide a clear pathway toward a certificate of academic achievement for career and technical students by showing them applied and relevant opportunities to demonstrate their knowledge and skills, and to provide guidance to teachers in integrating academic and career and technical instruction and assessment and assisting career and technical students in compiling a collection. The superintendent of public instruction shall develop and disseminate additional guidelines for no fewer than ten career and technical education programs representing a variety of program offerings by no later than September 1, 2008. Guidelines for ten additional programs shall be developed and disseminated no later than June 1, 2009.

(c) The superintendent shall consult with community and technical colleges, employers, the workforce training and education coordinating board, apprenticeship programs, and other regional and national experts in career and technical education to create appropriate guidelines and examples of work samples and other evidence of a career and technical student's knowledge and skills on the state academic standards.

(7) The superintendent of public instruction shall study the feasibility of using existing mathematics assessments in languages other than English as an additional alternative assessment option. The study shall include an estimation of the cost of translating the tenth grade mathematics assessment into other languages and scoring the assessments should they be implemented.

(8) The superintendent of public instruction shall implement:

(a) By June 1, 2006, a process for students to appeal the score they received on the high school assessments; and

(b) By January 1, 2007, guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and to the certificate of individual achievement for students who: (i) Transfer to a Washington public school in their junior or senior year with the intent of obtaining a public high school diploma, or (ii) have special, unavoidable circumstances.

(9) The state board of education shall examine opportunities for additional alternative assessments, including the possible use of one or more standardized norm-referenced student

achievement tests and the possible use of the reading, writing, or mathematics portions of the ACT ASSET and ACT COMPASS test instruments as objective alternative assessments for demonstrating that a student has met the state standards for the certificate of academic achievement. The state board shall submit its findings and recommendations to the education committees of the legislature by January 10, 2008.

(10) The superintendent of public instruction shall adopt rules to implement this section.

**Sec. 811.** RCW 28A.655.068 and 2013 2nd sp.s. c 22 s 4 are each amended to read as follows:

(1) Beginning in the 2011-12 school year, the statewide high school assessment in science shall be an end-of-course assessment for biology that measures the state standards for life sciences, in addition to systems, inquiry, and application as they pertain to life sciences.

(2)(a) The superintendent of public instruction may develop or adopt science end-of-course assessments or a comprehensive science assessment that includes subjects in addition to biology for purposes of RCW 28A.655.061, when so directed by the legislature. The legislature intends to transition from a biology end-of-course assessment to a more comprehensive science assessment in a manner consistent with the way in which the state transitioned to an English language arts assessment and a comprehensive mathematics assessment. The legislature further intends that the transition will include at least two years of using the student assessment results from either the biology end-of-course assessment or the more comprehensive assessment in order to provide students with reasonable opportunities to demonstrate high school competencies while being mindful of the increasing rigor of the new assessment.

(b) The superintendent of public instruction shall develop or adopt a science assessment in accordance with RCW 28A.655.070(10) that is not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender.

(c) Before the next subsequent school year after the legislature directs the superintendent to develop or adopt a new science assessment, the superintendent of public instruction shall review the objective alternative assessments for the science assessment and make recommendations to the legislature regarding additional objective alternatives, if any.

(3) The superintendent of public instruction may participate with consortia of multiple states as common student learning standards and assessments in science are developed. The superintendent of public instruction, in consultation with the state board of education, may modify the essential academic learning requirements and statewide student assessments in science, including the high school assessment, according to the multistate common student learning standards and assessments as long as the education committees of the legislature have opportunities for review before the modifications are adopted, as provided under RCW 28A.655.070.

~~((4) The statewide high school assessment under this section shall be used to demonstrate that a student meets the state standards in the science content area of the statewide student assessment for purposes of RCW 28A.655.061-))"~~

Renumber the remaining sections consecutively.

On page 7, beginning on line 1 of the title amendment, strike the title amendment and insert the following:

"On page 1, line 2 of the title, after "prerequisite;" strike the remainder of the title and insert "amending RCW 28A.655.061, 28A.655.065, and 28A.655.068; creating a new section; and declaring an emergency."

Senator Billig spoke in favor of adoption of the amendment.

Senator Zeiger spoke against adoption of the amendment.

The Vice President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 166 by Senator Billig on page 1, line 3 to floor striking amendment no. 140.

The motion by Senator Billig did not carry and floor amendment no. 166 was not adopted by voice vote.

#### MOTION

Senator Zeiger moved that the following floor amendment no. 157 by Senator Zeiger to floor striking amendment no. 140 be adopted:

On page 7, at the beginning of line 1 of the title amendment, after "On" strike all material through "amending" and insert "page 1, line 1 of the title, after "to" strike the remainder of the title and insert "delaying the use of the high school science assessment as a graduation prerequisite; amending"

Senator Zeiger spoke in favor of adoption of the amendment.

The Vice President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 157 by Senator Zeiger on page 7, line 1 to floor striking amendment no. 140.

The motion by Senator Zeiger carried and floor amendment no. 157 to floor striking amendment 140 was adopted by voice vote.

Senators Zeiger and Billig spoke in favor of adoption of the striking amendment as amended.

The Vice President Pro Tempore declared the question before the Senate to be the adoption of floor striking amendment no. 140 by Senator Zeiger, as amended, to Senate Bill No. 5891.

The motion by Senator Zeiger carried and floor striking amendment no. 140, as amended, was adopted by voice vote.

#### MOTION

On motion of Senator Zeiger, the rules were suspended, Engrossed Senate Bill No. 5891 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Zeiger and Rolfes spoke in favor of passage of the bill.

The Vice President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5891.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5891 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Billig, Braun, Brown, Carlyle, Chase, Cleveland, Conway, Darneille, Ericksen, Fain, Fortunato, Frockt, Hasegawa, Hawkins, Hobbs, Honeyford, Hunt, Keiser, King, Kuderer, Lias, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Palumbo, Pearson, Pedersen, Ranker, Rivers, Rolfes, Rossi, Saldaña, Schoesler, Sheldon, Short, Takko, Van De Wege, Walsh, Warnick, Wellman, Wilson and Zeiger



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ENGROSSED SENATE BILL NO. 5891, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

Senator Sheldon, President Pro Tempore, resumed the Chair.

## SECOND READING

SENATE BILL NO. 5033, by Senators Keiser, Honeyford, Frockt, Warnick, Conway and Palumbo

Concerning financing essential public infrastructure.

## MOTION

On motion of Senator Honeyford, Substitute Senate Bill No. 5033 was substituted for Senate Bill No. 5033 and the substitute bill was placed on the second reading and read the second time.

## MOTION

Senator Mullet moved that the following floor amendment no. 94 by Senator Mullet be adopted:

Beginning on page 13, line 3, strike all of sections 210, 211, and 212

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

On page 22, beginning on line 16, strike all of section 502

On page 1, beginning on line 3 of the title, after "43.155.120," strike all material through "82.18.040," on line 4 and beginning on line 7, after "date;" strike all material through "emergency." on line 8 and insert "and providing a contingent effective date."

Senators Mullet, Wellman and Chase spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

## MOTION

Senator Liias demanded a roll call vote.

The President declared that at least one-sixth of the Senate joined the demand and the demand was sustained.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 94 by Senator Mullet on page 13, line 3 to Substitute Senate Bill No. 5033.

The Secretary called the roll on the adoption of floor amendment no. 94 to Substitute Senate Bill No. 5033 and the amendment was not adopted by the following vote: Yeas, 24; Nays, 25; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Carlyle, Chase, Cleveland, Conway, Darneille, Frockt, Hasegawa, Hobbs, Hunt, Keiser, Kuderer, Liias, McCoy, Mullet, Nelson, Palumbo, Pedersen, Ranker, Rolfes, Saldaña, Takko, Van De Wege and Wellman

Voting nay: Senators Angel, Bailey, Baumgartner, Becker, Braun, Brown, Ericksen, Fain, Fortunato, Hawkins, Honeyford, King, Miloscia, O'Ban, Padden, Pearson, Rivers, Rossi, Schoesler, Sheldon, Short, Walsh, Warnick, Wilson and Zeiger

## MOTION

Senator Honeyford moved that the following floor amendment no. 88 by Senators Honeyford and Keiser be adopted:

On page 16, beginning on line 7, after "program." strike "The public works board must determine compliance with this requirement under guidance and advice by the state treasurer's office" and insert "The state treasurer's office must determine compliance with this requirement"

On page 16, beginning on line 13, after "code." strike "The public works board must determine compliance with this requirement under guidance and advice by the state treasurer's office." and insert "The state treasurer's office must determine compliance with this requirement."

Senator Honeyford spoke in favor of adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 88 by Senators Honeyford and Keiser on page 16, line 7 to Substitute Senate Bill No. 5033.

The motion by Senator Honeyford carried and floor amendment no. 88 was adopted by voice vote.

## MOTION

Senator Chase moved that the following floor amendment no. 99 by Senator Chase be adopted:

Beginning on page 19, after line 21, strike all material through "RCW." on page 21, line 34

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

On page 22, line 3, after "Sec. 501." strike "(1)"

On page 22, beginning on line 11, strike all of subsection (2)

On page 1, line 3 of the title, after "82.16.020," strike "82.18.040, and 39.36.060" and insert "and 82.18.040" and beginning on line 5, after "RCW;" strike all material through "RCW;" on line 6

Senator Chase spoke in favor of adoption of the amendment.

Senator Honeyford spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 99 by Senator Chase on page 19, line 21 to Substitute Senate Bill No. 5033.

The motion by Senator Chase did not carry and floor amendment no. 99 was not adopted by voice vote.

On motion of Senator Honeyford, the rules were suspended, Engrossed Substitute Senate Bill No. 5033 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Honeyford, Warnick and Rivers spoke in favor of passage of the bill.

Senator Keiser spoke on final passage of the bill.

Senators Frockt, Mullet, Hasegawa and Chase spoke against passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5033.

## ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5033 and the bill passed the Senate by the following vote: Yeas, 26; Nays, 23; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Braun, Brown, Ericksen, Fain, Fortunato, Hawkins, Honeyford, Keiser, King, Miloscia, O'Ban, Padden, Pearson, Rivers, Rossi, Schoesler, Sheldon, Short, Walsh, Warnick, Wilson and Zeiger

Voting nay: Senators Billig, Carlyle, Chase, Cleveland, Conway, Darneille, Frockt, Hasegawa, Hobbs, Hunt, Kuderer, Liias, McCoy, Mullet, Nelson, Palumbo, Pedersen, Ranker, Rolfes, Saldaña, Takko, Van De Wege and Wellman

ENGROSSED SUBSTITUTE SENATE BILL NO. 5033, 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. 5048, by Senators Braun and Ranker

Making 2017-2019 fiscal biennium operating appropriations.

#### MOTION

On motion of Senator Braun, Substitute Senate Bill No. 5048 was substituted for Senate Bill No. 5048 and the substitute bill was placed on the second reading and read the second time.

#### MOTION

Senator Hasegawa moved that the following floor amendment no. 141 by Senators Conway, Frockt, Hasegawa, Liias, Palumbo and Wellman be adopted:

On page 13, line 9, increase the State Treasurer's Service Account-State Appropriation by \$75,000.

On page 13, after line 9, insert the following:

"The appropriations in this section are subject to the following conditions and limitations:

\$75,000 of the State Treasurer's Service Account-State appropriation is provided solely to establish a task force on public infrastructure and a publicly owned depository. The task force must examine the scope of financial needs for local governments for constructing public infrastructure; the feasibility of creating a publicly owned depository to facilitate investment in, and financing of, public infrastructure systems that will increase public health and safety, and leverage the financial capital and resources of Washington state by working in partnership with financial institutions that benefit local communities, or with community-based organizations, economic development organizations, local governments, guaranty agencies, and other stakeholder groups to create jobs and economic opportunities within our state for public benefit.

(a) The task force will consist of one member from each of the two largest caucuses of the senate appointed by the president of the senate; one member from each of the two largest caucuses of the house of representatives appointed by the speaker of the house of representatives; members representing a small sized state-chartered bank, a medium sized state-chartered bank, a federally chartered bank, local governments, and four citizens with a background in financial issues or public infrastructure selected by the president of the senate and the speaker of the house; and the attorney general, the state auditor, the treasurer,

and the governor, or their designees. The task force will ensure that ample opportunity for input from interested stakeholders is provided. The department of commerce, the department of financial institutions, and the treasurer must cooperate with the task force and provide information and assistance at the request of the task force.

(b) The task force will report any recommendations identified by the task force that involve statutory changes, funding recommendations, or administrative action to the legislature as draft legislation by December 1, 2017."

Senators Hasegawa and Baumgartner spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 141 by Senators Conway, Frockt, Hasegawa, Liias, Palumbo and Wellman on page 13, line 9 to Substitute Senate Bill No. 5048.

The motion by Senator Hasegawa did not carry and floor amendment no. 141 was not adopted by a rising vote.

#### MOTION

Senator Liias moved that the following floor amendment no. 147 by Senator Liias be adopted:

On page 15, line 2, increase the General Fund-State Appropriation (FY 2018) by \$9,000,000.

On page 15, line 3, increase the General Fund-State Appropriation (FY 2019) by \$12,000,000.

Adjust the total appropriation accordingly.

On page 16, beginning on line 10, strike all material down and through line 16.

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

Senators Liias, Carlyle and Chase spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 147 by Senator Liias on page 15, line 2 to Substitute Senate Bill No. 5048.

The motion by Senator Liias did not carry and floor amendment no. 147 was not adopted by voice vote.

#### MOTION

Senator Nelson moved that the following floor amendment no. 148 by Senator Nelson be adopted:

On page 17, line 17, increase the General Fund-State Appropriation (FY 2018) by \$1,000,000.

On page 17, line 18, increase the General Fund-State Appropriation (FY 2019) by \$1,000,000.

Adjust the total appropriation accordingly.

On page 25, after line 36, insert the following:

"(44) \$1,000,000 of the general fund—state appropriation for fiscal year 2018 and \$1,000,000 of the general fund—state

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appropriation for fiscal year 2019 are provided solely to administer the grant program required in chapter 43.185C RCW, linking homeless students and their families with stable housing."

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

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 148 by Senator Nelson on page 17, line 17 to Substitute Senate Bill No. 5048.

The motion by Senator Nelson carried and floor amendment no. 148 was adopted by voice vote.

## MOTION

Senator Darneille moved that the following floor amendment no. 149 by Senator Darneille be adopted:

On page 17, line 17, increase the General Fund-State Appropriation (FY 2018) by \$27,099,000.

On page 17, line 18, increase the General Fund-State Appropriation (FY 2019) by \$27,098,000.

Adjust the total appropriation accordingly.

On page 25, after line 36, insert the following:

"(44) \$420,000 of the general fund—state appropriation for fiscal year 2018 and \$420,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the department to contract for services to provide shelter beds for young adults aged eighteen through twenty-four.

(45) \$787,000 of the general fund—state appropriation for fiscal year 2018 and \$787,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the young adult housing program.

(46) \$1,000,000 of the general fund—state appropriation for fiscal year 2018 and \$1,000,000 of the general fund—state appropriation for fiscal year 2019 are provided solely to administer the grant program required in chapter 43.185C RCW, linking homeless students and their families with stable housing.

(47) \$24,892,000 of the general fund—state appropriation for fiscal year 2018 and \$24,891,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the housing and essential needs program pursuant to RCW 43.185C.220 and RCW 74.04.805."

On page 68, line 28, increase the General Fund-State Appropriation (FY 2018) by \$15,224,000.

On page 68, line 29, increase the General Fund-State Appropriation (FY 2019) by \$15,852,000.

Adjust the total appropriation accordingly.

On page 69, line 1, after "(1)(a)", strike "\$114,222,000" and insert "\$127,659,000".

On page 69, line 2, after "2018,", strike "\$117,287,000" and insert "\$131,160,000".

On page 69, line 22, after "(b)", strike "\$248,058,000" and insert "\$251,290,000".

On page 69, line 29, after "(c)", strike "\$164,239,000" and insert "\$188,317,000".

Senators Darneille and Kuderer spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

## POINT OF ORDER

Senator Padden: "Mr. President, I know it is late and we're here again, and a lot of us were here late last night but, I do have to rise and ask the President to remind the speakers to stay away from questioning personal motives, questioning the morality of those on the other side. It is highly improper and I know the Senator is new this year but I think it is something that we don't need any more of this evening."

## REPLY BY THE PRESIDENT

President Pro Tempore Sheldon: "I will remind all the senators to keep their remarks to the bill at hand, the amendment or the bill at hand."

Senators Miloscia and Ranker spoke in favor of adoption of the amendment.

## REMARKS BY THE PRESIDENT

President Pro Tempore Sheldon: "Senator Ranker, if you would, let me control the chamber. And if we could keep our voices down that could be very useful. Continue with your remarks please, Senator Ranker."

Senator Ranker continued his remarks in favor of adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 149 by Senator Darneille on page 17, line 17 to Substitute Senate Bill No. 5048.

The motion by Senator Darneille did not carry and floor amendment no. 149 was not adopted by voice vote.

## MOTION TO LIMIT DEBATE

Pursuant to Rule 29, on motion of Senator Fain and without objection, senators were limited to speaking but once on each question under debate and, then, for no more than three minutes for the remainder of the day.

## MOTION

Senator Cleveland moved that the following floor amendment no. 150 by Senators Cleveland, Keiser and Kuderer be adopted:

On page 25, after line 36, insert the following:

"(44)(a) During the 2017-2019 fiscal biennium, the department must revise its agreements and contracts with vendors to include a provision to require that each vendor agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals as follows:

(i) Employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;

(ii) Vendors may allow differentials in compensation for its workers based in good faith on any of the following:

(A) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

(B) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(C) A bona fide regional difference in compensation level must be: consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

(b) The provision must allow for the termination of the contract if the department or department of enterprise services determines that the vendor is not in compliance with this agreement or contract term.

(c) The department must implement this provision with any new contract and at the time of renewal of any existing contract."

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

On page 35, after line 36, insert the following:

"(6)(a) During the 2017-2019 fiscal biennium, the department must revise its master contracts with vendors, including cooperative purchasing agreements under RCW 39.26.060, to include a provision require that each vendor agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals as follows:

(i) Employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;

(ii) Vendors may allow differentials in compensation for its workers based in good faith on any of the following:

(A) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

(B) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(C) A bona fide regional difference in compensation level must be: consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

(b) The provision must allow for the termination of the contract if the public entity using the contract or agreement of the department of enterprise services determines that the vendor is not in compliance with this agreement or contract term.

(c) The department must implement this provision with any new contract and at the time of renewal of any existing contract.

(d) Any cost for the implementation of this section must be recouped from the fees charged to master contract vendors."

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

On page 40, after line 33, insert the following:

"(7)(a) During the 2017-2019 fiscal biennium, the department must revise its agreements and contracts with vendors to include

a provision to require that each vendor agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals as follows:

(i) Employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;

(ii) Vendors may allow differentials in compensation for its workers based in good faith on any of the following:

(A) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

(B) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(C) A bona fide regional difference in compensation level must be: consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

(b) The provision must allow for the termination of the contract if the department or department of enterprise services determines that the vendor is not in compliance with this agreement or contract term.

(c) The department must implement this provision with any new contract and at the time of renewal of any existing contract."

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

On page 90, after line 21, insert the following:

"(qq) During the 2017-2019 fiscal biennium, the authority must revise its agreements and contracts with vendors to include a provision to require that each vendor agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals as follows:

(A) Employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;

(B) Vendors may allow differentials in compensation for its workers based in good faith on any of the following:

(I) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

(II) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(III) A bona fide regional difference in compensation level must be: consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

(b) The provision must allow for the termination of the contract if the authority or department of enterprise services determines that the vendor is not in compliance with this agreement or contract term.

(c) The authority must implement this provision with any new contract and at the time of renewal of any existing contract."

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Renumber the subsections consecutively and correct internal references accordingly.

On page 102, on line 25, after "limitations:" insert "(1)".

On page 102, after line 36, insert the following:

"(2)(a) During the 2017-2019 fiscal biennium, the department must revise its agreements and contracts with vendors to include a provision to require that each vendor agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals as follows:

(i) Employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;

(ii) Vendors may allow differentials in compensation for its workers based in good faith on any of the following:

(A) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

(B) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(C) A bona fide regional difference in compensation level must be: consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

(b) The provision must allow for the termination of the contract if the department or department of enterprise services determines that the vendor is not in compliance with this agreement or contract term.

(c) The department must implement this provision with any new contract and at the time of renewal of any existing contract."

Renumber the subsections consecutively and correct internal references accordingly.

On page 210, after line 16, insert the following:

"(18)(a) During the 2017-2019 fiscal biennium, the department must revise its agreements and contracts with vendors to include a provision to require that each vendor agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals as follows:

(i) Employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;

(ii) Vendors may allow differentials in compensation for its workers based in good faith on any of the following:

(A) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

(B) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(C) A bona fide regional difference in compensation level must be: consistent with business necessity; not based on or

derived from a gender-based differential; and account for the entire differential.

(b) The provision must allow for the termination of the contract if the department or department of enterprise services determines that the vendor is not in compliance with this agreement or contract term.

(c) The department must implement this provision with any new contract and at the time of renewal of any existing contract."

Renumber the subsections consecutively and correct internal references accordingly.

On page 317, after line 33, insert the following:

"NEW SECTION. Sec. 976. RCW 39.26.200 and 2015 c 44 s 1 are each amended to read as follows:

(1)(a) The director shall provide notice to the contractor of the director's intent to either fine or debar with the specific reason for either the fine or debarment. The department must establish the debarment and fining processes by rule.

(b) After reasonable notice to the contractor and reasonable opportunity for that contractor to be heard, the director has the authority to debar a contractor for cause from consideration for award of contracts. The debarment must be for a period of not more than three years.

(2) The director may either fine or debar a contractor based on a finding of one or more of the following causes:

(a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) Conviction or a final determination in a civil action under state or federal statutes of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the federal false claims act, 31 U.S.C. Sec. 3729 et seq., or the state medicaid fraud false claims act, chapter 74.66 RCW, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects responsibility as a state contractor;

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) Two or more violations within the previous five years of the federal labor relations act as determined by the national labor relations board or court of competent jurisdiction;

(e) Violation of contract provisions, as set forth in this subsection, of a character that is regarded by the director to be so serious as to justify debarment action:

(i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, however the failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;

(f) Violation of ethical standards set forth in RCW 39.26.020; and

(g) Any other cause the director determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in regulations.

(h) During the 2017-2019 fiscal biennium, the failure to comply with a provision in a state master contract or other agreement with a state agency that requires equality among its workers by ensuring similarly employed individuals are compensated as equals.

(3) The director must issue a written decision to debar. The decision must:

- (a) State the reasons for the action taken; and
- (b) Inform the debarred contractor of the contractor's rights to judicial or administrative review."

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

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 150 by Senators Cleveland, Keiser and Kuderer on page 25, line 36 to Substitute Senate Bill No. 5048.

The motion by Senator Cleveland carried and floor amendment no. 150 was adopted by voice vote.

#### MOTION

Senator Cleveland moved that the following floor amendment no. 151 by Senators Cleveland, Conway, Keiser, Kuderer and Nelson be adopted:

On page 30, on line 25, after "limitations:" insert "(1)".

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

"(2) Within the amounts appropriated within this section, the commissioner must:

(a) Ensure that health plans issued on or after the effective date of the biennial appropriations act, at a minimum, provide coverage for the same preventive services required to be covered under 42 U.S.C. Sec. 300gg-13 (2016) and any federal rules or guidance in effect on December 31, 2016, implementing 42 U.S.C. Sec. 300gg-13; and

(b) Ensure that health plans may not impose cost-sharing requirements for the preventive services required to be covered under subsection (a); and

(c) Enforce subsections (a) and (b) consistent with federal rules, guidance, and case law in effect on December 31, 2016, applicable to 42 U.S.C. 300gg-13 (2016)."

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

Senators Cleveland, Keiser, Ranker and Lias spoke in favor of adoption of the amendment.

Senators Rivers, Becker and Angel spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 151 by Senators Cleveland, Conway, Keiser, Kuderer and Nelson on page 30, line 25 to Substitute Senate Bill No. 5048.

The motion by Senator Cleveland did not carry and floor amendment no. 151 was not adopted by voice vote.

#### MOTION

Senator Keiser moved that the following floor amendment no. 152 by Senator Keiser be adopted:

On page 55, line 38, increase the General Fund--Federal appropriation by \$19,557,000 and adjust the total appropriation accordingly.

On page 80, line 1, increase the General Fund--Federal appropriation by \$522,184,000.

On page 80, line 2, increase the General Fund--Private/Local appropriation by \$77,145,000 and adjust the total appropriation accordingly.

On page 366, line 13, increase the General Fund--Federal appropriation by \$883,000 and adjust the total appropriation accordingly.

On page 397, line 32, increase the General Fund--Federal appropriation by \$126,442,000.

On page 397, line 34, increase the General Fund--Private/Local appropriation by \$12,226,000 and adjust the total appropriation accordingly.

On page 399, beginning with line 19, strike:

"~~((d) No more than \$127,336,000 of the general fund—federal appropriation may be expended for transformation through accountable communities of health described in initiative 1 of the medicaid transformation demonstration waiver currently being sought under healthier Washington, including preventing youth drug use. The authority shall not increase general fund—state expenditures on this initiative. The authority shall report to the fiscal committees of the legislature all expenditures under this subsection and shall provide such fiscal data in the manner, form, and time requested by the legislative fiscal committees.))~~"

And insert the following:

"(d) No more than ~~((~~\$127,336,000~~))~~ \$126,442,000 of the general fund—federal appropriation and no more than \$12,226,000 of the general fund-local appropriation may be expended for transformation through accountable communities of health described in initiative 1 of the medicaid transformation demonstration waiver currently being sought under healthier Washington, including preventing youth drug use. The authority shall not increase general fund—state expenditures on this initiative. The authority shall report to the fiscal committees of the legislature all expenditures under this subsection and shall provide such fiscal data in the manner, form, and time requested by the legislative fiscal committees."

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

On page 400, beginning with line 1, strike:

"~~((f) No more than \$9,425,000 of the general fund—federal appropriation may be expended for supportive housing services described in initiative 3(a) of the medicaid transformation demonstration waiver currently being sought under healthier Washington. The authority shall not increase general fund—state expenditures on this initiative. The authority shall report to the fiscal committees of the legislature all expenditures under this subsection and shall provide such fiscal data in the manner, form, and time requested by the legislative fiscal committees.))~~

"(g) No more than \$5,567,000 of the general fund—federal appropriation may be expended for supportive employment services described in initiative 3(b) of the medicaid transformation demonstration waiver currently being sought under healthier Washington. The authority shall not increase general fund—state expenditures on this initiative. The authority shall report to the fiscal committees of the legislature all expenditures under this subsection and shall provide such fiscal data in the manner, form, and time requested by the legislative fiscal committees.))"

And insert the following:

"(f) (~~No more than \$9,425,000 of the general fund—federal appropriation~~) Funds may be expended for supportive housing services described in initiative 3(a) of the medicaid transformation demonstration waiver currently being sought under healthier Washington. The authority shall not increase general fund—state expenditures on this initiative. The authority shall report to the fiscal committees of the legislature all expenditures under this subsection and shall provide such fiscal data in the manner, form, and time requested by the legislative fiscal committees.

(g) (~~No more than \$5,567,000 of the general fund—federal appropriation~~) Funds may be expended for supportive employment services described in initiative 3(b) of the medicaid transformation demonstration waiver currently being sought under healthier Washington. The authority shall not increase general fund—state expenditures on this initiative. The authority shall report to the fiscal committees of the legislature all expenditures under this subsection and shall provide such fiscal data in the manner, form, and time requested by the legislative fiscal committees."

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

Senators Keiser, Cleveland and Rolfes spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

MOTION

On motion of Senator Fain, Rule 15 was suspended for the remainder of the day for the purpose of allowing continued floor action.

EDITOR'S NOTE: Senate Rule 15 establishes the floor schedule and calls for a lunch and dinner break of 90 minutes each per day during regular daily sessions.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 152 by Senator Keiser on page 55, line 38 to Substitute Senate Bill No. 5048.

The motion by Senator Keiser did not carry and floor amendment no. 152 was not adopted by voice vote.

MOTION

Senator Miloscia moved that the following floor amendment no. 145 by Senators Fortunato, Miloscia and O'Ban be adopted:

On page 58, line 1, increase the General Fund--State (FY2019) appropriation by \$900,000 and on line 2, increase the General Fund--Federal appropriation by \$1,200,000. Adjust the total appropriation accordingly.

Beginning on page 59, line 3, strike all of sub section (d).

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

On page 63, line 8, increase the General Fund--State (FY2019) appropriation by \$2,400,000 and on line 9, increase the General Fund--Federal appropriation by \$3,200,000. Adjust the total appropriation accordingly.

Beginning on page 66, line 29, strike all of sub section (16).

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

On page 235, after line 34, insert the following:

<u>"NEW SECTION.</u>		Sec. 750.	COLLECTIVE
BARGAINING AGREEMENT—COALITION OF UNIONS			
General	Fund—State	Appropriation (FY 2018)	\$4,693,000
General	Fund—State	Appropriation (FY 2019)	\$5,160,000
General	Fund—Federal		
Appropriation			\$1,281,000
Dedicated	Funds and	Accounts	Appropriation
			\$3,136,000
TOTAL			
APPROPRIATION			
			\$18,555,000

The appropriations in this section are subject to the following conditions and limitations: Funding is provided for the agreement between the governor and the coalition of unions as provided in section 976 of this act."

On page 243, line 27, after "921" insert "and 976"

On page 244, beginning on line 8, after "(c)" strike the following:

"The coalition of unions;  
(d)"

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

On page 317, after line 33, insert the following:

" NEW SECTION. Sec. 976. COLLECTIVE BARGAINING AGREEMENT—COALITION OF UNIONS  
An agreement has been reached between the governor and the coalition of unions under the provisions of chapter 41.80 RCW for the 2017-2019 fiscal biennium. Funding is provided for a two percent general wage increase effective July 1, 2017, a two percent general wage increase effective July 1, 2018, and a two percent general wage increase effective January 1, 2019. The agreement also includes and funding is provided for salary adjustments for targeted job classifications and increases to vacation leave accruals."

WITHDRAWAL OF AMENDMENT

On motion of Senator Liias and without objection, the following floor amendment no. 165 by Senator Liias on page 2, line 28 to floor amendment no. 145 was withdrawn.

On page 2 of the amendment, after line 28, insert the following:

"On page 13, line 14, decrease the Auditing Services Revolving Account--State Appropriation by \$250,000.

Beginning on page 13, line 35, strike all of subsection (3).

On page 18, beginning on line 10, strike all material through line 11. Adjust the total appropriation accordingly.

Beginning on page 23, line 35, strike all of subsection (32).

On page 80, beginning on line 13, strike all material through line 14. Adjust the total appropriation accordingly.

On page 90, line 1, strike all of subsection (oo).

On page 280, line 9, after "~~(and)~~" strike "lean performance management systems, excellence assessments and zero-based budget reviews in state agencies."

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

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

Senator Saldaña spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 145 by Senators Fortunato, Miloscia and O'Ban on page 58, line 1 to Substitute Senate Bill No. 5048.

The motion by Senator Miloscia carried and floor amendment no. 145 was adopted by voice vote.

#### MOTION

Senator Zeiger moved that the following floor amendment no. 162 by Senator Zeiger be adopted:

On page 68, line 28, increase the General Fund--State Appropriation (FY 2018) by \$22,000.

On page 68, line 29, increase the General Fund--State Appropriation (FY 2019) by \$22,000.

Adjust the total appropriation accordingly.

On page 73, after line 19, insert the following:

"(12) \$22,000 of the general fund-state appropriation for fiscal year 2018 and \$22,000 of the general fund-state appropriation for fiscal year 2019 are provided solely for a legislative-executive WorkFirst poverty reduction oversight task force during the 2017-2019 fiscal biennium.

(a) The primary goals of the task force are to:

(i) Reduce the overall percentage of people living below two hundred percent of the federal poverty level by fifty percent by the year 2025. The task force must work toward this goal in a manner that seeks to eliminate disparities including, but not limited to, disparities by race, ethnicity, sex, gender, zip code, immigration status, age, household type, and disability status; and

(ii) Prevent and address adverse childhood experiences and the trauma of children who are living in poverty through the provision of effective services.

(b) The task force shall include diverse, statewide representation and its membership shall reflect regional, racial, and cultural diversity to adequately represent the needs of all children and families in the state. The task force shall consist of the following members:

(i) Two members from each of the two largest caucuses of the senate;

(ii) Two members from each of the two largest caucuses of the house of representatives;

(iii) One governor appointed representative from each of the following agencies: (A) The department of social and health services; (B) the department of early learning; (C) the department of commerce; (D) the employment security department; (E) the office of the superintendent of public instruction; (F) the

department of corrections; and (G) the state board for community and technical colleges;

(iv) One governor appointed representative from each of the following agencies to serve in an advisory capacity to the task force: The department of health, the health care authority, and the workforce training and education coordinating board; and

(v) One or more representatives of tribal governments.

(vi) The cochairs of the intergenerational poverty advisory committee created in this subsection shall serve as voting members of the task force.

(c) The task force shall choose cochairs, one from among the legislative members and one from among the executive branch members. The legislative members shall convene the initial meeting of the task force.

(d) The task force shall:

(i) Oversee the partner agencies' operation of the WorkFirst program and operation of the temporary assistance for needy families program to ensure that the programs are achieving desired outcomes for their clients;

(ii) Determine evidence-based outcome measures for the WorkFirst program, including measures related to equitably serving the needs of historically underrepresented populations, such as English language learners, immigrants, refugees, and other diverse communities;

(iii) Develop accountability measures for WorkFirst recipients and the state agencies responsible for their progress toward self-sufficiency;

(iv) Review existing statutes, administrative codes, and budget appropriations for their impact on advancing the goal of fifty percent poverty reduction by 2025;

(v) Seek input on best practices from service providers, community-based organizations, legislators, state agencies, stakeholders, the business community, and subject matter experts;

(vi) Collaborate with partner agencies to share and analyze data and information collected from other sources regarding intergenerational poverty in the state, with a primary focus on data and information regarding children who are at risk of continuing the cycle of poverty and welfare dependency unless outside intervention is made;

(vii) Make recommendations to the governor and the legislature regarding:

(A) Policies to improve the effectiveness of the WorkFirst program over time;

(B) Early identification of those recipients most likely to experience long stays on the program and strategies to improve their ability to achieve progress toward self-sufficiency; and

(C) Necessary changes to the program, including taking into account federal changes to the temporary assistance for needy families program;

(viii) Direct the department of social and health services to develop a five-year and ten-year plan to address intergenerational poverty, subject to oversight and approval by the task force. Upon approval by the task force, the department must submit these plans to the governor and the appropriate committees of the legislature by December 1, 2018; and

(ix) No later than December 1, 2018, provide a report to the governor and the appropriate committees of the legislature on the progress being made towards the goals identified in this section.

(e) Staff support for the task force must be provided by senate committee services, the house of representatives office of program research, and the state agency members of the task force.

(f) The task force shall meet on a quarterly basis, or as determined necessary by the task force cochairs.

(g) Legislative members of the task force are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for



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travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(h) 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.

(i) During its tenure, the state agency members of the task force shall respond in a timely manner to data requests from the cochairs.

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

Senators Zeiger, Darneille and Braun spoke in favor of adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 162 by Senator Zeiger on page 68, line 28 to Substitute Senate Bill No. 5048.

The motion by Senator Zeiger carried and floor amendment no. 162 was adopted by voice vote.

MOTION

Senator Saldaña moved that the following floor amendment no. 153 by Senators Kuderer and Saldaña be adopted:

On page 92, line 31, increase the General Fund-State Appropriation (FY 2018) by \$96,000.

On page 92, line 32, increase the General Fund-State Appropriation (FY 2019) by \$96,000.

Adjust the total appropriation accordingly.

On page 92, after line 34, insert the following:

"The appropriations in this section are subject to the following condition and limitation: Funding is provided solely to establish, in consultation with stakeholders, a toll-free telephone hotline and a web site with the capacity to refer callers and users to sources of information and assistance for victims of hate crimes or harassment due to their actual or perceived immigration, national origin or citizenship related status."

Senators Saldaña, McCoy, Liias, Nelson and Billig spoke in favor of adoption of the amendment.

Senators Braun and Ericksen spoke against adoption of the amendment.

Senator Padden spoke on adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 153 by Senators Kuderer and Saldaña on page 92, line 31 to Substitute Senate Bill No. 5048.

The motion by Senator Saldaña did not carry and floor amendment no. 153 was not adopted by voice vote.

MOTION

Senator Ericksen moved that the following floor amendment no. 164 by Senator Ericksen be adopted:

On page 93, after line 23, insert the following:

"Liquor Revolving Account-State Appropriation.....\$180,000

Adjust the total appropriation accordingly.

On page 96, after line 2, insert the following:

"(14) \$180,000 of the liquor revolving account-state appropriation is provided solely for the Washington association of sheriffs and police chiefs to provide grants to cities or counties through interagency agreements for implementation of 24/7 sobriety programs in accordance with RCW 36.28A.300. If Senate Bill No. 5161 is not enacted by June 30, 2017, the amounts provided in this subsection shall lapse."

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

Senators Ericksen, Braun and Padden spoke in favor of adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 164 by Senator Ericksen on page 93, line 23 to Substitute Senate Bill No. 5048.

The motion by Senator Ericksen carried and floor amendment no. 164 was adopted by voice vote.

MOTION

Senator Van De Wege moved that the following floor amendment no. 138 by Senator Van De Wege be adopted:

On page 120, after line 22, insert the following: "(11) Within the appropriations of this section, the department shall initiate outreach with recreational fishing stakeholders so that recreational fishing guide and non-guided angler data can be collected and analyzed to evaluate changes in the structure of guide licensing, with the objectives of: (a) improving the fishing experience and ensuring equitable opportunity for both guided and non-guided river anglers, (b) managing fishing pressure to protect wild steelhead and other species; and (c) ensuring that recreational fish guiding remains a sustainable economic contributor to rural economies. The department shall convene public meetings in the North Olympic Peninsula and Klickitat River areas, and may include other areas of the state, and shall provide the appropriate standing committees of the legislature a summary of its findings, by December 31, 2017."

Senators Van De Wege and Braun spoke in favor of adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 138 by Senator Van De Wege on page 120, after line 22 to Substitute Senate Bill No. 5048.

The motion by Senator Van De Wege carried and floor amendment no. 138 was adopted by voice vote.

MOTION

Senator Fain moved that the following floor amendment no. 171 by Senator Fain be adopted:

On page 135, line 21, strike "\$210,000" and insert "\$300,000"

On page 135, line 22, strike "\$210,000" and insert "\$300,000"

On page 206, line 26, strike "\$49,801,000" and insert "\$55,744,000"

On page 206, line 27, strike "\$48,904,000" and insert "\$59,891,000"

On page 206, line 32, after "least", strike "11,691" and insert "12,291"

On page 206, line 32, after "2018 and" strike "11,691" and insert "12,291"

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

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 171 by Senator Fain on page 135, line 21 to Substitute Senate Bill No. 5048.

The motion by Senator Fain carried and floor amendment no. 171 was adopted by voice vote.

#### MOTION

Senator Liias moved that the following floor amendment no. 154 by Senator Liias be adopted:

On page 140, line 25, increase the general fund—state appropriation (FY 2019) by \$1,546,000,000

On page 165, line 30, after "(3)" insert "(a)"

On page 165, after line 33, insert the following:

"(b) For the 2018-19 school year, the minimum per pupil guarantee under RCW 28A.150.--- and 2017 c . . . (SSB 5607) s 102(5) is \$14,865."

Senators Liias, Conway, Frockt and Billig spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 154 by Senator Liias on page 140, line 25 to Substitute Senate Bill No. 5048.

The motion by Senator Liias did not carry and floor amendment no. 154 was not adopted by voice vote.

#### MOTION

Senator Rolfes moved that the following floor amendment no. 167 by Senator Rolfes be adopted:

On page 146, line 8, strike "\$1,308.87" and insert "\$1,708.87"

On page 146, line 12, strike "\$1,472.01" and insert "\$1,755.59"

Beginning on page 166, line 16, strike all of subsection (1) and insert the following:

"(1) \$17,741,000 (reduced as appropriate to reflect full delink) of the general fund—state appropriation for fiscal year 2018, \$19,652,000 of the general fund—state appropriation for fiscal year 2019, \$1,350,000 of the education legacy trust account—state appropriation, and \$15,868,000 of the general fund—federal appropriation are provided solely for development and implementation of the Washington state assessment system. Within these amounts, the superintendent of public instruction shall contract for the early return of 10th grade student assessment results, on or around June 10th of each year. Appropriations are reduced to reflect savings from implementation of Substitute House Bill No. 1046 (certificates of achievement)."

Senator Rolfes spoke in favor of adoption of the amendment.

Senator Zeiger spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 167 by Senator Rolfes on page 146, line 8 to Substitute Senate Bill No. 5048.

The motion by Senator Rolfes did not carry and floor amendment no. 167 was not adopted by voice vote.

#### MOTION

Senator Short moved that the following floor amendment no. 163 by Senator Short be adopted:

On page 166, line 8, increase the General Fund—State Appropriation (FY 2018) by \$100,000

On page 166, line 9, increase the General Fund—State Appropriation (FY 2019) by \$100,000

Adjust the total appropriation accordingly.

On page 168, line 19, after "(9)" strike "\$1,677,000" and insert "\$1,777,000"

On page 168, line 20, after "and" strike "\$1,677,000" and insert "\$1,777,000"

On page 168, at the beginning of line 26, strike "\$100,000" and insert "\$200,000"

On page 168, line 26, after "and" strike "\$100,000" and insert "\$200,000"

Senator Short spoke in favor of adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 163 by Senator Short on page 166, line 8 to Substitute Senate Bill No. 5048.

The motion by Senator Short carried and floor amendment no. 163 was adopted by voice vote.

#### MOTION

Senator Wellman moved that the following floor amendment no. 155 by Senator Wellman be adopted:

On page 174, line 3, increase the General Fund—State Appropriation (FY 2018) by \$600,000,000

On page 174, line 4, increase the General Fund—State Appropriation (FY 2019) by \$600,000,000

Adjust the total appropriation accordingly.

On page 175, beginning on line 14, strike all of subsection (5) and insert the following:

"(5) To provide supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065, an additional per pupil amount of two thousand dollars per pupil is allocated to school districts based on the district percentage of students in grades K-12 who were eligible for free or reduced-price meals in the prior school year. For districts in which the percentage of students in grades K-12 who were eligible for free or reduced-price meals in the prior school year exceeds thirty percent, the per pupil amount is increased to five thousand dollars for the total number of students exceeding the thirty percent threshold."

Senator Wellman spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 155 by Senator Wellman on page 174, line 3 to Substitute Senate Bill No. 5048.

The motion by Senator Wellman did not carry and floor amendment no. 155 was not adopted by voice vote.

#### MOTION

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Senator Palumbo moved that the following floor amendment no. 156 by Senators Conway, Frockt and Palumbo be adopted:

On page 180, line 14 increase the General Fund--State Appropriation (FY 2018) by \$7,179,000 on line 15 increase the General Fund--State Appropriation (FY 2019) by \$13,849,000, and adjust the total appropriation accordingly.

On page 183, after line 24, insert the following:

"(17) \$7,179,000 of the general fund—state appropriation for fiscal year 2018 and \$13,849,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the implementation of section 976 of this act, which provides that tuition operating fees for resident undergraduates at Western Washington University in the 2017-18 and 2018-19 academic years shall remain the same as the fee set in the 2016-17 academic year."

On page 183, line 26 increase the General Fund--State Appropriation (FY 2018) by \$5,289,000 on line 27 increase the General Fund--State Appropriation (FY 2019) by \$10,202,000 and adjust the total appropriation accordingly.

On page 187, after line 27, insert the following:

"(17) \$5,289,000 of the general fund—state appropriation for fiscal year 2018 and \$10,202,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the implementation of section 976 of this act, which provides that tuition operating fees for resident undergraduates at Western Washington University in the 2017-18 and 2018-19 academic years shall remain the same as the fee set in the 2016-17 academic year."

On page 187, line 29 increase the General Fund--State Appropriation (FY 2018) by \$3,268,000, on line 30 increase the General Fund--State Appropriation (FY 2019) by \$6,304,000 and adjust the total appropriation accordingly.

On page 191, after line 8, insert the following:

"(17) \$3,268,000 of the general fund—state appropriation for fiscal year 2018 and \$6,304,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the implementation of section 976 of this act, which provides that tuition operating fees for resident undergraduates at Western Washington University in the 2017-18 and 2018-19 academic years shall remain the same as the fee set in the 2016-17 academic year."

On page 191, line 10 increase the General Fund--State Appropriation (FY 2018) by \$898,000, on line 11 increase the General Fund--State Appropriation (FY 2019) by \$1,732,000 and adjust the total appropriation accordingly.

On page 193, after line 9, insert the following:

"(17) \$898,000 of the general fund—state appropriation for fiscal year 2018 and \$1,732,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the implementation of section 976 of this act, which provides that tuition operating fees for resident undergraduates at Western Washington University in the 2017-18 and 2018-19 academic years shall remain the same as the fee set in the 2016-17 academic year."

On page 193, line 11 increase the General Fund--State Appropriation (FY 2018) by \$973,000 on line 12 increase the

General Fund--State Appropriation (FY 2019) by \$1,877,000 and adjust the total appropriation accordingly.

On page 195, after line 6, insert the following:

"(17) \$973,000 of the general fund—state appropriation for fiscal year 2018 and \$1,877,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the implementation of section 976 of this act, which provides that tuition operating fees for resident undergraduates at Western Washington University in the 2017-18 and 2018-19 academic years shall remain the same as the fee set in the 2016-17 academic year."

On page 195, line 8 increase the General Fund-- Fund--State Appropriation (FY 2018) by \$270,000, on line 9 increase the General Fund--State Appropriation (FY 2019) by \$521,000 and adjust the total appropriation accordingly.

On page 198, after line 10, insert the following:

"(17) \$270,000 of the general fund—state appropriation for fiscal year 2018 and \$521,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the implementation of section 976 of this act, which provides that tuition operating fees for resident undergraduates at Western Washington University in the 2017-18 and 2018-19 academic years shall remain the same as the fee set in the 2016-17 academic year."

On page 198, line 12 increase the General Fund-- Fund--State Appropriation (FY 2018) by \$1,353,000 on line 13 increase the General Fund--State Appropriation (FY 2019) by \$2,610,000 and adjust the total appropriation accordingly.

On page 200 after line 12, insert the following:

"(17) \$1,353,000 of the general fund—state appropriation for fiscal year 2018 and \$2,610,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the implementation of section 976 of this act, which provides that tuition operating fees for resident undergraduates at Western Washington University in the 2017-18 and 2018-19 academic years shall remain the same as the fee set in the 2016-17 academic year."

On page 317, after line 33 insert the following:

"NEW SECTION, Sec. 976. RCW 28B.15.067 and 2015 3rd sp.s. c 36 s 3 are each amended to read as follows:

(1) Tuition fees shall be established under the provisions of this chapter.

(2) Beginning in the 2011-12 academic year and through the 2014-15 academic year, reductions or increases in full-time tuition fees shall be as provided in the omnibus appropriations act for resident undergraduate students at community and technical colleges.

(3)(a) In the 2015-16 and 2016-17 academic years, tuition operating fees for resident undergraduates at community and technical colleges excluding applied baccalaureate degrees as defined in RCW 28B.50.030, shall be five percent less than the 2014-15 academic year tuition operating fee.

(b) In the 2017-18 and 2018-19 academic years, tuition operating fees for resident undergraduates at community and technical colleges shall remain the same as the fee set in the 2016-17 academic year.

(c) Beginning in the ((2017-18)) 2019-20 academic year, tuition operating fees for resident undergraduates at community and technical colleges excluding applied baccalaureate degrees as defined in RCW 28B.50.030, may increase by no more than the

average annual percentage growth rate in the median hourly wage for Washington for the previous fourteen years as the wage is determined by the federal bureau of labor statistics.

(4) The governing boards of the state universities, regional universities, and The Evergreen State College; and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including nonresident students, summer school students, and students in other self-supporting degree programs. Percentage increases in full-time tuition may exceed the fiscal growth factor. Except during the 2013-2015 fiscal biennium, the state board for community and technical colleges may pilot or institute differential tuition models. The board may define scale, scope, and rationale for the models.

(5)(a) Beginning with the 2011-12 academic year and through the end of the 2014-15 academic year, the governing boards of the state universities, the regional universities, and The Evergreen State College may reduce or increase full-time tuition fees for all students, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students; however, during the 2013-2015 fiscal biennium, reductions or increases in tuition must be uniform among resident undergraduate students.

(b) Prior to reducing or increasing tuition for each academic year, the governing boards of the state universities, the regional universities, and The Evergreen State College shall consult with existing student associations or organizations with student undergraduate and graduate representatives regarding the impacts of potential tuition increases. Each governing board shall make public its proposal for tuition and fee increases twenty-one days before the governing board of the institution considers adoption and allow opportunity for public comment. However, the requirement to make public a proposal for tuition and fee increases twenty-one days before the governing board considers adoption shall not apply if the omnibus appropriations act has not passed the legislature by May 15th. Governing boards shall be required to provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(c) Prior to reducing or increasing tuition for each academic year, the state board for community and technical college system shall consult with existing student associations or organizations with undergraduate student representation regarding the impacts of potential tuition increases. The state board for community and technical colleges shall provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(6)(a) In the 2015-16 academic year, full-time tuition operating fees for resident undergraduates for state universities, regional universities, The Evergreen State College, and applied baccalaureate degrees as defined in RCW 28B.50.030 shall be five percent less than the 2014-15 academic year tuition operating fee.

(b) Beginning with the 2016-17 academic year, full-time tuition operating fees for resident undergraduates for:

(i) State universities shall be fifteen percent less than the 2014-15 academic year tuition operating fee; and

(ii) Regional universities, The Evergreen State College, and applied baccalaureate degrees as defined in RCW 28B.50.030 shall be twenty percent less than the 2014-15 academic year tuition operating fee.

(c) In the 2017-18 and 2018-19 academic years, full-time tuition operating fees for resident undergraduates in (a) of this

subsection shall remain the same as the fee set in the 2016-17 academic year.

(d) Beginning with the ((2017-18)) 2019-20 academic year, full-time tuition operating fees for resident undergraduates in (a) of this subsection may increase by no more than the average annual percentage growth rate in the median hourly wage for Washington for the previous fourteen years as the wage is determined by the federal bureau of labor statistics.

(7) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(8) The tuition fees established under this chapter shall not apply to eligible students enrolling in a dropout reengagement program through an interlocal agreement between a school district and a community or technical college under RCW 28A.175.100 through 28A.175.110.

(9) The legislative advisory committee to the committee on advanced tuition payment established in RCW 28B.95.170 shall:

(a) Review the impact of differential tuition rates on the funded status and future unit price of the Washington advanced college tuition payment program; and

(b) No later than January 14, 2013, make a recommendation to the appropriate policy and fiscal committees of the legislature regarding how differential tuition should be addressed in order to maintain the ongoing solvency of the Washington advanced college tuition payment program.

(10) As a result of any changes in tuition under section 3, chapter 36, Laws of 2015 3rd sp. sess., the governing boards of the state universities, the regional universities, and The Evergreen State College shall not reduce resident undergraduate enrollment below the 2014-15 academic year levels."

On page 200, line 21 increase the General Fund--State Appropriation (FY 2018) by \$50,000,000, on line 22 increase the General Fund--State Appropriation (FY 2019) by \$50,000,000, and adjust the total appropriation accordingly.

On page 200, line 34 strike "\$223,073,000" and insert "\$273,073,000" and on line 35 strike "\$202,844,000" and insert "\$252,844,000."

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

Senators Palumbo and Conway spoke in favor of adoption of the amendment.

Senator Braun spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 156 by Senators Conway, Frockt and Palumbo on page 180, line 14 to Substitute Senate Bill No. 5048.

The motion by Senator Palumbo did not carry and floor amendment no. 156 was not adopted by voice vote.

#### MOTION

Senator O'Ban moved that the following floor amendment no. 170 by Senator O'Ban be adopted:

On page 183, line 26 increase the General Fund--State Appropriation (FY 2018) by \$200,000 and on line 27 increase the General Fund--State Appropriation (FY 2019) by \$200,000, and adjust the total appropriation accordingly.

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On page 187, line 9, strike all of subsection (21) and insert the following:

"(21) \$200,000 of the general fund—state appropriation for fiscal year 2018 and \$200,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the university to establish a pre-law program in Tacoma, created in preparation for the law school."

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

Senator O'Ban spoke in favor of adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 170 by Senator O'Ban on page 183, line 26 to Substitute Senate Bill No. 5048.

The motion by Senator O'Ban carried and floor amendment no. 170 was adopted by voice vote.

MOTION

Senator Ranker moved that the following floor amendment no. 169 by Senators Braun and Ranker be adopted:

On page 198, line 12 increase the General Fund--State Appropriation (FY 2018) by \$448,200 and on line 13 increase the General Fund--State Appropriation (FY 2019) by \$913,800 and adjust the total appropriation accordingly.

On page 199, line 32, strike "\$741,000" and insert "\$1,189,200" and on line 33, strike "\$1,517,000" and insert "\$2,430,800."

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

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

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 169 by Senators Braun and Ranker on page 198, line 12 to Substitute Senate Bill No. 5048.

The motion by Senator Ranker carried and floor amendment no. 169 was adopted by voice vote.

MOTION

Senator Baumgartner moved that the following floor amendment no. 139 by Senator Baumgartner be adopted:

On page 317, after line 33 insert the following:

"NEW SECTION. Sec. 976. RCW 28B.15.067 and 2015 3rd sp.s. c 36 s 3 are each amended to read as follows:

(1) Tuition fees shall be established under the provisions of this chapter.

(2) Beginning in the 2011-12 academic year and through the 2014-15 academic year, reductions or increases in full-time tuition fees shall be as provided in the omnibus appropriations act for resident undergraduate students at community and technical colleges.

(3)(a) In the 2015-16 and 2016-17 academic years, tuition operating fees for resident undergraduates at community and technical colleges excluding applied baccalaureate degrees as defined in RCW 28B.50.030, shall be five percent less than the 2014-15 academic year tuition operating fee.

(b) In the 2017-18 and 2018-19 academic years, tuition operating fees for resident undergraduates at community and technical colleges shall remain the same as the fee set in the 2016-17 academic year.

(c) Beginning in the ((2017-18)) 2019-20 academic year, tuition operating fees for resident undergraduates at community and technical colleges excluding applied baccalaureate degrees as defined in RCW 28B.50.030, may increase by no more than the average annual percentage growth rate in the median hourly wage for Washington for the previous fourteen years as the wage is determined by the federal bureau of labor statistics.

(4) The governing boards of the state universities, regional universities, and The Evergreen State College; and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including nonresident students, summer school students, and students in other self-supporting degree programs. Percentage increases in full-time tuition may exceed the fiscal growth factor. Except during the 2013-2015 fiscal biennium, the state board for community and technical colleges may pilot or institute differential tuition models. The board may define scale, scope, and rationale for the models.

(5)(a) Beginning with the 2011-12 academic year and through the end of the 2014-15 academic year, the governing boards of the state universities, the regional universities, and The Evergreen State College may reduce or increase full-time tuition fees for all students, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students; however, during the 2013-2015 fiscal biennium, reductions or increases in tuition must be uniform among resident undergraduate students.

(b) Prior to reducing or increasing tuition for each academic year, the governing boards of the state universities, the regional universities, and The Evergreen State College shall consult with existing student associations or organizations with student undergraduate and graduate representatives regarding the impacts of potential tuition increases. Each governing board shall make public its proposal for tuition and fee increases twenty-one days before the governing board of the institution considers adoption and allow opportunity for public comment. However, the requirement to make public a proposal for tuition and fee increases twenty-one days before the governing board considers adoption shall not apply if the omnibus appropriations act has not passed the legislature by May 15th. Governing boards shall be required to provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(c) Prior to reducing or increasing tuition for each academic year, the state board for community and technical college system shall consult with existing student associations or organizations with undergraduate student representation regarding the impacts of potential tuition increases. The state board for community and technical colleges shall provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(6)(a) In the 2015-16 academic year, full-time tuition operating fees for resident undergraduates for state universities, regional universities, The Evergreen State College, and applied baccalaureate degrees as defined in RCW 28B.50.030 shall be five percent less than the 2014-15 academic year tuition operating fee.

(b) Beginning with the 2016-17 academic year, full-time tuition operating fees for resident undergraduates for:

(i) State universities shall be fifteen percent less than the 2014-15 academic year tuition operating fee; and

(ii) Regional universities, The Evergreen State College, and applied baccalaureate degrees as defined in RCW 28B.50.030 shall be twenty percent less than the 2014-15 academic year tuition operating fee.

(c) In the 2017-18 and 2018-19 academic years, full-time tuition operating fees for resident undergraduates in (a) of this subsection shall remain the same as the fee set in the 2016-17 academic year.

(d) Beginning with the ((2017-18)) 2019-20 academic year, full-time tuition operating fees for resident undergraduates in (a) of this subsection may increase by no more than the average annual percentage growth rate in the median hourly wage for Washington for the previous fourteen years as the wage is determined by the federal bureau of labor statistics.

(7) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(8) The tuition fees established under this chapter shall not apply to eligible students enrolling in a dropout reengagement program through an interlocal agreement between a school district and a community or technical college under RCW 28A.175.100 through 28A.175.110.

(9) The legislative advisory committee to the committee on advanced tuition payment established in RCW 28B.95.170 shall:

(a) Review the impact of differential tuition rates on the funded status and future unit price of the Washington advanced college tuition payment program; and

(b) No later than January 14, 2013, make a recommendation to the appropriate policy and fiscal committees of the legislature regarding how differential tuition should be addressed in order to maintain the ongoing solvency of the Washington advanced college tuition payment program.

(10) As a result of any changes in tuition under section 3, chapter 36, Laws of 2015 3rd sp. sess., the governing boards of the state universities, the regional universities, and The Evergreen State College shall not reduce resident undergraduate enrollment below the 2014-15 academic year levels."

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

Senator Baumgartner spoke in favor of adoption of the amendment.

Senators Braun and Liias spoke against adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of floor amendment no. 139 by Senator Baumgartner on page 317, line 33 to Substitute Senate Bill No. 5048.

The motion by Senator Baumgartner did not carry and floor amendment no. 139 was not adopted by voice vote.

#### MOTION

On motion of Senator Braun, the rules were suspended, Engrossed Substitute Senate Bill No. 5048 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Padden spoke on final passage of the bill.

Senators Braun, Schoesler and Angel spoke in favor of passage of the bill.

Senators Ranker, Darneille, Wellman, Kuderer, Nelson, Chase and Hasegawa spoke against passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5048.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5048 and the bill passed the Senate by the following vote: Yeas, 25; Nays, 24; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Braun, Brown, Ericksen, Fain, Fortunato, Hawkins, Honeyford, King, Miloscia, O'Ban, Padden, Pearson, Rivers, Rossi, Schoesler, Sheldon, Short, Walsh, Warnick, Wilson and Zeiger

Voting nay: Senators Billig, Carlyle, Chase, Cleveland, Conway, Darneille, Frockt, Hasegawa, Hobbs, Hunt, Keiser, Kuderer, Liias, McCoy, Mullet, Nelson, Palumbo, Pedersen, Ranker, Rolfes, Saldaña, Takko, Van De Wege and Wellman

ENGROSSED SUBSTITUTE SENATE BILL NO. 5048, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

The Senate resumed consideration of Senate Bill No. 5111 which had been deferred on a previous day.

#### SECOND READING

SENATE BILL NO. 5111, by Senators Braun, Ranker and Hunt

Enacting an excise tax on capital gains to improve the fairness of Washington's tax system and provide funding for the education legacy trust account.

The measure was read the second time.

#### MOTION

Senator Fain moved that the rules be suspended, and Senate Bill No. 5111 be advanced to third reading, the second reading considered the third and the bill be placed on final passage.

Senator Liias objected to the motion by Senator Fain.

#### MOTION

Senator Fain demanded a roll call vote.

The President declared that at least one-sixth of the Senate joined the demand and the demand was sustained.

The President Pro Tempore declared the question before the Senate to be the motion by Senator Fain that the rules be suspended and Senate Bill No. 5111 be advanced to third reading and final passage.

#### ROLL CALL

The Secretary called the roll on the motion by Senator Fain that the Senate Bill No. 5111 be advanced to third reading and final passage and the motion, having failed to receive the required two-thirds majority, did not carry by the following vote: Yeas, 25; Nays, 7; Absent, 17; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Braun, Brown, Ericksen, Fain, Fortunato, Hawkins, Honeyford,

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Voting nay: Senators Billig, Cleveland, Frockt, Hasegawa, Hobbs, Palumbo and Ranker

Absent: Senators Carlyle, Chase, Conway, Darneille, Hunt, Keiser, Kuderer, Liias, McCoy, Mullet, Nelson, Pedersen, Rolfes, Saldaña, Takko, Van De Wege and Wellman

MOTION

At 12:22 a.m., on motion of Senator Fain, the Senate adjourned until 12:00 o'clock p.m. Monday, March 27, 2017.

TIM SHELDON, President Pro Tempore of the Senate

MOTION

HUNTER G. GOODMAN, Secretary of the Senate

On motion of Senator Fain, further consideration of Senate Bill No. 5111 was deferred and the bill held its place on the second reading calendar.