

Supreme Court No. 79971-7

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**SUPREME COURT  
FOR THE STATE OF WASHINGTON**

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MELANIE MORIN,

Appellant,  
v.

CLARENCE HARRELL and HAZEL HARRELL, husband and wife and  
their marital community,

Respondents.

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**AMICUS CURIAE BRIEF OF SERVICE EMPLOYEES  
INTERNATIONAL UNION 775 IN SUPPORT OF APPELLANT**

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SUPREME COURT  
STATE OF WASHINGTON  
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## **I. INTRODUCTION**

Amicus Curiae Service Employees International Union 775 (SEIU 775) submits this brief in support of Melanie Morin's appeal from summary judgment entered on September 26, 2005 by the Kittitas County Superior Court dismissing her Minimum Wage Act (MWA) claims.

## **II. IDENTITY AND INTEREST OF AMICUS CURIAE**

SEIU 775 represents approximately 29,000 homecare and nursing home workers throughout Washington. Of this number, approximately 24,000 work as individual providers (IPs) and are paid directly by the Department of Social and Health Services to provide services to elderly or disabled individuals in their homes or in community settings rather than in institutions.

Long term care work involves a range of personal and often intimate tasks, ranging from assisting clients with daily bathing and grooming, to assisting with ambulation and meal preparation, to overseeing client medication. The work is arduous and the hourly pay is low. Caregivers frequently work in excess of forty (40) hours per week. By organizing home care workers into a union, SEIU 775 has raised the wages, increased training opportunities, and improved the working conditions of home care workers. It is concerned with the status of *all* home care workers in the state of Washington.

The lower court erred as a matter of law by repealing the 1989 amendment to RCW 49.46.010(5)(b) based on an alleged procedural flaw in Initiative No. 518 (hereinafter "I-518"). Because the repeal of this eighteen year old law would adversely affect the statutory rights of nearly all SEIU 775's membership, as well as home care workers throughout the long term care industry, the Union has a clear vested interest in the outcome of this matter.

### **III. ASSIGNMENT OF ERROR**

The trial court erred by granting Defendants' motion for summary judgment and holding unconstitutional an eighteen- year-old amendment to the Minimum Wage Act, RCW 49.46 *et seq.*

### **IV. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

1. Assuming *arguendo* that the adoption of I-518 may have been procedurally flawed, in violation of Article II, Section 19 of the State Constitution, were those defects cured by the three subsequent reenactments by the State Legislature of the statutory provisions at issue here?

2. Assuming *arguendo* that the adoption of Initiative 518 may have been procedurally flawed, in violation of Article II, Section 19 of the State Constitution, are Respondents barred by the doctrine of laches from challenging the constitutionality of that initiative at this late date?

## V. ARGUMENT

### A. **EVEN IF THE 1989 AMENDMENT TO RCW 49.46.010 AT ISSUE HERE VIOLATED THE REQUIREMENTS OF ARTICLE II, SECTION 19 OF THE STATE'S CONSTITUTION, ANY DEFECT IN THAT AMENDMENT HAS BEEN CURED BY SUBSEQUENT REENACTMENT OF THE LANGUAGE HERE AT ISSUE**

#### 1. **The State Legislature Has Reenacted The MWA Three Times Since Voters Passed I-518.**

Because the statutory language at issue in the instant case has been reenacted by the Washington State Legislature three times since November 8, 1988, the date I-518 was passed by the vote of the people, Respondents' challenge to the language currently contained in RCW 49.46.010 is without merit.

I-518 passed with eighty-four percent of the vote on November 8, 1988. By its own terms, the initiative became effective on January 1, 1989. Chapter 1, Laws of 1989, Sec. 5. It is the language of this initiative eliminating the "domestic service in or about a private home"

exclusion from the definition of “employee” in the Minimum Wage Act, and replacing it with an exemption for “casual labor in or about a private home,” which Respondents assert was improperly omitted from the official ballot title for the initiative, in violation of Article II, Section 19 of Washington’s constitution.

The flaw in Respondents’ argument, however, is that more than eighteen years, and three legislative reenactments of the pertinent language, have occurred since the date I-518 took effect.

Thus, in 1993, the Legislature reenacted RCW 49.46.010 to make some mostly technical changes. As part of this reenactment, the Legislature re-adopted the “casual labor” exemption, RCW 49.46.010(5)(b), and did not enact any “domestic service” exemption. *See* Laws of 1993, Chapter 281, § 56, Appendix A.

Again, in 1997, the Legislature reenacted RCW 49.46.010, this time to add the definition of “Retail or service establishment.” As in 1993, as part of this reenactment, the Legislature re-adopted the “casual labor” exemption and did not enact any “domestic service” exemption. *See* Laws of 1997, Chapter 203, § 3, Appendix B.

Finally, in 2002, the Legislature reenacted this provision so that the reference in RCW 49.46.010(5)(c) to the “Washington personnel resources board” would be changed to a reference to the “director of

personnel,” to reflect simultaneous changes being made to RCW 41.06. As part of this reenactment, the Legislature again re-adopted the “casual labor” exemption and did not enact any “domestic service” exemption. See Laws of 2002, Chapter 354, § 231, Appendix C.

**2. Every State That Has Addressed The Issue Has, Apparently, Set The Date Of A Statute’s Subsequent Reenactment As The Date After Which No Procedural Challenge May Be Brought.**

Courts have long struggled with the question of how long after a law or initiative is enacted can it still be challenged on the grounds that the procedure followed in adopting it violated a state constitutional provision. As the Supreme Court of Montana has stated:

[I]f we allowed Plaintiffs to challenge the procedure by which CI-64 was enacted nine years after the fact, what would prevent a party from filing a similar procedural challenge to some other constitutional initiative fifteen, twenty or even thirty years after that initiative's enactment? There must be a point at which a claim asserting that Montana voters failed to follow the proper procedures in enacting a constitutional initiative simply comes too late.

*Cole v. State*, 308 Mont. 265, 272, 42 P.3d 760 (2002).

Some courts have held that public policy requires setting the point by which a procedurally-based constitutional claim, such as the one at issue here, must be brought as early as the date the statutory enactment is codified. See, e.g., *State v. Mabry*, 460 N.W.2d 472, 475 (Iowa 1990)

(noting that such a rule “strikes a balance between the salutary purposes of the single-subject rule and the importance of upholding the constitutionality of new legislation”). Because of the importance of setting a point – any point – after which the constitutionality of new legislation cannot be challenged on procedural grounds, it is of no significance, once such a point has been set, whether or not a particular litigant had reason or opportunity to challenge the statute at an earlier point in time. “Absent a successful challenge during this period of time, the new legislation, if it is otherwise constitutional, becomes valid law.... [A procedurally-based constitutional challenge] is barred even though future litigants may claim they were in no position to make such a challenge before the codification.” *Id.*

Not all states have, like Iowa, set the date of initial codification as the cut-off date for raising procedurally based constitutional challenges to a statute. However, every state that has addressed the issue has, apparently, set the date of any subsequent reenactment of a statute as the cut-off after which no challenge on procedural grounds - such as claims that the text of an act is broader than its caption - may be brought.

In *Nichols v. Tullahoma Open Door, Inc.*, 640 S.W.2d 13, 16 (Tenn. App. 1982), for example, the Tennessee Court of Appeals ruled moot a challenge to a Tennessee statute on the basis of the:

[w]ell-established rule in this jurisdiction that if an act has been reenacted as codified, then the subsequent legislation supersedes the earlier and the breadth of the initial caption becomes moot.

Similarly, in *Honchell v. State*, 257 So.2d 889, 890 (Fla. 1972), the Florida Supreme Court rejected a claim that a statute defining criminal activity was invalid because its original enactment violated “double subject” provisions in the Florida Constitution because the statute in question had been reenacted. And in another case, the Florida Court held that a defect in the title of the original act creating a Turnpike Authority had been cured by the adoption of revised statutes including that act. *Spangler v. Florida State Turnpike Author.*, 106 So.2d 421 (Fla. 1958).

*See also State ex rel. Sossaman v. Stone*, 235 Ala. 233, 236, 178 So. 18, 21 (1937); *Specht v. People*, 156 Colo. 12, 15, 396 P.2d 838, 840 (1964); *Warnock v. Florida Hotel & Restaurant Comm'n*, 178 So.2d 917, 919 (Fla. App. 1965); *Heaton v. State*, 60 Ga.App. 428, 429, 4 S.E.2d 98, 99 (1939); *Federal Reserve Bank v. Citizens Bank & Trust Co.*, 53 Idaho 316, 326-27, 23 P.2d 735, 738-39 (1933); *Bond v. Board of County Comm'rs*, 178 Kan. 668, 670, 290 P.2d 1013, 1015 (1955); *Falender v. Hankins*, 296 Ky. 396, 399, 177 S.W.2d 382, 383-84 (1944); *Grillo v. State*, 209 Md. 154, 158, 120 A.2d 384, 387 (1956); *State v. Rice*, 134 Mont. 265, 268, 329 P.2d 451, 453 (1958); *Peterson v. Vasak*, 162 Neb.

498, 502, 76 N.W.2d 420, 424 (1956); *Abruzzese v. Oestrich*, 138 N.J.Eq. 33, 41, 47 A.2d 883, 889 (Ch.1946); *Lapland v. Stearns*, 79 N.D. 62, 67, 54 N.W.2d 748, 752 (1952); *Atlas Life Ins. Co. v. Rose*, 196 Okla. 592, 595, 166 P.2d 1011, 1014 (1946); *South Carolina Tax Comm'n v. York Electric Coop., Inc.*, 275 S.C. 326, 331, 270 S.E.2d 626, 628-29 (1980); *State v. Barr*, 89 S.D. 280, 282, 232 N.W.2d 257, 259 (1975); *International Harvester Co. v. Carr*, 225 Tenn. 244, 260, 466 S.W.2d 207, 214 (1971); *Skaggs v. Grisham-Hunter Corp.*, 53 S.W.2d 687, 688 (Tex.Civ.App.1932); *State v. Chesapeake & Potomac Tel. Co.*, 121 W.Va. 420, 421, 4 S.E.2d 257, 258 (1939); *State v. Pitet*, 69 Wyo. 478, 498, 243 P.2d 177, 186 (1952).

### **3. Washington Courts Recognize That Subsequent Reenactment Of A Statute Cures Any Procedural Defect To Its Original Enactment.**

Washington courts have consistently recognized that reenactment of a statute, the initial adoption of which may have been subject to challenge on procedural grounds, cures any such defect. Most recently, *Pierce County v. State*, 159 Wash.2d 16 at 41, 148 P.3d 1002 (2006), held that the Legislature's reenactment of a bill "ratified and cured any defect in the [prior] enactment."<sup>1</sup> *Accord Henry v. Town of Oakville*, 30 Wn.

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<sup>1</sup> In its discussion the Court looked to the analysis in *Honchell, supra*, and *Nichols, supra*. 159 Wash. 2d at 40-41.

App. 240, 246-47, 633 P.2d 892 (1981) (town ordinance authorizing a bond issue that was originally passed without proper notice under the open meetings laws valid when lawfully reenacted); *Eugster v. City of Spokane*, 110 Wn. App. 212, 228, 39 P.3d 380 (2002) (holding that a procedural challenge to the validity of a city ordinance was moot since the ordinance had subsequently been properly enacted); *Eugster v. City of Spokane*, 118 Wn. App. 383, 423, 76 P.3d 741 (2003) (same); *OPAL v. Adams County*, 128 Wash.2d 869, 883, 913 P.2d 793 (1996) (same); *Heesan Corporation v. City of Lakewood*, 118 Wn. App. 341, 357, 75 P.3d 1003 (2003) (same); *Clark v. City of Lakewood*, 259 F.3d 996, 1014-1015 (9<sup>th</sup> Cir. 2001).

The foregoing authority demonstrates that this Court rejects procedural challenges where the defects (if any) have been cured by subsequent reenactment. Therefore, even assuming *arguendo* that the 1989 amendment to RCW 49.46.010 was not properly included in the initiative that adopted that amendment, subsequent sessions of the Legislature again enacted these statutory changes. These subsequent enactments, therefore, ratified and cured any defect in the 1989 enactment.

**B. ALTERNATIVELY, RESPONDENTS' CHALLENGE TO THE 1989 AMENDMENT TO RCW 49.46.010 ON CONSTITUTIONAL GROUNDS IS BARRED BECAUSE IT HAS BEEN BROUGHT SO LONG AFTER THE DATE OF THAT AMENDMENT.**

The equitable doctrine of laches should be deemed to prevent a challenge to the statute by Respondents at this late date.

The doctrine of laches bars claims that have been brought under circumstances where the equities of a particular case would render the maintenance of the action inequitable. As the Washington Supreme Court stated in *LaVergne v. Boysen*, 82 Wash.2d 718, 721, 513 P.2d 547 (1973)(emphasis added):

Delay and the lapse of time alone do not constitute laches. Its application depends upon the equities of a particular case which would render the maintenance of the action inequitable. Some injury, prejudice or disadvantage to the defendant or an innocent third party must result from allowing the relief sought.

This doctrine applies to challenges to a statute or ordinance based on alleged defects in the mode of its enactment. “[D]efects and irregularities in the mode of enactment of an ordinance do not pertain to the nature of the ordinance itself. In our judgment, challenges to such defects may be precluded by waiver, estoppel, or laches.” *Citizens for Responsible Government v. Kitsap County*, 52 Wn. App. 236, 239, 758 P.2d 1009 (1988).

*See also Stilp v. Hafer*, 553 Pa. 128, 132, 718 A.2d 290, 292 (1998), where the Pennsylvania Supreme Court barred a citizen from raising a procedural challenge to a statute concerning disposal of low-level radioactive waste. The act had been enacted in 1988 and the challenge was filed in 1996. The Court held that laches would not apply to a substantive constitutional challenge, but “may apply where a challenge to a law is made on procedural grounds years after its passage...Otherwise...courts would revisit statutes that are constitutionally sound in substance and that have been relied upon by the citizens of this Commonwealth.” *Id.* at 134.

In the context of a procedurally-based constitutional challenge to a statute, the injury, prejudice or disadvantage to the public and third parties of allowing such a challenge to be brought years after the enactment of the statute at issue is substantial.

In *Cole v. State, supra*, for example, legislators and voters brought a challenge nine years after the fact to a term limits law enacted in 1992, basing their challenge on Montana’s version of the “double subject” provision in the state constitution. The Montana Supreme Court dismissed the claim due to laches, holding that the nine-year delay was

unconscionable, and that allowing the claim would prejudice those who had relied upon the statute's presumptive validity. 308 Mont. at 272.<sup>2</sup>

*See also Ninth Street Improvement Co. v. Ocean City*, 90 N.J.L. 106, 108, 100 A. 568 (1917), which upheld the validity of the building code of the defendant city on other grounds, but also noted:

aside from that consideration, it cannot be overlooked that the attack upon the ordinance in question was not undertaken until over 12 years had elapsed since the date of its adoption. During that interval it is reasonable to assume that the citizens of the municipality affected by the provisions of this ordinance, regulating, as it specifically expresses, 'the manner of building dwelling houses, and other buildings,' have expended their means and conformed their building operations to comply with its provisions, and have fixed their status as property owners accordingly. In such a situation, this prosecutor is too late to be heard to complain of alleged informalities and irregularities in the procedure, which led to its adoption.

*Accord: Benequit v. Borough of Monmouth Beach et al.*, 125 N.J.L. 65, 68, 13 A.2d 847, 849 (1940) (noting that the ordinance being challenged on procedural grounds "had been in effect for over nine years and

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<sup>2</sup> Respondent's assertion that the constitutional challenge "does not concern a procedural defect [but] rather...is *substantive*..." is simply incorrect. Brief of Respondents at 22. There can be no question that the ballot title and single subject claims at issue here are prototypical *procedural* defects. *E.g. Cole v. State, supra, and Stilp v. Hafer, supra*. They are exactly the type of "defects and irregularities in the mode of enactment..." contemplated by *Citizens for Responsible Government, supra*. There can be no question that the legislature has the constitutional authority to enact a bill creating the casual labor exemption to the MWA. Or, to put it another way, one would accurately label a claim that the Legislature lacked the constitutional authority to amend the MWA as a substantive constitutional challenge. Respondent's challenge here, however, can only be characterized as a procedurally-based constitutional challenge.

presumably citizens had conformed to its provisions and their status as property owners became fixed accordingly").<sup>3</sup>

In the instant case, Respondents have identified no reasons as to why they failed to bring the instant challenge to the constitutionality of the 1989 initiative far earlier than they did. Respondents have not asserted that they were not residents of Washington capable of bringing this action years ago. Even if one were to assume, for the sake of argument, that Respondents could reasonably have been expected to wait until the instant lawsuit was brought against them, (contrary to the decision in *Mabry, supra*, 460 N.W.2d at 475, which held that a procedurally-based constitutional challenge is barred “even though future litigants may claim they were in no position to make such a challenge” during the window period set out for such challenges), Defendants cannot provide any good cause as to why they waited almost nine months from the date this case was filed, on February 15, 2005, to raise this argument. Compare *LaVergne, supra*, 82 Wn.2d at 721 (noting not only that the plaintiffs waited until 79 days after the election before commencing the suit, but also that they waited eight months more before taking steps to prosecute the suit).

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<sup>3</sup> See also *Lavergne, supra*, 82 Wn.2d at 722 (delay in bringing challenge to validity of election “caused prejudice and disadvantage to the school, its board of directors and the public itself”).

Because of Respondents' delay, employers, employees, and the Washington State Legislature have, for more than seventeen years, conformed their behavior to the current language of RCW 49.46.010. In the language of *Ocean City, supra*, “[d]uring that interval it is reasonable to assume that the citizens of the municipality affected by the provisions of this ordinance ... have expended their means and conformed their ... operations to comply with its provisions, and have fixed their status ... accordingly.” 100 A. at 568.

To identify just two examples of such reliance on the 1989 statutory enactment, there is no telling how many employers have declined, since that year, to provide the benefits of the Minimum Wage Act to persons who they may have employed as “casual labor in or about a private home,” even though under Respondents' analysis, that Minimum Wage Act exemption was never validly created. Likewise, there is no telling how many employers have honored the terms of RCW 49.46.010 as they have existed since 1989 by providing the benefits of the Minimum Wage Act to persons who were providing “domestic service in or about a private home,” in the belief, which Respondents now suggest should be deemed erroneous, that such benefits were compelled by law.

In addition, the Washington State Legislature inevitably must have relied on its belief that the 1989 law was valid when it enacted the 1993,

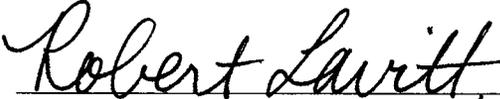
1997, 2002, amendments thereto, discussed above, because (as noted *supra*) the Legislature reenacted the language of the 1989 Initiative without alteration at the same time it made each of those amendments.

Under these circumstances, Respondents' challenge to the constitutionality of RCW 49.46.010 should be rejected.

## VI. CONCLUSION

For the foregoing reasons, the lower court's ruling regarding the constitutionality of I-518 should be reversed.

Respectfully submitted this 24<sup>th</sup> day of April 2007.

  
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CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of April, 2007, I caused the original Amicus Curiae Brief of Service Employees International Union 775 in Support of Appellant to be delivered via UPS Overnight Mail, addressed to:

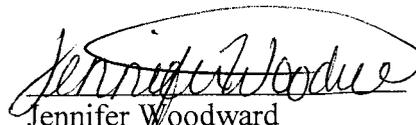
Clerk of the Court  
Supreme Court of Washington  
415 12th Ave SW  
Olympia, WA 98504-0929

And a true and correct copy of the same to be delivered via UPS

Overnight mail, addressed to:

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Jennifer Woodward  
Legal Assistant

# **Appendix A**

CERTIFICATION OF ENROLLMENT  
ENGROSSED SUBSTITUTE HOUSE BILL 2054

Chapter 281, Laws of 1993

53rd Legislature  
1993 Regular Session

CIVIL SERVICE REFORM

EFFECTIVE DATE: 7/25/93 - Except Sections 1 through 66 & 68 through 71 which take effect on 7/1/93 & Section 67 which takes effect on 7/1/97

Passed by the House April 22, 1993  
Yeas 94 Nays 3

BRIAN EBERSOLE  
Speaker of the  
House of Representatives

Passed by the Senate April 21, 1993  
Yeas 37 Nays 10

JOEL PRITCHARD  
President of the Senate

Approved May 10, 1993

MIKE LOWRY  
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2054** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON  
Chief Clerk

FILED

May 10, 1993 - 8:46 a.m.

Secretary of State  
State of Washington

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ENGROSSED SUBSTITUTE HOUSE BILL 2054

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AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington                      53rd Legislature                      1993 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Peery, Reams, Anderson, Heavey, R. Fisher, G. Cole, Ogden and Lemmon; by request of Governor Lowry)

Read first time 03/08/93.

1            AN ACT Relating to state government; amending RCW 28B.12.060,  
2 34.05.030, 34.12.020, 41.04.340, 41.04.670, 41.06.030, 41.06.070,  
3 41.06.076, 41.06.079, 41.06.093, 41.06.110, 41.06.130, 41.06.150,  
4 41.06.155, 41.06.160, 41.06.163, 41.06.170, 41.06.186, 41.06.196,  
5 41.06.280, 41.06.340, 41.06.350, 41.06.450, 41.06.475, 41.48.140,  
6 41.50.804, 41.64.090, 42.16.010, 42.17.2401, 43.01.170, 43.03.028,  
7 43.03.305, 43.06.410, 43.06.425, 43.06.430, 43.33A.100, 43.43.832,  
8 43.60A.906, 43.105.052, 43.131.090, 48.03.060, 49.46.010, 49.74.020,  
9 49.74.030, 50.13.060, 70.24.300, 70.87.120, 72.01.210, 72.02.045,  
10 72.09.220, 72.19.050, 74.09.150, and 88.46.927; reenacting and amending  
11 RCW 41.06.020; adding new sections to chapter 41.06 RCW; creating new  
12 sections; recodifying RCW 28B.16.240; decodifying RCW 41.06.230,  
13 41.06.240, 41.06.310, and 41.64.900; repealing RCW 28B.16.010,  
14 28B.16.020, 28B.16.030, 28B.16.040, 28B.16.041, 28B.16.042, 28B.16.043,  
15 28B.16.060, 28B.16.070, 28B.16.080, 28B.16.090, 28B.16.100, 28B.16.101,  
16 28B.16.105, 28B.16.110, 28B.16.112, 28B.16.113, 28B.16.116, 28B.16.120,  
17 28B.16.130, 28B.16.140, 28B.16.150, 28B.16.160, 28B.16.170, 28B.16.180,  
18 28B.16.190, 28B.16.200, 28B.16.210, 28B.16.220, 28B.16.230, 28B.16.255,  
19 28B.16.265, 28B.16.275, 28B.16.300, 28B.16.900, 28B.16.910, 28B.16.920,  
20 28B.16.930, and 41.06.430; providing effective dates; and declaring an  
21 emergency.

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

2 NEW SECTION. **Sec. 1.** The higher education personnel board and the  
3 state personnel board are abolished and their powers, duties, and  
4 functions are transferred to the Washington personnel resources board.  
5 All references to the director or the higher education personnel board  
6 or the state personnel board in the Revised Code of Washington shall be  
7 construed to mean the director of the Washington personnel resources  
8 board or the Washington personnel resources board.

9 NEW SECTION. **Sec. 2.** All reports, documents, surveys, books,  
10 records, files, papers, or written material in the possession of the  
11 higher education personnel board and the state personnel board shall be  
12 delivered to the custody of the Washington personnel resources board.  
13 All cabinets, furniture, office equipment, motor vehicles, and other  
14 tangible property employed by the higher education personnel board and  
15 the state personnel board shall be made available to the Washington  
16 personnel resources board. All funds, credits, or other assets held by  
17 the higher education personnel board and the state personnel board  
18 shall be assigned to the Washington personnel resources board.

19 Any appropriations made to the higher education personnel board and  
20 the state personnel board shall, on the effective date of this section,  
21 be transferred and credited to the Washington personnel resources  
22 board.

23 Whenever any question arises as to the transfer of any personnel,  
24 funds, books, documents, records, papers, files, equipment, or other  
25 tangible property used or held in the exercise of the powers and the  
26 performance of the duties and functions transferred, the director of  
27 financial management shall make a determination as to the proper  
28 allocation and certify the same to the state agencies concerned.

29 NEW SECTION. **Sec. 3.** All employees of the higher education  
30 personnel board and the state personnel board are transferred to the  
31 jurisdiction of the Washington personnel resources board. All  
32 employees classified under chapter 28B.16 RCW on June 30, 1993, or  
33 chapter 41.06 RCW, the state civil service law, are assigned to the  
34 Washington personnel resources board to perform their usual duties upon  
35 the same terms as formerly, without any loss of rights, subject to any

1 action that may be appropriate thereafter in accordance with the laws  
2 and rules governing state civil service.

3 NEW SECTION. **Sec. 4.** All rules of the higher education personnel  
4 board and the state personnel board shall be continued until acted upon  
5 by the Washington personnel resources board. All pending business  
6 shall be continued until acted upon by the Washington personnel  
7 resources board. All existing contracts and obligations shall remain  
8 in full force and shall be performed by the Washington personnel  
9 resources board.

10 NEW SECTION. **Sec. 5.** The transfer of the powers, duties,  
11 functions, and personnel of the higher education personnel board and  
12 the state personnel board shall not affect the validity of any act  
13 performed prior to the effective date of this section.

14 NEW SECTION. **Sec. 6.** If apportionments of budgeted funds are  
15 required because of the transfers directed by sections 2 through 5 of  
16 this act, the director of financial management shall certify the  
17 apportionments to the agencies affected, the state auditor, and the  
18 state treasurer. Each of these shall make the appropriate transfer and  
19 adjustments in funds and appropriation accounts and equipment records  
20 in accordance with the certification.

21 NEW SECTION. **Sec. 7.** Nothing contained in sections 1 through 6 of  
22 this act may be construed to alter any existing collective bargaining  
23 unit or the provisions of any existing collective bargaining agreement  
24 until the agreement has expired or until the bargaining unit has been  
25 modified by action of the Washington personnel resources board as  
26 provided by law.

27 NEW SECTION. **Sec. 8.** A new section is added to chapter 41.06 RCW  
28 to read as follows:

29 For purposes of this chapter, "manager" means any employee who:

30 (1) Formulates state-wide policy or directs the work of an agency  
31 or agency subdivision;

32 (2) Is responsible to administer one or more state-wide policies or  
33 programs of an agency or agency subdivision;

1 (3) Manages, administers, and controls a local branch office of an  
2 agency or agency subdivision, including the physical, financial, or  
3 personnel resources;

4 (4) Has substantial responsibility in personnel administration,  
5 legislative relations, public information, or the preparation and  
6 administration of budgets; or

7 (5) Functionally is above the first level of supervision and  
8 exercises authority that is not merely routine or clerical in nature  
9 and requires the consistent use of independent judgment.

10 NEW SECTION. **Sec. 9.** A new section is added to chapter 41.06 RCW  
11 to read as follows:

12 (1) Except as provided in RCW 41.06.070, notwithstanding any other  
13 provisions of this chapter, the director is authorized to adopt, after  
14 consultation with state agencies and employee organizations, rules for  
15 managers as defined in section 8 of this act. These rules shall not  
16 apply to managers employed by institutions of higher education or  
17 related boards or whose positions are exempt. The rules shall govern  
18 recruitment, appointment, classification and allocation of positions,  
19 examination, training and career development, hours of work, probation,  
20 certification, compensation, transfer, affirmative action, promotion,  
21 layoff, reemployment, performance appraisals, discipline, and any and  
22 all other personnel practices for managers. These rules shall be  
23 separate from rules adopted by the board for other employees, and to  
24 the extent that the rules adopted apply only to managers shall take  
25 precedence over rules adopted by the board, and are not subject to  
26 review by the board.

27 (2) In establishing rules for managers, the director shall adhere  
28 to the following goals:

29 (a) Development of a simplified classification system that  
30 facilitates movement of managers between agencies and promotes upward  
31 mobility;

32 (b) Creation of a compensation system consistent with the policy  
33 set forth in RCW 41.06.150(17). The system shall provide flexibility  
34 in setting and changing salaries;

35 (c) Establishment of a performance appraisal system that emphasizes  
36 individual accountability for program results and efficient management  
37 of resources; effective planning, organization, and communication

1 skills; valuing and managing workplace diversity; development of  
2 leadership and interpersonal abilities; and employee development;

3 (d) Strengthening management training and career development  
4 programs that build critical management knowledge, skills, and  
5 abilities; focusing on managing and valuing workplace diversity;  
6 empowering employees by enabling them to share in workplace decision  
7 making and to be innovative, willing to take risks, and able to accept  
8 and deal with change; promoting a workplace where the overall focus is  
9 on the recipient of the government services and how these services can  
10 be improved; and enhancing mobility and career advancement  
11 opportunities;

12 (e) Permitting flexible recruitment and hiring procedures that  
13 enable agencies to compete effectively with other employers, both  
14 public and private, for managers with appropriate skills and training;  
15 allowing consideration of all qualified candidates for positions as  
16 managers; and achieving affirmative action goals and diversity in the  
17 workplace;

18 (f) Providing that managers may only be reduced, dismissed,  
19 suspended, or demoted for cause; and

20 (g) Facilitating decentralized and regional administration.

21 NEW SECTION. **Sec. 10.** A new section is added to chapter 41.06 RCW  
22 to read as follows:

23 Each institution of higher education and each related board shall  
24 designate an officer who shall perform duties as personnel officer.  
25 The personnel officer at each institution or related board shall  
26 direct, supervise, and manage administrative and technical personnel  
27 activities for the classified service at the institution or related  
28 board consistent with policies established by the institution or  
29 related board and in accordance with the provisions of this chapter and  
30 the rules adopted under this chapter. Institutions may undertake  
31 jointly with one or more other institutions to appoint a person  
32 qualified to perform the duties of personnel officer, provide staff and  
33 financial support and may engage consultants to assist in the  
34 performance of specific projects. The services of the department of  
35 personnel may also be used by the institutions or related boards  
36 pursuant to RCW 41.06.080.

1 The state board for community and technical colleges shall have  
2 general supervision and control over activities undertaken by the  
3 various community colleges pursuant to this section.

4 NEW SECTION. **Sec. 11.** A new section is added to chapter 41.06 RCW  
5 to read as follows:

6 Rules adopted by the board shall provide for local administration  
7 and management by the institutions of higher education and related  
8 boards, subject to periodic audit and review by the board, of the  
9 following:

- 10 (1) Appointment, promotion, and transfer of employees;
- 11 (2) Dismissal, suspension, or demotion of an employee;
- 12 (3) Examinations for all positions in the competitive and  
13 noncompetitive service;
- 14 (4) Probationary periods of six to twelve months and rejection of  
15 probationary employees;
- 16 (5) Sick leaves and vacations;
- 17 (6) Hours of work;
- 18 (7) Layoffs when necessary and subsequent reemployment;
- 19 (8) Allocation and reallocation of positions within the  
20 classification plans;
- 21 (9) Training programs; and
- 22 (10) Maintenance of personnel records.

23 NEW SECTION. **Sec. 12.** A new section is added to chapter 41.06 RCW  
24 to read as follows:

25 (1) The legislature recognizes that:

26 (a) The labor market and the state government work force are  
27 diverse in terms of gender, race, ethnicity, age, and the presence of  
28 disabilities.

29 (b) The state's personnel resource and management practices must be  
30 responsive to the diverse nature of its work force composition.

31 (c) Managers in all agencies play a key role in the implementation  
32 of all critical personnel policies.

33 It is therefore the policy of the state to create an organizational  
34 culture in state government that respects and values individual  
35 differences and encourages the productive potential of every employee.

36 (2) To implement this policy, the department shall:

1 (a) In consultation with agencies, employee organizations,  
2 employees, institutions of higher education, and related boards, review  
3 civil service rules and related policies to ensure that they support  
4 the state's policy of valuing and managing diversity in the workplace;

5 (b) In consultation with agencies, employee organizations, and  
6 employees, institutions of higher education, and related boards,  
7 develop model policies, procedures, and technical information to be  
8 made available to such entities for the support of workplace diversity  
9 programs, including, but not limited to:

10 (i) Voluntary mentorship programs;

11 (ii) Alternative testing practices for persons of disability where  
12 deemed appropriate;

13 (iii) Career counseling;

14 (iv) Training opportunities, including management and employee  
15 awareness and skills training, English as a second language, and  
16 individual tutoring;

17 (v) Recruitment strategies;

18 (vi) Management performance appraisal techniques that focus on  
19 valuing and managing diversity in the workplace; and

20 (vii) Alternative work arrangements;

21 (c) In consultation with agencies, employee organizations, and  
22 employees, institutions of higher education, and related boards,  
23 develop training programs for all managers to enhance their ability to  
24 implement diversity policies and to provide a thorough grounding in all  
25 aspects of the state civil service law and merit system rules, and how  
26 the proper implementation and application thereof can facilitate and  
27 further the mission of the agency.

28 (3) The department shall coordinate implementation of this section  
29 with the office of financial management and institutions of higher  
30 education and related boards to reduce duplication of effort.

31 NEW SECTION. **Sec. 13.** A new section is added to chapter 41.06 RCW  
32 to read as follows:

33 Meaningful and effective involvement of employees and their  
34 representatives is essential to the efficient and effective delivery of  
35 state government services. To accomplish this, agencies shall use  
36 joint employee-management committees to collaborate on the desired  
37 goals of streamlined organizational structures, continuous improvement  
38 in all systems and processes, empowerment of line level employees to

1 solve workplace and system delivery problems, managers functioning as  
2 coaches and facilitators, and employee training and development as an  
3 investment in the future. If employees are represented by an exclusive  
4 bargaining representative, the representative shall select the employee  
5 committee members and also be on the committee. In addition, the  
6 committees shall be used for improvement of the quality of work life  
7 for state employees resulting in more productive and efficient service  
8 delivery to the general public and customers of state government.  
9 Nothing in this section supplants any collective bargaining process or  
10 provision.

11 **Sec. 14.** RCW 28B.12.060 and 1987 c 330 s 202 are each amended to  
12 read as follows:

13 The higher education coordinating board shall adopt rules ((and  
14 regulations)) as may be necessary or appropriate for effecting the  
15 provisions of this chapter, and not in conflict with this chapter, in  
16 accordance with the provisions of chapter 34.05 RCW, the state higher  
17 education administrative procedure act. Such rules ((and regulations))  
18 shall include provisions designed to make employment under such work-  
19 study program reasonably available, to the extent of available funds,  
20 to all eligible students in eligible post-secondary institutions in  
21 need thereof. Such rules ((and regulations)) shall include:

22 (1) Providing work under the college work-study program which will  
23 not result in the displacement of employed workers or impair existing  
24 contracts for services.

25 (2) Furnishing work only to a student who:

26 (a) Is capable, in the opinion of the eligible institution, of  
27 maintaining good standing in such course of study while employed under  
28 the program covered by the agreement; and

29 (b) Has been accepted for enrollment as at least a half-time  
30 student at the eligible institution or, in the case of a student  
31 already enrolled in and attending the eligible institution, is in good  
32 standing and in at least half-time attendance there either as an  
33 undergraduate, graduate or professional student; and

34 (c) Is not pursuing a degree in theology.

35 (3) Placing priority on the securing of work opportunities for  
36 students who are residents of the state of Washington as defined in RCW  
37 28B.15.011 through 28B.15.014.

1 (4) Provisions to assure that in the state institutions of higher  
2 education utilization of this student work-study program:

3 (a) Shall only supplement and not supplant classified positions  
4 under jurisdiction of chapter ((28B-16)) 41.06 RCW;

5 (b) That all positions established which are comparable shall be  
6 identified to a job classification under the ((higher education))  
7 Washington personnel resources board's classification plan and shall  
8 receive equal compensation;

9 (c) Shall not take place in any manner that would replace  
10 classified positions reduced due to lack of funds or work; and

11 (d) That work study positions shall only be established at entry  
12 level positions of the classified service.

13 **Sec. 15.** RCW 34.05.030 and 1989 c 175 s 2 are each amended to read  
14 as follows:

15 (1) This chapter shall not apply to:

16 (a) The state militia, or

17 (b) The board of clemency and pardons, or

18 (c) The department of corrections or the indeterminate sentencing  
19 review board with respect to persons who are in their custody or are  
20 subject to the jurisdiction of those agencies.

21 (2) The provisions of RCW 34.05.410 through 34.05.598 shall not  
22 apply:

23 (a) To adjudicative proceedings of the board of industrial  
24 insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

25 (b) Except for actions pursuant to chapter 46.29 RCW, to the  
26 denial, suspension, or revocation of a driver's license by the  
27 department of licensing;

28 (c) To the department of labor and industries where another statute  
29 expressly provides for review of adjudicative proceedings of a  
30 department action, order, decision, or award before the board of  
31 industrial insurance appeals;

32 (d) To actions of the ((state)) Washington personnel resources  
33 board, ((the higher education personnel board,)) the director of  
34 personnel, or the personnel appeals board; or

35 (e) To the extent they are inconsistent with any provisions of  
36 chapter 43.43 RCW.

1 (3) Unless a party makes an election for a formal hearing pursuant  
2 to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not  
3 apply to a review hearing conducted by the board of tax appeals.

4 (4) All other agencies, whether or not formerly specifically  
5 excluded from the provisions of all or any part of the Administrative  
6 Procedure Act, shall be subject to the entire act.

7 **Sec. 16.** RCW 34.12.020 and 1989 c 175 s 33 are each amended to  
8 read as follows:

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

11 (1) "Office" means the office of administrative hearings.

12 (2) "Administrative law judge" means any person appointed by the  
13 chief administrative law judge to conduct or preside over hearings as  
14 provided in this chapter.

15 (3) "Hearing" means an adjudicative proceeding within the meaning  
16 of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413  
17 through 34.05.476.

18 (4) "State agency" means any state board, commission, department,  
19 or officer authorized by law to make rules or to conduct adjudicative  
20 proceedings, except those in the legislative or judicial branches, the  
21 pollution control hearings board, the shorelines hearings board, the  
22 forest practices appeals board, the environmental hearings office, the  
23 board of industrial insurance appeals, the (~~state personnel board, the~~  
24 ~~higher education~~) Washington personnel resources board, the public  
25 employment relations commission, the personnel appeals board, and the  
26 board of tax appeals.

27 **Sec. 17.** RCW 41.04.340 and 1991 c 249 s 1 are each amended to read  
28 as follows:

29 (1) An attendance incentive program is established for all eligible  
30 employees. As used in this section the term "eligible employee" means  
31 any employee of the state, other than teaching and research faculty at  
32 the state and regional universities and The Evergreen State College,  
33 entitled to accumulate sick leave and for whom accurate sick leave  
34 records have been maintained. No employee may receive compensation  
35 under this section for any portion of sick leave accumulated at a rate  
36 in excess of one day per month. The state and regional universities

1 and The Evergreen State College shall maintain complete and accurate  
2 sick leave records for all teaching and research faculty.

3 (2) In January of the year following any year in which a minimum of  
4 sixty days of sick leave is accrued, and each January thereafter, any  
5 eligible employee may receive remuneration for unused sick leave  
6 accumulated in the previous year at a rate equal to one day's monetary  
7 compensation of the employee for each four full days of accrued sick  
8 leave in excess of sixty days. Sick leave for which compensation has  
9 been received shall be deducted from accrued sick leave at the rate of  
10 four days for every one day's monetary compensation.

11 (3) At the time of separation from state service due to retirement  
12 or death, an eligible employee or the employee's estate may elect to  
13 receive remuneration at a rate equal to one day's current monetary  
14 compensation of the employee for each four full days of accrued sick  
15 leave.

16 (4) Pursuant to this subsection, in lieu of cash remuneration the  
17 state may, with equivalent funds, provide eligible employees with a  
18 benefit plan providing for reimbursement of medical expenses. The  
19 committee for deferred compensation shall develop any benefit plan  
20 established under this subsection, but may offer and administer the  
21 plan only if (a) each eligible employee has the option of whether to  
22 receive cash remuneration or to have his or her employer transfer  
23 equivalent funds to the plan; and (b) the committee has received an  
24 opinion from the United States internal revenue service stating that  
25 participating employees, prior to the time of receiving reimbursement  
26 for expenses, will incur no United States income tax liability on the  
27 amount of the equivalent funds transferred to the plan.

28 (5) Remuneration or benefits received under this section shall not  
29 be included for the purpose of computing a retirement allowance under  
30 any public retirement system in this state.

31 (6) With the exception of subsection ~~((3))~~ (4) of this section,  
32 this section shall be administered, and rules shall be ~~((promulgated))~~  
33 adopted to carry out its purposes, by the ~~((state personnel board and~~  
34 ~~the higher education))~~ Washington personnel resources board for persons  
35 subject to chapter ~~((s))~~ 41.06 ~~((and 28B.16))~~ RCW ~~((, respectively, and~~  
36 ~~by their respective personnel authorities for other eligible~~  
37 ~~employees))~~: PROVIDED, That determination of classes of eligible  
38 employees shall be subject to approval by the office of financial  
39 management.

1 (7) Should the legislature revoke any remuneration or benefits  
2 granted under this section, no affected employee shall be entitled  
3 thereafter to receive such benefits as a matter of contractual right.

4 **Sec. 18.** RCW 41.04.670 and 1990 c 23 s 3 are each amended to read  
5 as follows:

6 The (~~state personnel board, the higher education~~) Washington  
7 personnel resources board((7)) and other personnel authorities shall  
8 each adopt rules applicable to employees under their respective  
9 jurisdictions: (1) Establishing appropriate parameters for the program  
10 which are consistent with the provisions of RCW 41.04.650 through  
11 41.04.665; (2) providing for equivalent treatment of employees between  
12 their respective jurisdictions and allowing transfers of leave in  
13 accordance with RCW 41.04.665(5); (3) establishing procedures to ensure  
14 that the program does not significantly increase the cost of providing  
15 leave; and (4) providing for the administration of the program and  
16 providing for maintenance and collection of sufficient information on  
17 the program to allow a thorough legislative review.

18 **Sec. 19.** RCW 41.06.020 and 1985 c 461 s 1 and 1985 c 365 s 3 are  
19 each reenacted and amended to read as follows:

20 Unless the context clearly indicates otherwise, the words used in  
21 this chapter have the meaning given in this section.

22 (1) "Agency" means an office, department, board, commission, or  
23 other separate unit or division, however designated, of the state  
24 government and all personnel thereof; it includes any unit of state  
25 government established by law, the executive officer or members of  
26 which are either elected or appointed, upon which the statutes confer  
27 powers and impose duties in connection with operations of either a  
28 governmental or proprietary nature.

29 (2) "Board" means the (~~state~~) Washington personnel resources  
30 board established under the provisions of RCW 41.06.110, except that  
31 this definition does not apply to the words "board" or "boards" when  
32 used in RCW 41.06.070.

33 (3) "Classified service" means all positions in the state service  
34 subject to the provisions of this chapter.

35 (4) "Competitive service" means all positions in the classified  
36 service for which a competitive examination is required as a condition  
37 precedent to appointment.

1 (5) "Comparable worth" means the provision of similar salaries for  
2 positions that require or impose similar responsibilities, judgments,  
3 knowledge, skills, and working conditions.

4 (6) "Noncompetitive service" means all positions in the classified  
5 service for which a competitive examination is not required.

6 (7) "Department" means an agency of government that has as its  
7 governing officer a person, or combination of persons such as a  
8 commission, board, or council, by law empowered to operate the agency  
9 responsible either to (a) no other public officer or (b) the governor.

10 (8) "Career development" means the progressive development of  
11 employee capabilities to facilitate productivity, job satisfaction, and  
12 upward mobility through work assignments as well as education and  
13 training that are both state-sponsored and are achieved by individual  
14 employee efforts, all of which shall be consistent with the needs and  
15 obligations of the state and its agencies.

16 (9) "Training" means activities designed to develop job-related  
17 knowledge and skills of employees.

18 (10) "Director" means the director of personnel appointed under the  
19 provisions of RCW 41.06.130.

20 (11) "Affirmative action" means a procedure by which racial  
21 minorities, women, persons in the protected age category, persons with  
22 disabilities, Vietnam-era veterans, and disabled veterans are provided  
23 with increased employment opportunities. It shall not mean any sort of  
24 quota system.

25 (12) "Institutions of higher education" means the University of  
26 Washington, Washington State University, Central Washington University,  
27 Eastern Washington University, Western Washington University, The  
28 Evergreen State College, and the various state community colleges.

29 (13) "Related boards" means the state board for community and  
30 technical colleges; and such other boards, councils, and commissions  
31 related to higher education as may be established.

32 **Sec. 20.** RCW 41.06.030 and 1961 c 1 s 3 are each amended to read  
33 as follows:

34 A department of personnel, governed by (~~a state~~) the Washington  
35 personnel resources board and administered by a director of personnel,  
36 is hereby established as a separate agency within the state government.

1       **Sec. 21.** RCW 41.06.070 and 1990 c 60 s 101 are each amended to  
2 read as follows:

3       (1) The provisions of this chapter do not apply to:

4       ((+1)) (a) The members of the legislature or to any employee of,  
5 or position in, the legislative branch of the state government  
6 including members, officers, and employees of the legislative council,  
7 legislative budget committee, statute law committee, and any interim  
8 committee of the legislature;

9       ((+2)) (b) The justices of the supreme court, judges of the court  
10 of appeals, judges of the superior courts or of the inferior courts, or  
11 to any employee of, or position in the judicial branch of state  
12 government;

13       ((+3)) (c) Officers, academic personnel, and employees of (~~state~~  
14 ~~institutions of higher education, the state board for community~~)  
15 technical colleges (~~education, and the higher education personnel~~  
16 ~~board~~);

17       ((+4)) (d) The officers of the Washington state patrol;

18       ((+5)) (e) Elective officers of the state;

19       ((+6)) (f) The chief executive officer of each agency;

20       ((+7)) (g) In the departments of employment security, fisheries,  
21 social and health services, the director and ((his)) the director's  
22 confidential secretary; in all other departments, the executive head of  
23 which is an individual appointed by the governor, the director, his or  
24 her confidential secretary, and his or her statutory assistant  
25 directors;

26       ((+8)) (h) In the case of a multimember board, commission, or  
27 committee, whether the members thereof are elected, appointed by the  
28 governor or other authority, serve ex officio, or are otherwise chosen:

29       ((+a)) (i) All members of such boards, commissions, or committees;

30       ((+b)) (ii) If the members of the board, commission, or committee  
31 serve on a part-time basis and there is a statutory executive officer:

32       ((+i)) The secretary of the board, commission, or committee; ((+ii))

33 the chief executive officer of the board, commission, or committee; and

34       ((+iii)) the confidential secretary of the chief executive officer of  
35 the board, commission, or committee;

36       ((+e)) (iii) If the members of the board, commission, or committee  
37 serve on a full-time basis: ((+i)) The chief executive officer or  
38 administrative officer as designated by the board, commission, or

1 committee; and ~~((+ii))~~ a confidential secretary to the ~~((chairman))~~  
2 chair of the board, commission, or committee;

3 ~~((+d))~~ (iv) If all members of the board, commission, or committee  
4 serve ex officio: ~~((+i))~~ The chief executive officer; and ~~((+ii))~~  
5 the confidential secretary of such chief executive officer;

6 ~~((+9))~~ (i) The confidential secretaries and administrative  
7 assistants in the immediate offices of the elective officers of the  
8 state;

9 ~~((+10))~~ (j) Assistant attorneys general;

10 ~~((+11))~~ (k) Commissioned and enlisted personnel in the military  
11 service of the state;

12 ~~((+12))~~ (l) Inmate, student, part-time, or temporary employees,  
13 and part-time professional consultants, as defined by the ~~((state~~  
14 ~~personnel))~~ board ~~((or the board having jurisdiction))~~;

15 ~~((+13))~~ (m) The public printer or to any employees of or positions  
16 in the state printing plant;

17 ~~((+14))~~ (n) Officers and employees of the Washington state fruit  
18 commission;

19 ~~((+15))~~ (o) Officers and employees of the Washington state apple  
20 advertising commission;

21 ~~((+16))~~ (p) Officers and employees of the Washington state dairy  
22 products commission;

23 ~~((+17))~~ (q) Officers and employees of the Washington tree fruit  
24 research commission;

25 ~~((+18))~~ (r) Officers and employees of the Washington state beef  
26 commission;

27 ~~((+19))~~ (s) Officers and employees of any commission formed under  
28 ~~((the provisions of chapter 191, Laws of 1955, and))~~ chapter 15.66 RCW;

29 ~~((+20))~~ (t) Officers and employees of the state wheat commission  
30 formed under ~~((the provisions of chapter 87, Laws of 1961-))~~ chapter  
31 15.63 RCW~~((+))~~;

32 ~~((+21))~~ (u) Officers and employees of agricultural commissions  
33 formed under ~~((the provisions of chapter 256, Laws of 1961-))~~ chapter  
34 15.65 RCW~~((+))~~;

35 ~~((+22))~~ (v) Officers and employees of the nonprofit corporation  
36 formed under chapter 67.40 RCW;

37 ~~((+23))~~ (w) Liquor vendors appointed by the Washington state  
38 liquor control board pursuant to RCW 66.08.050: PROVIDED, HOWEVER,  
39 That rules ~~((and regulations))~~ adopted by the ~~((state))~~ Washington

1 personnel resources board pursuant to RCW 41.06.150 regarding the basis  
2 for, and procedures to be followed for, the dismissal, suspension, or  
3 demotion of an employee, and appeals therefrom shall be fully  
4 applicable to liquor vendors except those part time agency vendors  
5 employed by the liquor control board when, in addition to the sale of  
6 liquor for the state, they sell goods, wares, merchandise, or services  
7 as a self-sustaining private retail business;

8 ~~((+24))~~ (x) Executive assistants for personnel administration and  
9 labor relations in all state agencies employing such executive  
10 assistants including but not limited to all departments, offices,  
11 commissions, committees, boards, or other bodies subject to the  
12 provisions of this chapter and this subsection shall prevail over any  
13 provision of law inconsistent herewith unless specific exception is  
14 made in such law;

15 ~~((+25))~~ (y) In each agency with fifty or more employees: Deputy  
16 agency heads, assistant directors or division directors, and not more  
17 than three principal policy assistants who report directly to the  
18 agency head or deputy agency heads;

19 ~~((+26))~~ (z) All employees of the marine employees' commission;

20 ~~((+27))~~ (aa) Up to a total of five senior staff positions of the  
21 western library network under chapter 27.26 RCW responsible for  
22 formulating policy or for directing program management of a major  
23 administrative unit. This subsection shall expire on June 30, 1997;

24 ~~((+28))~~ (2) The following classifications, positions, and  
25 employees of institutions of higher education and related boards are  
26 hereby exempted from coverage of this chapter:

27 (a) Members of the governing board of each institution of higher  
28 education and related boards, all presidents, vice-presidents and their  
29 confidential secretaries, administrative and personal assistants;  
30 deans, directors, and chairs; academic personnel; and executive heads  
31 of major administrative or academic divisions employed by institutions  
32 of higher education; and any employee of a community college district  
33 whose place of work is one which is physically located outside the  
34 state of Washington and who is employed pursuant to RCW 28B.50.092 and  
35 assigned to an educational program operating outside of the state of  
36 Washington;

37 (b) Student, part-time, or temporary employees, and part-time  
38 professional consultants, as defined by the Washington personnel

1 resources board, employed by institutions of higher education and  
2 related boards;

3 (c) The governing board of each institution, and related boards,  
4 may also exempt from this chapter classifications involving research  
5 activities, counseling of students, extension or continuing education  
6 activities, graphic arts or publications activities requiring  
7 prescribed academic preparation or special training, and principal  
8 assistants to executive heads of major administrative or academic  
9 divisions, as determined by the board: PROVIDED, That no nonacademic  
10 employee engaged in office, clerical, maintenance, or food and trade  
11 services may be exempted by the board under this provision;

12 (d) Printing craft employees in the department of printing at the  
13 University of Washington;

14 (3) In addition to the exemptions specifically provided by this  
15 chapter, the ((state)) Washington personnel resources board may provide  
16 for further exemptions pursuant to the following procedures. The  
17 governor or other appropriate elected official may submit requests for  
18 exemption to the Washington personnel resources board stating the  
19 reasons for requesting such exemptions. The Washington personnel  
20 resources board shall hold a public hearing, after proper notice, on  
21 requests submitted pursuant to this subsection. If the board  
22 determines that the position for which exemption is requested is one  
23 involving substantial responsibility for the formulation of basic  
24 agency or executive policy or one involving directing and controlling  
25 program operations of an agency or a major administrative division  
26 thereof, the Washington personnel resources board shall grant the  
27 request and such determination shall be final as to any decision made  
28 before July 1, 1993. The total number of additional exemptions  
29 permitted under this subsection shall not exceed ((one hundred eighty-  
30 seven)) one percent of the number of employees in the classified  
31 service not including employees of institutions of higher education and  
32 related boards for those agencies not directly under the authority of  
33 any elected public official other than the governor, and shall not  
34 exceed a total of twenty-five for all agencies under the authority of  
35 elected public officials other than the governor. The ((state))  
36 Washington personnel resources board shall report to each regular  
37 session of the legislature during an odd-numbered year all exemptions  
38 granted under subsections ((-24), (25), and (28)) (1) (x) and (y) and  
39 (2) of this section, together with the reasons for such exemptions.

1 The salary and fringe benefits of all positions presently or  
2 hereafter exempted except for the chief executive officer of each  
3 agency, full-time members of boards and commissions, administrative  
4 assistants and confidential secretaries in the immediate office of an  
5 elected state official, and the personnel listed in subsection(~~(s~~  
6 ~~(10))~~) (1) (j) through (~~(22))~~) (v) of this section, shall be  
7 determined by the (~~(state))~~) Washington personnel resources board.

8 Any person holding a classified position subject to the provisions  
9 of this chapter shall, when and if such position is subsequently  
10 exempted from the application of this chapter, be afforded the  
11 following rights: If such person previously held permanent status in  
12 another classified position, such person shall have a right of  
13 reversion to the highest class of position previously held, or to a  
14 position of similar nature and salary.

15 Any classified employee having civil service status in a classified  
16 position who accepts an appointment in an exempt position shall have  
17 the right of reversion to the highest class of position previously  
18 held, or to a position of similar nature and salary.

19 A person occupying an exempt position who is terminated from the  
20 position for gross misconduct or malfeasance does not have the right of  
21 reversion to a classified position as provided for in this section.

22 **Sec. 22.** RCW 41.06.076 and 1980 c 73 s 1 are each amended to read  
23 as follows:

24 In addition to the exemptions set forth in RCW 41.06.070, the  
25 provisions of this chapter shall not apply in the department of social  
26 and health services to the secretary; the secretary's executive  
27 assistant, if any; not to exceed six assistant secretaries, thirteen  
28 division directors, six regional directors; one confidential secretary  
29 for each of the above-named officers; not to exceed six bureau chiefs;  
30 and all superintendents of institutions of which the average daily  
31 population equals or exceeds one hundred residents: PROVIDED, That  
32 each such confidential secretary must meet the minimum qualifications  
33 for the class of secretary II as determined by the (~~(state))~~) Washington  
34 personnel resources board.

35 **Sec. 23.** RCW 41.06.079 and 1985 c 178 s 1 are each amended to read  
36 as follows:

1 In addition to the exemptions set forth in RCW 41.06.070, the  
2 provisions of this chapter shall not apply in the department of  
3 transportation to the secretary, a deputy secretary, an administrative  
4 assistant to the secretary, if any, one assistant secretary for each  
5 division designated pursuant to RCW 47.01.081, one confidential  
6 secretary for each of the above-named officers, up to six  
7 transportation district administrators and one confidential secretary  
8 for each district administrator, up to six additional new  
9 administrators or confidential secretaries designated by the secretary  
10 of the department of transportation and approved by the ((state))  
11 Washington personnel resources board pursuant to the provisions of RCW  
12 ((41.06.070(26))) 41.06.070(1)(z), the legislative liaison for the  
13 department, the state construction engineer, the state aid engineer,  
14 the personnel manager, the state project development engineer, the  
15 state maintenance and operations engineer, one confidential secretary  
16 for each of the last-named five positions, and a confidential secretary  
17 for the public affairs administrator. The individuals appointed under  
18 this section shall be exempt from the provisions of the state civil  
19 service law, and shall be paid salaries to be fixed by the governor in  
20 accordance with the procedure established by law for the fixing of  
21 salaries for individuals exempt from the operation of the state civil  
22 service law.

23 **Sec. 24.** RCW 41.06.093 and 1990 c 14 s 1 are each amended to read  
24 as follows:

25 In addition to the exemptions set forth in RCW 41.06.070, the  
26 provisions of this chapter shall not apply in the Washington state  
27 patrol to confidential secretaries of agency bureau chiefs, or their  
28 functional equivalent, and a confidential secretary for the chief of  
29 staff: PROVIDED, That each confidential secretary must meet the  
30 minimum qualifications for the class of secretary II as determined by  
31 the ((state)) Washington personnel resources board.

32 **Sec. 25.** RCW 41.06.110 and 1984 c 287 s 69 are each amended to  
33 read as follows:

34 (1) There is hereby created a ((state)) Washington personnel  
35 resources board composed of three members appointed by the governor,  
36 subject to confirmation by the senate. ((The first such board shall be  
37 appointed within thirty days after December 8, 1960, for terms of two,

1 ~~four, and six years.))~~ The members of the personnel board serving June  
2 30, 1993, shall be the members of the Washington personnel resources  
3 board, and they shall complete their terms as under the personnel  
4 board. Each odd-numbered year thereafter the governor shall appoint  
5 a member for a six-year term. Each member shall continue to hold  
6 office after the expiration of the member's term until a successor has  
7 been appointed. Persons so appointed shall have clearly demonstrated  
8 an interest and belief in the merit principle, shall not hold any other  
9 employment with the state, shall not have been an officer of a  
10 political party for a period of one year immediately prior to such  
11 appointment, and shall not be or become a candidate for partisan  
12 elective public office during the term to which they are appointed;

13 (2) Each member of the board shall be compensated in accordance  
14 with RCW 43.03.250. The members of the board may receive any number of  
15 daily payments for official meetings of the board actually attended.  
16 Members of the board shall also be reimbursed for travel expenses  
17 incurred in the discharge of their official duties in accordance with  
18 RCW 43.03.050 and 43.03.060.

19 (3) At its first meeting following the appointment of all of its  
20 members, and annually thereafter, the board shall elect a ~~((chairman))~~  
21 chair and ~~((vice-chairman))~~ vice-chair from among its members to serve  
22 one year. The presence of at least two members of the board shall  
23 constitute a quorum to transact business. A written public record  
24 shall be kept by the board of all actions of the board. The director  
25 ~~((of personnel))~~ shall serve as secretary.

26 (4) The board may appoint and compensate hearing officers to hear  
27 and conduct appeals until December 31, 1982. Such compensation shall  
28 be paid on a contractual basis for each hearing, in accordance with the  
29 provisions of chapter 43.88 RCW and rules adopted pursuant thereto, as  
30 they relate to personal service contracts.

31 **Sec. 26.** RCW 41.06.130 and 1982 1st ex.s. c 53 s 3 are each  
32 amended to read as follows:

33 The office of director of personnel is hereby established.

34 (1) ~~((Within ninety days after December 8, 1960, a director of~~  
35 ~~personnel shall be appointed. The merit system director then serving~~  
36 ~~under RCW 50.12.030, whose position is terminated by this chapter, may~~  
37 ~~serve as director of personnel hereunder until a permanent director of~~  
38 ~~personnel is appointed as herein provided, and may be appointed as~~

1 ~~director of personnel by the governor alone; or the governor may fill~~  
2 ~~the position in the manner hereinafter provided for subsequent~~  
3 ~~vacancies therein on the basis of competitive examination, in~~  
4 ~~conformance with board rules for competitive examinations, for which~~  
5 ~~examinations the merit system director is eligible.~~

6 ~~(2))~~ The director of personnel shall be appointed by the governor  
7 ~~((from a list of three names submitted to him by the board with its~~  
8 ~~recommendations. The names on such list shall be those of the three~~  
9 ~~standing highest upon competitive examination conducted by a committee~~  
10 ~~of three persons appointed by the board solely for that purpose~~  
11 ~~whenever the position is vacant. Only persons with substantial~~  
12 ~~experience in the field of personnel management are eligible to take~~  
13 ~~such examination)).~~ The governor shall consult with, but shall not be  
14 obligated by recommendations of the board. The director's appointment  
15 shall be subject to confirmation by the senate.

16 ~~((3))~~ (2) The director of personnel ~~((is removable for cause by))~~  
17 shall serve at the pleasure of the governor ~~((with the approval of a~~  
18 ~~majority of the board or by a majority of the board))~~.

19 ~~((4))~~ (3) The director of personnel shall direct and supervise  
20 all the department of personnel's administrative and technical  
21 activities in accordance with the provisions of this chapter and the  
22 rules ~~((and regulations approved and promulgated thereunder. He))~~  
23 adopted under it. The director shall prepare for consideration by the  
24 board proposed rules ~~((and regulations))~~ required by this chapter.  
25 ~~((His))~~ The director's salary shall be fixed by the ~~((board))~~ governor.

26 ~~((5))~~ (4) The director of personnel may delegate to any agency  
27 the authority to perform administrative and technical personnel  
28 activities if the agency requests such authority and the director of  
29 personnel is satisfied that the agency has the personnel management  
30 capabilities to effectively perform the delegated activities. The  
31 director of personnel shall prescribe standards and guidelines for the  
32 performance of delegated activities. If the director of personnel  
33 determines that an agency is not performing delegated activities within  
34 the prescribed standards and guidelines, the director shall withdraw  
35 the authority from the agency to perform such activities.

36 **Sec. 27.** RCW 41.06.150 and 1990 c 60 s 103 are each amended to  
37 read as follows:

1 The board shall adopt rules, consistent with the purposes and  
2 provisions of this chapter, as now or hereafter amended, and with the  
3 best standards of personnel administration, regarding the basis and  
4 procedures to be followed for:

5 (1) The reduction, dismissal, suspension, or demotion of an  
6 employee;

7 (2) Certification of names for vacancies, including departmental  
8 promotions, with the number of names equal to (~~four~~) six more names  
9 than there are vacancies to be filled, such names representing  
10 applicants rated highest on eligibility lists: PROVIDED, That when  
11 other applicants have scores equal to the lowest score among the names  
12 certified, their names shall also be certified;

13 (3) Examinations for all positions in the competitive and  
14 noncompetitive service;

15 (4) Appointments;

16 (5) Training and career development;

17 (6) Probationary periods of six to twelve months and rejections  
18 (~~therein~~) of probationary employees, depending on the job  
19 requirements of the class, except that entry level state park rangers  
20 shall serve a probationary period of twelve months;

21 (7) Transfers;

22 (8) Sick leaves and vacations;

23 (9) Hours of work;

24 (10) Layoffs when necessary and subsequent reemployment, both  
25 according to seniority;

26 (11) Determination of appropriate bargaining units within any  
27 agency: PROVIDED, That in making such determination the board shall  
28 consider the duties, skills, and working conditions of the employees,  
29 the history of collective bargaining by the employees and their  
30 bargaining representatives, the extent of organization among the  
31 employees, and the desires of the employees;

32 (12) Certification and decertification of exclusive bargaining  
33 representatives: PROVIDED, That after certification of an exclusive  
34 bargaining representative and upon the representative's request, the  
35 director shall hold an election among employees in a bargaining unit to  
36 determine by a majority whether to require as a condition of employment  
37 membership in the certified exclusive bargaining representative on or  
38 after the thirtieth day following the beginning of employment or the  
39 date of such election, whichever is the later, and the failure of an

1 employee to comply with such a condition of employment constitutes  
2 cause for dismissal: PROVIDED FURTHER, That no more often than once in  
3 each twelve-month period after expiration of twelve months following  
4 the date of the original election in a bargaining unit and upon  
5 petition of thirty percent of the members of a bargaining unit the  
6 director shall hold an election to determine whether a majority wish to  
7 rescind such condition of employment: PROVIDED FURTHER, That for  
8 purposes of this clause, membership in the certified exclusive  
9 bargaining representative is satisfied by the payment of monthly or  
10 other periodic dues and does not require payment of initiation,  
11 reinstatement, or any other fees or fines and includes full and  
12 complete membership rights: AND PROVIDED FURTHER, That in order to  
13 safeguard the right of nonassociation of public employees, based on  
14 bona fide religious tenets or teachings of a church or religious body  
15 of which such public employee is a member, such public employee shall  
16 pay to the union, for purposes within the program of the union as  
17 designated by such employee that would be in harmony with his or her  
18 individual conscience, an amount of money equivalent to regular union  
19 dues minus any included monthly premiums for union-sponsored insurance  
20 programs, and such employee shall not be a member of the union but is  
21 entitled to all the representation rights of a union member;

22 (13) Agreements between agencies and certified exclusive bargaining  
23 representatives providing for grievance procedures and collective  
24 negotiations on all personnel matters over which the appointing  
25 authority of the appropriate bargaining unit of such agency may  
26 lawfully exercise discretion;

27 (14) Written agreements may contain provisions for payroll  
28 deductions of employee organization dues upon authorization by the  
29 employee member and for the cancellation of such payroll deduction by  
30 the filing of a proper prior notice by the employee with the appointing  
31 authority and the employee organization: PROVIDED, That nothing  
32 contained herein permits or grants to any employee the right to strike  
33 or refuse to perform his or her official duties;

34 (15) Adoption and revision of a comprehensive classification plan  
35 for all positions in the classified service, based on investigation and  
36 analysis of the duties and responsibilities of each such position;

37 (16) Allocation and reallocation of positions within the  
38 classification plan;

1 (17) Adoption and revision of a state salary schedule to reflect  
2 the prevailing rates in Washington state private industries and other  
3 governmental units but the rates in the salary schedules or plans shall  
4 be increased if necessary to attain comparable worth under an  
5 implementation plan under RCW 41.06.155 and that, for institutions of  
6 higher education and related boards, shall be competitive for positions  
7 of a similar nature in the state or the locality in which an  
8 institution of higher education or related board is located, such  
9 adoption and revision subject to approval by the director of financial  
10 management in accordance with the provisions of chapter 43.88 RCW;

11 (18) Increment increases within the series of steps for each pay  
12 grade based on length of service for all employees whose standards of  
13 performance are such as to permit them to retain job status in the  
14 classified service;

15 (19) Providing for veteran's preference as required by existing  
16 statutes, with recognition of preference in regard to layoffs and  
17 subsequent reemployment for veterans and their ((widows)) surviving  
18 spouses by giving such eligible veterans and their ((widows)) surviving  
19 spouses additional credit in computing their seniority by adding to  
20 their unbroken state service, as defined by the board, the veteran's  
21 service in the military not to exceed five years. For the purposes of  
22 this section, "veteran" means any person who has one or more years of  
23 active military service in any branch of the armed forces of the United  
24 States or who has less than one year's service and is discharged with  
25 a disability incurred in the line of duty or is discharged at the  
26 convenience of the government and who, upon termination of such service  
27 has received an honorable discharge, a discharge for physical reasons  
28 with an honorable record, or a release from active military service  
29 with evidence of service other than that for which an undesirable, bad  
30 conduct, or dishonorable discharge shall be given: PROVIDED, HOWEVER,  
31 That the ((widow)) surviving spouse of a veteran is entitled to the  
32 benefits of this section regardless of the veteran's length of active  
33 military service: PROVIDED FURTHER, That for the purposes of this  
34 section "veteran" does not include any person who has voluntarily  
35 retired with twenty or more years of active military service and whose  
36 military retirement pay is in excess of five hundred dollars per month;

37 (20) Permitting agency heads to delegate the authority to appoint,  
38 reduce, dismiss, suspend, or demote employees within their agencies if  
39 such agency heads do not have specific statutory authority to so

1 delegate: PROVIDED, That the board may not authorize such delegation  
2 to any position lower than the head of a major subdivision of the  
3 agency;

4 (21) Assuring persons who are or have been employed in classified  
5 positions under chapter 28B.16 RCW before July 1, 1993, will be  
6 eligible for employment, reemployment, transfer, and promotion in  
7 respect to classified positions covered by this chapter;

8 (22) Affirmative action in appointment, promotion, transfer,  
9 recruitment, training, and career development; development and  
10 implementation of affirmative action goals and timetables; and  
11 monitoring of progress against those goals and timetables.

12 The board shall consult with the human rights commission in the  
13 development of rules pertaining to affirmative action. The department  
14 of personnel shall transmit a report annually to the human rights  
15 commission which states the progress each state agency has made in  
16 meeting affirmative action goals and timetables.

17 **Sec. 28.** RCW 41.06.155 and 1983 1st ex.s. c 75 s 6 are each  
18 amended to read as follows:

19 Salary changes necessary to achieve comparable worth shall be  
20 implemented during the 1983-85 biennium under a schedule developed by  
21 the department (~~in cooperation with the higher education personnel~~  
22 ~~board~~). Increases in salaries and compensation solely for the purpose  
23 of achieving comparable worth shall be made at least annually.  
24 Comparable worth for the jobs of all employees under this chapter shall  
25 be fully achieved not later than June 30, 1993.

26 **Sec. 29.** RCW 41.06.160 and 1985 c 94 s 2 are each amended to read  
27 as follows:

28 In preparing classification and salary schedules as set forth in  
29 RCW 41.06.150 as now or hereafter amended the department of personnel  
30 shall give full consideration to prevailing rates in other public  
31 employment and in private employment in this state. For this purpose  
32 the department shall undertake comprehensive salary and fringe benefit  
33 surveys (~~to be planned and conducted on a joint basis with the higher~~  
34 ~~education personnel board~~), with such surveys to be conducted in the  
35 year prior to the convening of every other one hundred five day regular  
36 session of the state legislature. In the year prior to the convening  
37 of each one hundred five day regular session during which a

1 comprehensive salary and fringe benefit survey is not conducted, the  
2 department shall plan and conduct (~~on a joint basis with the higher~~  
3 ~~education personnel board~~) a trend salary and fringe benefit survey.  
4 This survey shall measure average salary and fringe benefit movement  
5 for broad occupational groups which has occurred since the last  
6 comprehensive salary and fringe benefit survey was conducted. The  
7 results of each comprehensive and trend salary and fringe benefit  
8 survey shall be completed and forwarded by September 30 with a  
9 recommended state salary schedule to the governor and director of  
10 financial management for their use in preparing budgets to be submitted  
11 to the succeeding legislature. A copy of the data and supporting  
12 documentation shall be furnished by the department of personnel to the  
13 standing committees for appropriations of the senate and house of  
14 representatives.

15 In the case of comprehensive salary and fringe benefit surveys, the  
16 department shall furnish the following supplementary data in support of  
17 its recommended salary schedule:

18 (1) A total dollar figure which reflects the recommended increase  
19 or decrease in state salaries as a direct result of the specific salary  
20 and fringe benefit survey that has been conducted and which is  
21 categorized to indicate what portion of the increase or decrease is  
22 represented by salary survey data and what portion is represented by  
23 fringe benefit survey data;

24 (2) An additional total dollar figure which reflects the impact of  
25 recommended increases or decreases to state salaries based on other  
26 factors rather than directly on prevailing rate data obtained through  
27 the survey process and which is categorized to indicate the sources of  
28 the requests for deviation from prevailing rates and the reasons for  
29 the changes;

30 (3) A list of class codes and titles indicating recommended monthly  
31 salary ranges for all state classes under the control of the department  
32 of personnel with(~~-~~

33 ~~(a))~~ those salary ranges which do not substantially conform to the  
34 prevailing rates developed from the salary and fringe benefit survey  
35 distinctly marked and an explanation of the reason for the deviation  
36 included; (~~and~~

37 ~~(b) Those department of personnel classes which are substantially~~  
38 ~~the same as classes being used by the higher education personnel board~~

1 ~~clearly marked to show the commonality of the classes between the two~~  
2 ~~jurisdictions;))~~

3 (4) A supplemental salary schedule which indicates the additional  
4 salary to be paid state employees for hazardous duties or other  
5 considerations requiring extra compensation under specific  
6 circumstances. Additional compensation for these circumstances shall  
7 not be included in the basic salary schedule but shall be maintained as  
8 a separate pay schedule for purposes of full disclosure and visibility;  
9 and

10 (5) A supplemental salary schedule which indicates those cases  
11 where the board determines that prevailing rates do not provide similar  
12 salaries for positions that require or impose similar responsibilities,  
13 judgment, knowledge, skills, and working conditions. This  
14 supplementary salary schedule shall contain proposed salary adjustments  
15 necessary to eliminate any such dissimilarities in compensation.  
16 Additional compensation needed to eliminate such salary dissimilarities  
17 shall not be included in the basic salary schedule but shall be  
18 maintained as a separate salary schedule for purposes of full  
19 disclosure and visibility.

20 It is the intention of the legislature that requests for funds to  
21 support recommendations for salary deviations from the prevailing rate  
22 survey data shall be kept to a minimum, and that the requests be fully  
23 documented when forwarded by the department of personnel. (~~Further,~~  
24 ~~it is the intention of the legislature that the department of personnel~~  
25 ~~and the higher education personnel board jointly determine job classes~~  
26 ~~which are substantially common to both jurisdictions and that basic~~  
27 ~~salaries for these job classes shall be equal based on salary and~~  
28 ~~fringe benefit survey findings.))~~

29 Salary and fringe benefit survey information collected from private  
30 employers which identifies a specific employer with the salary and  
31 fringe benefit rates which that employer pays to its employees shall  
32 not be subject to public disclosure under chapter 42.17 RCW.

33 The first comprehensive salary and fringe benefit survey required  
34 by this section shall be completed and forwarded to the governor and  
35 the director of financial management by September 30, 1986. The first  
36 trend salary and fringe benefit survey required by this section shall  
37 be completed and forwarded to the governor and the director of  
38 financial management by September 30, 1988.

1       **Sec. 30.** RCW 41.06.163 and 1987 c 185 s 9 are each amended to read  
2 as follows:

3       (1) In the conduct of salary and fringe benefit surveys under RCW  
4 41.06.160 as now or hereafter amended, it is the intention of the  
5 legislature that the surveys be undertaken in a manner consistent with  
6 statistically accurate sampling techniques. For this purpose, a  
7 comprehensive salary and fringe benefit survey plan shall be submitted  
8 to the director of financial management, employee organizations, and  
9 the standing committees for appropriations of the senate and house of  
10 representatives six months before the beginning of each periodic survey  
11 required before regular legislative sessions. This comprehensive plan  
12 shall include but not be limited to the following:

13       (a) A complete explanation of the technical, statistical process to  
14 be used in the salary and fringe benefit survey including the  
15 percentage of accuracy expected from the planned statistical sample  
16 chosen for the survey and a definition of the term "prevailing rates"  
17 which is to be used in the planned survey;

18       (b) A comprehensive salary and fringe benefit survey model based on  
19 scientific statistical principles which:

20       (i) Encompasses the interrelationships among the various elements  
21 of the survey sample including sources of salary and fringe benefit  
22 data by organization type, size, and regional location;

23       (ii) Is representative of private and public employment in this  
24 state;

25       (iii) Ensures that, wherever practical, data from smaller, private  
26 firms are included and proportionally weighted in the survey sample;  
27 and

28       (iv) Indicates the methodology to be used in application of survey  
29 data to job classes used by state government;

30       (c) A prediction of the increase or decrease in total funding  
31 requirements expected to result from the pending salary and fringe  
32 benefit survey based on consumer price index information and other  
33 available trend data pertaining to Washington state salaries and fringe  
34 benefits.

35       (2) Every comprehensive survey plan shall fully consider fringe  
36 benefits as an element of compensation in addition to basic salary  
37 data. ~~((The plans prepared under this section shall be developed  
38 jointly by the department of personnel in conjunction with the higher  
39 education personnel board established under chapter 28B.16 RCW. All~~

1 ~~comprehensive salary and fringe benefit survey plans shall be submitted~~  
2 ~~on a joint signature basis by the department of personnel and the~~  
3 ~~higher education personnel board.))~~

4 (3) Interim or special surveys conducted under RCW 41.06.160 as now  
5 or hereafter amended shall conform when possible to the statistical  
6 techniques and principles developed for regular periodic surveys under  
7 this section.

8 (4) The term "fringe benefits" as used in this section and in  
9 conjunction with salary surveys shall include but not be limited to  
10 compensation for:

11 (a) Leave time, including vacation, holiday, civil, and personal  
12 leave;

13 (b) Employer retirement contributions;

14 (c) Health and insurance payments, including life, accident, and  
15 health insurance, workers' compensation, and sick leave; and

16 (d) Stock options, bonuses, and purchase discounts where  
17 appropriate.

18 **Sec. 31.** RCW 41.06.170 and 1981 c 311 s 19 are each amended to  
19 read as follows:

20 (1) The board or director, in the ((~~promulgation~~)) adoption of  
21 rules ((~~and regulations~~)) governing suspensions for cause, shall not  
22 authorize an appointing authority to suspend an employee for more than  
23 fifteen calendar days as a single penalty or more than thirty calendar  
24 days in any one calendar year as an accumulation of several penalties.  
25 The board or director shall require that the appointing authority give  
26 written notice to the employee not later than one day after the  
27 suspension takes effect, stating the reasons for and the duration  
28 thereof. ((~~The authority shall file a copy of the notice with the~~  
29 ~~director of personnel.~~))

30 (2) Any employee who is reduced, dismissed, suspended, or demoted,  
31 after completing his or her probationary period of service as provided  
32 by the rules ((~~and regulations~~)) of the board, or any employee who is  
33 adversely affected by a violation of the state civil service law,  
34 chapter 41.06 RCW((~~, as now or hereafter amended~~)), or rules  
35 ((~~promulgated pursuant thereto~~)) adopted under it, shall have the right  
36 to appeal to the personnel appeals board created by RCW 41.64.010 not  
37 later than thirty days after the effective date of such action. The  
38 employee shall be furnished with specified charges in writing when a

1 reduction, dismissal, suspension, or demotion action is taken. Such  
2 appeal shall be in writing.

3 (3) Any employee whose position has been exempted after July 1,  
4 1993, shall have the right to appeal to the personnel appeals board  
5 created by RCW 41.64.010 not later than thirty days after the effective  
6 date of such action.

7 (4) An employee incumbent in a position at the time of its  
8 allocation or reallocation, or the agency utilizing the position, may  
9 appeal the allocation or reallocation to the personnel appeals board  
10 created by RCW 41.64.010. Notice of such appeal must be filed in  
11 writing within thirty days of the action from which appeal is taken.

12 **Sec. 32.** RCW 41.06.186 and 1985 c 461 s 5 are each amended to read  
13 as follows:

14 The Washington personnel resources board shall adopt rules designed  
15 to terminate the state employment of any employee whose performance is  
16 so inadequate as to warrant termination.

17 **Sec. 33.** RCW 41.06.196 and 1985 c 461 s 6 are each amended to read  
18 as follows:

19 The Washington personnel resources board shall adopt rules designed  
20 to remove from supervisory positions those supervisors who in violation  
21 of the rules adopted under RCW 41.06.186 have tolerated the continued  
22 employment of employees under their supervision whose performance has  
23 warranted termination from state employment.

24 **Sec. 34.** RCW 41.06.280 and 1987 c 248 s 4 are each amended to read  
25 as follows:

26 There is hereby created a fund within the state treasury,  
27 designated as the "department of personnel service fund," to be used by  
28 the board as a revolving fund for the payment of salaries, wages, and  
29 operations required for the administration of the provisions of this  
30 chapter, applicable provisions of chapter 41.04 RCW, and chapter 41.60  
31 RCW. An amount not to exceed one and one-half percent of the approved  
32 allotments of salaries and wages for all positions in the classified  
33 service in each of the agencies subject to this chapter(~~(, except the~~  
34 ~~institutions of higher learning,)~~) shall be charged to the operations  
35 appropriations of each agency and credited to the department of  
36 personnel service fund as the allotments are approved pursuant to

1 chapter 43.88 RCW. Subject to the above limitations, the amount shall  
2 be charged against the allotments pro rata, at a rate to be fixed by  
3 the director from time to time which, together with income derived from  
4 services rendered under RCW 41.06.080, will provide the department with  
5 funds to meet its anticipated expenditures during the allotment period,  
6 including the training requirements in sections 9 and 12 of this act.

7 The director of personnel shall fix the terms and charges for  
8 services rendered by the department of personnel pursuant to RCW  
9 41.06.080, which amounts shall be credited to the department of  
10 personnel service fund and charged against the proper fund or  
11 appropriation of the recipient of such services on a quarterly basis.  
12 Payment for services so rendered under RCW 41.06.080 shall be made on  
13 a quarterly basis to the state treasurer and deposited by him in the  
14 department of personnel service fund.

15 Moneys from the department of personnel service fund shall be  
16 disbursed by the state treasurer by warrants on vouchers duly  
17 authorized by the board.

18 **Sec. 35.** RCW 41.06.340 and 1969 ex.s. c 215 s 13 are each amended  
19 to read as follows:

20 Each and every provision of RCW 41.56.140 through 41.56.190 shall  
21 be applicable to this chapter as it relates to state civil service  
22 employees and the ((state)) Washington personnel resources board, or  
23 its designee, whose final decision shall be appealable to the ((state))  
24 Washington personnel resources board, which is granted all powers and  
25 authority granted to the department of labor and industries by RCW  
26 41.56.140 through 41.56.190.

27 **Sec. 36.** RCW 41.06.350 and 1969 ex.s. c 152 s 1 are each amended  
28 to read as follows:

29 The ((state)) Washington personnel resources board is authorized to  
30 receive federal funds now available or hereafter made available for the  
31 assistance and improvement of public personnel administration, which  
32 may be expended in addition to the department of personnel service fund  
33 established by RCW 41.06.280.

34 **Sec. 37.** RCW 41.06.450 and 1982 c 208 s 10 are each amended to  
35 read as follows:

1 (1) By January 1, 1983, the Washington personnel resources board  
2 shall adopt rules applicable to each agency to ensure that information  
3 relating to employee misconduct or alleged misconduct is destroyed or  
4 maintained as follows:

5 (a) All such information determined to be false and all such  
6 information in situations where the employee has been fully exonerated  
7 of wrongdoing, shall be promptly destroyed;

8 (b) All such information having no reasonable bearing on the  
9 employee's job performance or on the efficient and effective management  
10 of the agency, shall be promptly destroyed;

11 (c) All other information shall be retained only so long as it has  
12 a reasonable bearing on the employee's job performance or on the  
13 efficient and effective management of the agency.

14 (2) Notwithstanding subsection (1) of this section, an agency may  
15 retain information relating to employee misconduct or alleged  
16 misconduct if:

17 (a) The employee requests that the information be retained; or

18 (b) The information is related to pending legal action or legal  
19 action may be reasonably expected to result.

20 (3) In adopting rules under this section, the Washington personnel  
21 resources board shall consult with the public disclosure commission to  
22 ensure that the public policy of the state, as expressed in chapter  
23 42.17 RCW, is adequately protected.

24 **Sec. 38.** RCW 41.06.475 and 1986 c 269 s 2 are each amended to read  
25 as follows:

26 The ((state)) Washington personnel resources board shall adopt  
27 rules, in cooperation with the secretary of social and health services,  
28 for the background investigation of persons being considered for state  
29 employment in positions directly responsible for the supervision, care,  
30 or treatment of children or developmentally disabled persons.

31 **Sec. 39.** RCW 41.48.140 and 1979 c 152 s 3 are each amended to read  
32 as follows:

33 Nothing in RCW 41.48.120 or 41.48.130 shall affect the power of the  
34 ((state)) Washington personnel resources board(~~(, the higher education~~  
35 ~~personnel board,)) or any other state personnel authority to establish  
36 sick leave ((regulations)) rules except as may be required under RCW  
37 41.48.120 or 41.48.130: PROVIDED, That each personnel board and~~

1 personnel authority shall establish the maximum number of working days  
2 an employee under its jurisdiction may be absent on account of sickness  
3 or accident disability without a medical certificate.

4 "Personnel authority" as used in this section, means a state  
5 agency, board, committee, or similar body having general authority to  
6 establish personnel ((regulations)) rules.

7 **Sec. 40.** RCW 41.50.804 and 1975-'76 2nd ex.s. c 105 s 17 are each  
8 amended to read as follows:

9 Nothing contained in this chapter shall be construed to alter any  
10 existing collective bargaining agreement until any such agreement has  
11 expired or until any such bargaining unit has been modified by action  
12 of the Washington personnel resources board as provided by law.

13 **Sec. 41.** RCW 41.64.090 and 1981 c 311 s 10 are each amended to  
14 read as follows:

15 (1) The board shall have jurisdiction to decide appeals filed on or  
16 after July 1, 1981, of employees under the jurisdiction of the  
17 ((state)) Washington personnel resources board pursuant to RCW  
18 41.06.170, as now or hereafter amended.

19 (2) The board shall have jurisdiction to decide appeals filed on or  
20 after July 1, 1993, of employees of institutions of higher education  
21 and related boards under the jurisdiction of the Washington personnel  
22 resources board pursuant to RCW 41.06.170. An appeal under this  
23 subsection by an employee of an institution of higher education or a  
24 related board shall be held in the county in which the institution is  
25 located or the county in which the person was employed when the appeal  
26 was filed.

27 **Sec. 42.** RCW 42.16.010 and 1983 1st ex.s. c 28 s 1 are each  
28 amended to read as follows:

29 (1) Except as provided otherwise in subsection (2) of this section,  
30 all state officers and employees shall be paid for services rendered  
31 from the first day of the month through the fifteenth day of the month  
32 and for services rendered from the sixteenth day of the month through  
33 the last calendar day of the month. Paydates for these two pay periods  
34 shall be established by the director of financial management through  
35 the administrative hearing process and the official paydates shall be  
36 established six months prior to the beginning of each subsequent

1 calendar year. Under no circumstance shall the payday be established  
2 more than ten days after the pay period in which the wages are earned  
3 except when the designated payday falls on Sunday, in which case the  
4 payday shall not be later than the following Monday. Payment shall be  
5 deemed to have been made by the established paydates if: (a) The  
6 salary warrant is available at the geographic work location at which  
7 the warrant is normally available to the employee; or (b) the salary  
8 has been electronically transferred into the employee's account at the  
9 employee's designated financial institution; or (c) the salary warrants  
10 are mailed at least two days before the established payday for those  
11 employees engaged in work in remote or varying locations from the  
12 geographic location at which the payroll is prepared, provided that the  
13 employee has requested payment by mail.

14 The office of financial management shall develop the necessary  
15 policies and operating procedures to assure that all remuneration for  
16 services rendered including basic salary, shift differential, standby  
17 pay, overtime, penalty pay, salary due based on contractual agreements,  
18 and special pay provisions, as provided for by law, Washington  
19 personnel resources board rules, agency policy or rule, or contract,  
20 shall be available to the employee on the designated payday.  
21 Overtime, penalty pay, and special pay provisions may be paid by the  
22 next following payday if the postponement of payment is attributable  
23 to: The employee's not making a timely or accurate report of the facts  
24 which are the basis for the payment, or the employer's lack of  
25 reasonable opportunity to verify the claim.

26 Compensable benefits payable because of separation from state  
27 service shall be paid with the earnings for the final period worked  
28 unless the employee separating has not provided the agency with the  
29 proper notification of intent to terminate.

30 One-half of the employee's basic monthly salary shall be paid in  
31 each pay period. Employees paid on an hourly basis or employees who  
32 work less than a full pay period shall be paid for actual salary  
33 earned.

34 (2) Subsection (1) of this section shall not apply in instances  
35 where it would conflict with contractual rights or, with the approval  
36 of the office of financial management, to short-term, intermittent,  
37 noncareer state employees, to student employees of institutions of  
38 higher education, and to liquor control agency managers who are paid a  
39 percentage of monthly liquor sales.

1       **Sec. 43.** RCW 42.17.2401 and 1991 c 200 s 404 are each amended to  
2 read as follows:

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

5       (1) The chief administrative law judge, the director of  
6 agriculture, the administrator of the office of marine safety, the  
7 administrator of the Washington basic health plan, the director of the  
8 department of services for the blind, the director of the state system  
9 of community and technical colleges, the director of community  
10 development, the secretary of corrections, the director of ecology, the  
11 commissioner of employment security, the chairman of the energy  
12 facility site evaluation council, the director of the energy office,  
13 the secretary of the state finance committee, the director of financial  
14 management, the director of fisheries, the executive secretary of the  
15 forest practices appeals board, the director of the gambling  
16 commission, the director of general administration, the secretary of  
17 health, the administrator of the Washington state health care  
18 authority, the executive secretary of the health care facilities  
19 authority, the executive secretary of the higher education facilities  
20 authority, (~~the director of the higher education personnel board,~~)  
21 the executive secretary of the horse racing commission, the executive  
22 secretary of the human rights commission, the executive secretary of  
23 the indeterminate sentence review board, the director of the department  
24 of information services, the director of the interagency committee for  
25 outdoor recreation, the executive director of the state investment  
26 board, the director of labor and industries, the director of licensing,  
27 the director of the lottery commission, the director of the office of  
28 minority and women's business enterprises, the director of parks and  
29 recreation, the director of personnel, the executive director of the  
30 public disclosure commission, the director of retirement systems, the  
31 director of revenue, the secretary of social and health services, the  
32 chief of the Washington state patrol, the executive secretary of the  
33 board of tax appeals, the director of trade and economic development,  
34 the secretary of transportation, the secretary of the utilities and  
35 transportation commission, the director of veterans affairs, the  
36 director of wildlife, the president of each of the regional and state  
37 universities and the president of The Evergreen State College, each  
38 district and each campus president of each state community college;

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

1 (3) Each professional staff member of the legislature; and  
2 (4) Central Washington University board of trustees, board of  
3 trustees of each community college, each member of the state board for  
4 community and technical colleges ((~~education~~)), state convention and  
5 trade center board of directors, committee for deferred compensation,  
6 Eastern Washington University board of trustees, Washington economic  
7 development finance authority, The Evergreen State College board of  
8 trustees, forest practices appeals board, forest practices board,  
9 gambling commission, Washington health care facilities authority,  
10 higher education coordinating board, higher education facilities  
11 authority, ((~~higher education personnel board~~)) horse racing  
12 commission, state housing finance commission, human rights commission,  
13 indeterminate sentence review board, board of industrial insurance  
14 appeals, information services board, interagency committee for outdoor  
15 recreation, state investment board, liquor control board, lottery  
16 commission, marine oversight board, oil and gas conservation committee,  
17 Pacific Northwest electric power and conservation planning council,  
18 parks and recreation commission, personnel appeals board, ((~~personnel~~  
19 ~~board~~)) board of pilotage ((~~commissioners~~)) commissioners, pollution  
20 control hearings board, public disclosure commission, public pension  
21 commission, shorelines hearing board, state employees' benefits board,  
22 board of tax appeals, transportation commission, University of  
23 Washington board of regents, utilities and transportation commission,  
24 Washington state maritime commission, Washington personnel resources  
25 board, Washington public power supply system executive board,  
26 Washington State University board of regents, Western Washington  
27 University board of trustees, and wildlife commission.

28 **Sec. 44.** RCW 43.01.170 and 1992 c 234 s 11 are each amended to  
29 read as follows:

30 In order to ensure that the state derives the expected benefits  
31 from the early retirement provisions of chapter 234, Laws of 1992, no  
32 state agency may hire persons who retire from state service under the  
33 provisions of chapter 234, Laws of 1992 as temporary or project  
34 employees, as defined by the ((~~state~~)) Washington personnel resources  
35 board for employees covered under chapter 41.06 RCW ((~~and by the higher~~  
36 ~~education personnel board for employees covered under chapter 28B.16~~  
37 ~~RCW~~)). Exceptions to this section may be granted by written approval  
38 from the director of the office of financial management if the director

1 finds that the temporary or project employment of a retiree is  
2 necessary to protect the public safety, protect against the loss of  
3 federal certification or loss of critical federal funds, or carry out  
4 functions so essential to the agency that even temporary suspension or  
5 delay of services would have a significant negative impact on the  
6 public. At the end of each three-month period in which exceptions are  
7 approved, the director shall forward a copy of any approvals, together  
8 with justification for the exceptions, to the fiscal committees of the  
9 legislature. Each forwarded approval shall include the name of the  
10 temporary or project employee, the agency and division or department  
11 requesting the employment, duration and cost of the proposed  
12 employment, and specific functions and duties to be carried out during  
13 the employment. This section shall expire June 30, 1995.

14 **Sec. 45.** RCW 43.03.028 and 1991 c 3 s 294 are each amended to read  
15 as follows:

16 (1) There is hereby created a state committee on agency officials'  
17 salaries to consist of seven members, or their designees, as follows:  
18 The president of the University of Puget Sound; the chairperson of the  
19 council of presidents of the state's four-year institutions of higher  
20 education; the chairperson of the ((State)) Washington personnel  
21 resources board; the president of the Association of Washington  
22 Business; the president of the Pacific Northwest Personnel Managers'  
23 Association; the president of the Washington State Bar Association; and  
24 the president of the Washington State Labor Council. If any of the  
25 titles or positions mentioned in this subsection are changed or  
26 abolished, any person occupying an equivalent or like position shall be  
27 qualified for appointment by the governor to membership upon the  
28 committee.

29 (2) The committee shall study the duties and salaries of the  
30 directors of the several departments and the members of the several  
31 boards and commissions of state government, who are subject to  
32 appointment by the governor or whose salaries are fixed by the  
33 governor, and of the chief executive officers of the following agencies  
34 of state government:

35 The arts commission; the human rights commission; the board of  
36 accountancy; the board of pharmacy; the capitol historical association  
37 and museum; the eastern Washington historical society; the Washington  
38 state historical society; the interagency committee for outdoor

1 recreation; the criminal justice training commission; the department of  
2 personnel; the state finance committee; the state library; the traffic  
3 safety commission; the horse racing commission; the advisory council on  
4 vocational education; the public disclosure commission; the state  
5 conservation commission; the commission on Hispanic affairs; the  
6 commission on Asian-American affairs; the state board for volunteer  
7 fire fighters; the transportation improvement board; the public  
8 ((employees)) employment relations commission; the forest practices  
9 appeals board; and the energy facilities site evaluation council.

10 The committee shall report to the governor or the chairperson of  
11 the appropriate salary fixing authority at least once in each fiscal  
12 biennium on such date as the governor may designate, but not later than  
13 seventy-five days prior to the convening of each regular session of the  
14 legislature during an odd-numbered year, its recommendations for the  
15 salaries to be fixed for each position.

16 (3) Committee members shall be reimbursed by the department of  
17 personnel for travel expenses under RCW 43.03.050 and 43.03.060.

18 **Sec. 46.** RCW 43.03.305 and 1986 c 155 s 2 are each amended to read  
19 as follows:

20 There is created a commission to be known as the Washington  
21 citizens' commission on salaries for elected officials, to consist of  
22 fifteen members appointed by the governor as provided in this section.

23 (1) Eight of the fifteen commission members shall be selected by  
24 lot by the secretary of state from among those registered voters  
25 eligible to vote at the general election held in November, 1986, and  
26 thereafter from among those registered voters eligible to vote at the  
27 time of the selection. One member shall be selected from each  
28 congressional district. The secretary shall establish policies and  
29 procedures for conducting the selection by lot. The policies and  
30 procedures shall include, but not be limited to, those for notifying  
31 persons selected and for providing a new selection from a congressional  
32 district if a person selected from the district declines appointment to  
33 the commission.

34 (2) The remaining seven of the fifteen commission members, all  
35 residents of this state, shall be selected jointly by the speaker of  
36 the house of representatives and the president of the senate. The  
37 persons selected under this subsection shall have had experience in the  
38 field of personnel management. Of these seven members, one shall be

1 selected from each of the following five sectors in this state:  
2 Private institutions of higher education; business; professional  
3 personnel management; legal profession; and organized labor. Of the  
4 two remaining members, one shall be a person recommended to the speaker  
5 and the president by the ((chairperson)) chair of the ((state))  
6 Washington personnel resources board and one shall be a person  
7 recommended by majority vote of the presidents of the state's four-year  
8 institutions of higher education.

9 (3) The secretary of state shall forward the names of persons  
10 selected under subsection (1) of this section and the speaker of the  
11 house of representatives and president of the senate shall forward the  
12 names of persons selected under subsection (2) of this section to the  
13 governor who shall appoint these persons to the commission. Except as  
14 provided in subsection (6) of this section, the names of persons  
15 selected for appointment to the commission shall be forwarded to the  
16 governor not later than February 15, 1987, and not later than the  
17 fifteenth day of February every four years thereafter.

18 (4) Members shall hold office for terms of four years, and no  
19 person may be appointed to more than two such terms. No member of the  
20 commission may be removed by the governor during his or her term of  
21 office unless for cause of incapacity, incompetence, neglect of duty,  
22 or malfeasance in office or for a disqualifying change of residence.

23 (5) No state official, public employee, or lobbyist, or immediate  
24 family member of the official, employee, or lobbyist, subject to the  
25 registration requirements of chapter 42.17 RCW is eligible for  
26 membership on the commission.

27 As used in this subsection the phrase "immediate family" means the  
28 parents, spouse, siblings, children, or dependent relative of the  
29 official, employee, or lobbyist whether or not living in the household  
30 of the official, employee, or lobbyist.

31 (6) Upon a vacancy in any position on the commission, a successor  
32 shall be selected and appointed to fill the unexpired term. The  
33 selection and appointment shall be concluded within thirty days of the  
34 date the position becomes vacant and shall be conducted in the same  
35 manner as originally provided.

36 **Sec. 47.** RCW 43.06.410 and 1985 c 442 s 1 are each amended to read  
37 as follows:

1        There is established within the office of the governor the  
2 Washington state internship program to assist students and state  
3 employees in gaining valuable experience and knowledge in various areas  
4 of state government. In administering the program, the governor shall:

5        (1) Consult with the secretary of state, the director of personnel,  
6 (~~the director of the higher education personnel board,~~) the  
7 commissioner of the employment security department, and representatives  
8 of labor;

9        (2) Encourage and assist agencies in developing intern positions;

10       (3) Develop and coordinate a selection process for placing  
11 individuals in intern positions. This selection process shall give due  
12 regard to the responsibilities of the state to provide equal employment  
13 opportunities;

14       (4) Develop and coordinate a training component of the internship  
15 program which balances the need for training and exposure to new ideas  
16 with the intern's and agency's need for on-the-job work experience;

17       (5) Work with institutions of higher education in developing the  
18 program, soliciting qualified applicants, and selecting participants;  
19 and

20       (6) Develop guidelines for compensation of the participants.

21       **Sec. 48.** RCW 43.06.425 and 1985 c 442 s 4 are each amended to read  
22 as follows:

23       The ((state)) Washington personnel resources board (~~and the higher  
24 education personnel board~~) shall ((each)) adopt rules to provide that:

25       (1) Successful completion of an internship under RCW 43.06.420  
26 shall be considered as employment experience at the level at which the  
27 intern was placed;

28       (2) Persons leaving classified or exempt positions in state  
29 government in order to take an internship under RCW 43.06.420: (a)  
30 Have the right of reversion to the previous position at any time during  
31 the internship or upon completion of the internship; and (b) shall  
32 continue to receive all fringe benefits as if they had never left their  
33 classified or exempt positions;

34       (3) Participants in the undergraduate internship program who were  
35 not public employees prior to accepting a position in the program  
36 receive sick leave allowances commensurate with other state employees;

37       (4) Participants in the executive fellows program who were not  
38 public employees prior to accepting a position in the program receive

1 sick and vacation leave allowances commensurate with other state  
2 employees.

3       **Sec. 49.** RCW 43.06.430 and 1985 c 442 s 5 are each amended to read  
4 as follows:

5       The ((state)) Washington personnel resources board shall adopt  
6 rules to provide that persons successfully completing an internship  
7 under the executive fellows program created under RCW 43.06.420 are  
8 eligible for positions in the career executive program under RCW  
9 41.06.430.

10       **Sec. 50.** RCW 43.33A.100 and 1981 c 219 s 3 are each amended to  
11 read as follows:

12       The state investment board shall maintain appropriate offices and  
13 employ such personnel as may be necessary to perform its duties.  
14 Employment by the investment board shall include but not be limited to  
15 an executive director, investment officers, and a confidential  
16 secretary, which positions are exempt from classified service under  
17 chapter 41.06 RCW. Employment of the executive director by the board  
18 shall be for a term of three years, and such employment shall be  
19 subject to confirmation of the state finance committee: PROVIDED, That  
20 nothing shall prevent the board from dismissing the director for cause  
21 before the expiration of the term nor shall anything prohibit the  
22 board, with the confirmation of the state finance committee, from  
23 employing the same individual as director in succeeding terms.  
24 Compensation levels for the investment officers employed by the  
25 investment board shall be established by the ((state)) Washington  
26 personnel resources board.

27       As of July 1, 1981, all employees classified under chapter 41.06  
28 RCW and engaged in duties assumed by the state investment board on July  
29 1, 1981, are assigned to the state investment board. The transfer  
30 shall not diminish any rights granted these employees under chapter  
31 41.06 RCW nor exempt the employees from any action which may occur  
32 thereafter in accordance with chapter 41.06 RCW.

33       All existing contracts and obligations pertaining to the functions  
34 transferred to the state investment board in this 1980 act shall remain  
35 in full force and effect, and shall be performed by the board. None of  
36 the transfers directed by this 1980 act shall affect the validity of

1 any act performed by a state entity or by any official or employee  
2 thereof prior to July 1, 1981.

3 **Sec. 51.** RCW 43.43.832 and 1990 c 3 s 1102 are each amended to  
4 read as follows:

5 (1) The legislature finds that businesses and organizations  
6 providing services to children, developmentally disabled persons, and  
7 vulnerable adults need adequate information to determine which  
8 employees or licensees to hire or engage. Therefore, the Washington  
9 state patrol criminal identification system may disclose, upon the  
10 request of a business or organization as defined in RCW 43.43.830, an  
11 applicant's record for convictions of offenses against children or  
12 other persons, convictions for crimes relating to financial  
13 exploitation, but only if the victim was a vulnerable adult,  
14 adjudications of child abuse in a civil action, the issuance of a  
15 protection order against the respondent under chapter 74.34 RCW, and  
16 disciplinary board final decisions and any subsequent criminal charges  
17 associated with the conduct that is the subject of the disciplinary  
18 board final decision. When necessary, applicants may be employed on a  
19 conditional basis pending completion of such a background  
20 investigation.

21 (2) The legislature also finds that the state board of education  
22 may request of the Washington state patrol criminal identification  
23 system information regarding a certificate applicant's record for  
24 convictions under subsection (1) of this section.

25 (3) The legislature also finds that law enforcement agencies, the  
26 office of the attorney general, prosecuting authorities, and the  
27 department of social and health services may request this same  
28 information to aid in the investigation and prosecution of child,  
29 developmentally disabled person, and vulnerable adult abuse cases and  
30 to protect children and adults from further incidents of abuse.

31 (4) The legislature further finds that the department of social and  
32 health services, when considering persons for state positions directly  
33 responsible for the care, supervision, or treatment of children,  
34 developmentally disabled persons, or vulnerable adults or when  
35 licensing or authorizing such persons or agencies pursuant to its  
36 authority under chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any  
37 later-enacted statute which purpose is to license or regulate a  
38 facility which handles vulnerable adults, must consider the information

1 listed in subsection (1) of this section. However, when necessary,  
2 persons may be employed on a conditional basis pending completion of  
3 the background investigation. The ((state)) Washington personnel  
4 resources board shall adopt rules to accomplish the purposes of this  
5 subsection as it applies to state employees.

6 **Sec. 52.** RCW 43.60A.906 and 1975-'76 2nd ex.s. c 115 s 16 are each  
7 amended to read as follows:

8 Nothing contained in this chapter shall be construed to alter any  
9 existing collective bargaining unit or the provisions of any existing  
10 collective bargaining agreement until any such agreement has expired or  
11 until any such bargaining unit has been modified by action of the  
12 Washington personnel resources board as provided by law.

13 **Sec. 53.** RCW 43.105.052 and 1992 c 20 s 10 are each amended to  
14 read as follows:

15 The department shall:

16 (1) Perform all duties and responsibilities the board delegates to  
17 the department, including but not limited to:

18 (a) The review of agency acquisition plans and requests; and

19 (b) Implementation of state-wide and interagency policies,  
20 standards, and guidelines;

21 (2) Make available information services to state agencies and local  
22 governments on a full cost-recovery basis. These services may include,  
23 but are not limited to:

24 (a) Telecommunications services for voice, data, and video;

25 (b) Mainframe computing services;

26 (c) Support for departmental and microcomputer evaluation,  
27 installation, and use;

28 (d) Equipment acquisition assistance, including leasing, brokering,  
29 and establishing master contracts;

30 (e) Facilities management services for information technology  
31 equipment, equipment repair, and maintenance service;

32 (f) Negotiation with local cable companies and local governments to  
33 provide for connection to local cable services to allow for access to  
34 these public and educational channels in the state;

35 (g) Office automation services;

36 (h) System development services; and

37 (i) Training.

1        These services are for discretionary use by customers and customers  
2 may elect other alternatives for service if those alternatives are more  
3 cost-effective or provide better service. Agencies may be required to  
4 use the backbone network portions of the telecommunications services  
5 during an initial start-up period not to exceed three years;

6        (3) Establish rates and fees for services provided by the  
7 department to assure that the services component of the department is  
8 self-supporting. A billing rate plan shall be developed for a two-year  
9 period to coincide with the budgeting process. The rate plan shall be  
10 subject to review at least annually by the customer oversight  
11 committees. The rate plan shall show the proposed rates by each cost  
12 center and will show the components of the rate structure as mutually  
13 determined by the department and the customer oversight committees.  
14 The same rate structure will apply to all user agencies of each cost  
15 center. The rate plan and any adjustments to rates shall be approved  
16 by the office of financial management. The services component shall  
17 not subsidize the operations of the planning component;

18        (4) With the advice of the information services board and agencies,  
19 develop a state strategic information technology plan and performance  
20 reports as required under RCW 43.105.160;

21        (5) Develop plans for the department's achievement of state-wide  
22 goals and objectives set forth in the state strategic information  
23 technology plan required under RCW 43.105.160. These plans shall  
24 address such services as telecommunications, central and distributed  
25 computing, local area networks, office automation, and end user  
26 computing. The department shall seek the advice of customer oversight  
27 committees and the board in the development of these plans;

28        (6) Under direction of the information services board and in  
29 collaboration with the department of personnel, (~~the higher education~~  
30 ~~personnel board,~~) and other agencies as may be appropriate, develop  
31 training plans and coordinate training programs that are responsive to  
32 the needs of agencies;

33        (7) Identify opportunities for the effective use of information  
34 services and coordinate appropriate responses to those opportunities;

35        (8) Assess agencies' projects, acquisitions, plans, or overall  
36 information processing performance as requested by the board, agencies,  
37 the director of financial management, or the legislature. Agencies may  
38 be required to reimburse the department for agency-requested reviews;

1 (9) Develop planning, budgeting, and expenditure reporting  
2 requirements, in conjunction with the office of financial management,  
3 for agencies to follow;

4 (10) Assist the office of financial management with budgetary and  
5 policy review of agency plans for information services;

6 (11) Provide staff support from the planning component to the board  
7 for:

8 (a) Meeting preparation, notices, and minutes;

9 (b) Promulgation of policies, standards, and guidelines adopted by  
10 the board;

11 (c) Supervision of studies and reports requested by the board;

12 (d) Conducting reviews and assessments as directed by the board;

13 (12) Be the lead agency in coordinating video telecommunications  
14 services for all state agencies and develop, pursuant to board  
15 policies, standards and common specifications for leased and purchased  
16 telecommunications equipment. The department shall not evaluate the  
17 merits of school curriculum, higher education course offerings, or  
18 other education and training programs proposed for transmission and/or  
19 reception using video telecommunications resources. Nothing in this  
20 section shall abrogate or abridge the legal responsibilities of  
21 licensees of telecommunications facilities as licensed by the federal  
22 communication commission on March 27, 1990; and

23 (13) Perform all other matters and things necessary to carry out  
24 the purposes and provisions of this chapter.

25 **Sec. 54.** RCW 43.131.090 and 1983 1st ex.s. c 27 s 4 are each  
26 amended to read as follows:

27 Unless the legislature specifies a shorter period of time, a  
28 terminated state agency shall continue in existence until June 30th of  
29 the next succeeding year for the purpose of concluding its affairs:  
30 PROVIDED, That the powers and authority of the state agency shall not  
31 be reduced or otherwise limited during this period. Unless otherwise  
32 provided:

33 (1) All employees of terminated state agencies classified under  
34 chapter 41.06 RCW, the state civil service law, shall be transferred as  
35 appropriate or as otherwise provided in the procedures adopted by the  
36 Washington personnel resources board pursuant to RCW 41.06.150;

37 (2) All documents and papers, equipment, or other tangible property  
38 in the possession of the terminated state agency shall be delivered to

1 the custody of the agency assuming the responsibilities of the  
2 terminated agency or if such responsibilities have been eliminated,  
3 documents and papers shall be delivered to the state archivist and  
4 equipment or other tangible property to the department of general  
5 administration;

6 (3) All funds held by, or other moneys due to, the terminated state  
7 agency shall revert to the fund from which they were appropriated, or  
8 if that fund is abolished to the general fund;

9 (4) Notwithstanding the provisions of RCW 34.05.020, all rules made  
10 by a terminated state agency shall be repealed, without further action  
11 by the state agency, at the end of the period provided in this section,  
12 unless assumed and reaffirmed by the agency assuming the related legal  
13 responsibilities of the terminated state agency;

14 (5) All contractual rights and duties of a state agency shall be  
15 assigned or delegated to the agency assuming the responsibilities of  
16 the terminated state agency, or if there is none to such agency as the  
17 governor shall direct.

18 **Sec. 55.** RCW 48.03.060 and 1981 c 339 s 2 are each amended to read  
19 as follows:

20 (1) Examinations within this state of any insurer domiciled or  
21 having its home offices in this state, other than a title insurer, made  
22 by the commissioner or ~~((his))~~ the commissioner's examiners and  
23 employees shall, except as to fees, mileage, and expense incurred as to  
24 witnesses, be at the expense of the state.

25 (2) Every other examination, whatsoever, or any part of the  
26 examination of any person domiciled or having its home offices in this  
27 state requiring travel and services outside this state, shall be made  
28 by the commissioner or by examiners designated by him and shall be at  
29 the expense of the person examined; but a domestic insurer shall not be  
30 liable for the compensation of examiners employed by the commissioner  
31 for such services outside this state.

32 (3) The person examined and liable therefor shall reimburse the  
33 state upon presentation of an itemized statement thereof, for the  
34 actual travel expenses of the commissioner's examiners, their  
35 reasonable living expense allowance, and their per diem compensation,  
36 including salary and the employer's cost of employee benefits, at a  
37 reasonable rate approved by the commissioner, incurred on account of  
38 the examination. Per diem salary and expenses for employees examining

1 insurers domiciled outside the state of Washington shall be established  
2 by the commissioner on the basis of the National Association of  
3 Insurance Commissioner's recommended salary and expense schedule for  
4 zone examiners, or the salary schedule established by the ((state))  
5 Washington personnel resources board and the expense schedule  
6 established by the office of financial management, whichever is higher.  
7 Domestic title insurer shall pay the examination expense and costs to  
8 the commissioner as itemized and billed by ((him)) the commissioner.

9 The commissioner or ((his)) the commissioner's examiners shall not  
10 receive or accept any additional emolument on account of any  
11 examination.

12 **Sec. 56.** RCW 49.46.010 and 1989 c 1 s 1 are each amended to read  
13 as follows:

14 As used in this chapter:

15 (1) "Director" means the director of labor and industries;

16 (2) "Wage" means compensation due to an employee by reason of  
17 employment, payable in legal tender of the United States or checks on  
18 banks convertible into cash on demand at full face value, subject to  
19 such deductions, charges, or allowances as may be permitted by  
20 ((regulations)) rules of the director;

21 (3) "Employ" includes to permit to work;

22 (4) "Employer" includes any individual, partnership, association,  
23 corporation, business trust, or any person or group of persons acting  
24 directly or indirectly in the interest of an employer in relation to an  
25 employee;

26 (5) "Employee" includes any individual employed by an employer but  
27 shall not include:

28 (a) Any individual (i) employed as a hand harvest laborer and paid  
29 on a piece rate basis in an operation which has been, and is generally  
30 and customarily recognized as having been, paid on a piece rate basis  
31 in the region of employment; (ii) who commutes daily from his or her  
32 permanent residence to the farm on which he or she is employed; and  
33 (iii) who has been employed in agriculture less than thirteen weeks  
34 during the preceding calendar year;

35 (b) Any individual employed in casual labor in or about a private  
36 home, unless performed in the course of the employer's trade, business,  
37 or profession;

1 (c) Any individual employed in a bona fide executive,  
2 administrative, or professional capacity or in the capacity of outside  
3 salesman as those terms are defined and delimited by (~~regulations~~)  
4 rules of the director. However, those terms shall be defined and  
5 delimited by the (~~state~~) Washington personnel resources board  
6 pursuant to chapter 41.06 RCW (~~and the higher education personnel~~  
7 ~~board pursuant to chapter 28B.16 RCW for employees employed under their~~  
8 ~~respective jurisdictions~~);

9 (d) Any individual engaged in the activities of an educational,  
10 charitable, religious, state or local governmental body or agency, or  
11 nonprofit organization where the employer-employee relationship does  
12 not in fact exist or where the services are rendered to such  
13 organizations gratuitously. If the individual receives reimbursement  
14 in lieu of compensation for normally incurred out-of-pocket expenses or  
15 receives a nominal amount of compensation per unit of voluntary service  
16 rendered, an employer-employee relationship is deemed not to exist for  
17 the purpose of this section or for purposes of membership or  
18 qualification in any state, local government or publicly supported  
19 retirement system other than that provided under chapter 41.24 RCW;

20 (e) Any individual employed full time by any state or local  
21 governmental body or agency who provides voluntary services but only  
22 with regard to the provision of the voluntary services. The voluntary  
23 services and any compensation therefor shall not affect or add to  
24 qualification, entitlement or benefit rights under any state, local  
25 government, or publicly supported retirement system other than that  
26 provided under chapter 41.24 RCW;

27 (f) Any newspaper vendor or carrier;

28 (g) Any carrier subject to regulation by Part 1 of the Interstate  
29 Commerce Act;

30 (h) Any individual engaged in forest protection and fire prevention  
31 activities;

32 (i) Any individual employed by any charitable institution charged  
33 with child care responsibilities engaged primarily in the development  
34 of character or citizenship or promoting health or physical fitness or  
35 providing or sponsoring recreational opportunities or facilities for  
36 young people or members of the armed forces of the United States;

37 (j) Any individual whose duties require that he or she reside or  
38 sleep at the place of his or her employment or who otherwise spends a

1 substantial portion of his or her work time subject to call, and not  
2 engaged in the performance of active duties;

3 (k) Any resident, inmate, or patient of a state, county, or  
4 municipal correctional, detention, treatment or rehabilitative  
5 institution;

6 (l) Any individual who holds a public elective or appointive office  
7 of the state, any county, city, town, municipal corporation or quasi  
8 municipal corporation, political subdivision, or any instrumentality  
9 thereof, or any employee of the state legislature;

10 (m) All vessel operating crews of the Washington state ferries  
11 operated by the department of transportation;

12 (n) Any individual employed as a seaman on a vessel other than an  
13 American vessel.

14 (6) "Occupation" means any occupation, service, trade, business,  
15 industry, or branch or group of industries or employment or class of  
16 employment in which employees are gainfully employed.

17 **Sec. 57.** RCW 49.74.020 and 1985 c 365 s 9 are each amended to read  
18 as follows:

19 If the commission reasonably believes that a state agency, an  
20 institution of higher education, or the state patrol has failed to  
21 comply with an affirmative action rule adopted under RCW  
22 ~~((28B-16-100,))~~ 41.06.150~~((,))~~ or 43.43.340, the commission shall  
23 notify the director of the state agency, president of the institution  
24 of higher education, or chief of the Washington state patrol of the  
25 noncompliance, as well as the director of personnel ~~((or the director  
26 of the higher education personnel board, whichever is appropriate))~~.  
27 The commission shall give the director of the state agency, president  
28 of the institution of higher education, or chief of the Washington  
29 state patrol an opportunity to be heard on the failure to comply.

30 **Sec. 58.** RCW 49.74.030 and 1985 c 365 s 10 are each amended to  
31 read as follows:

32 The commission in conjunction with the department of personnel ~~((,  
33 the higher education personnel board,))~~ or the state patrol, whichever  
34 is appropriate, shall attempt to resolve the noncompliance through  
35 conciliation. If an agreement is reached for the elimination of  
36 noncompliance, the agreement shall be reduced to writing and an order  
37 shall be issued by the commission setting forth the terms of the

1 agreement. The noncomplying state agency, institution of higher  
2 education, or state patrol shall make a good faith effort to conciliate  
3 and make a full commitment to correct the noncompliance with any action  
4 that may be necessary to achieve compliance, provided such action is  
5 not inconsistent with the rules adopted under RCW (~~(28B-16-100(20),)~~)  
6 41.06.150(21)(~~7~~) and 43.43.340(5), whichever is appropriate.

7 **Sec. 59.** RCW 50.13.060 and 1981 c 177 s 1 are each amended to read  
8 as follows:

9 (1) Governmental agencies, including law enforcement agencies,  
10 prosecuting agencies, and the executive branch, whether state, local,  
11 or federal shall have access to information or records deemed private  
12 and confidential under this chapter if the information or records are  
13 needed by the agency for official purposes and:

14 (a) The agency submits an application in writing to the employment  
15 security department for the records or information containing a  
16 statement of the official purposes for which the information or records  
17 are needed and specific identification of the records or information  
18 sought from the department; and

19 (b) The director, commissioner, chief executive, or other official  
20 of the agency has verified the need for the specific information in  
21 writing either on the application or on a separate document; and

22 (c) The agency requesting access has served a copy of the  
23 application for records or information on the individual or employing  
24 unit whose records or information are sought and has provided the  
25 department with proof of service. Service shall be made in a manner  
26 which conforms to the civil rules for superior court. The requesting  
27 agency shall include with the copy of the application a statement to  
28 the effect that the individual or employing unit may contact the public  
29 records officer of the employment security department to state any  
30 objections to the release of the records or information. The  
31 employment security department shall not act upon the application of  
32 the requesting agency until at least five days after service on the  
33 concerned individual or employing unit. The employment security  
34 department shall consider any objections raised by the concerned  
35 individual or employing unit in deciding whether the requesting agency  
36 needs the information or records for official purposes.

37 (2) The requirements of subsections (1) and (7) of this section  
38 shall not apply to the state legislative branch. The state legislature

1 shall have access to information or records deemed private and  
2 confidential under this chapter, if the legislature or a legislative  
3 committee finds that the information or records are necessary and for  
4 official purposes. If the employment security department does not make  
5 information or records available as provided in this subsection, the  
6 legislature may exercise its authority granted by chapter 44.16 RCW.

7 (3) In cases of emergency the governmental agency requesting access  
8 shall not be required to formally comply with the provisions of  
9 subsection (1) of this section at the time of the request if the  
10 procedures required by subsection (1) of this section are complied with  
11 by the requesting agency following the receipt of any records or  
12 information deemed private and confidential under this chapter. An  
13 emergency is defined as a situation in which irreparable harm or damage  
14 could occur if records or information are not released immediately.

15 (4) The requirements of subsection (1)(c) of this section shall not  
16 apply to governmental agencies where the procedures would frustrate the  
17 investigation of possible violations of criminal laws.

18 (5) Governmental agencies shall have access to certain records or  
19 information, limited to such items as names, addresses, social security  
20 numbers, and general information about benefit entitlement or employer  
21 information possessed by the department, for comparison purposes with  
22 records or information possessed by the requesting agency to detect  
23 improper or fraudulent claims, or to determine potential tax liability  
24 or employer compliance with registration and licensing requirements.  
25 In those cases the governmental agency shall not be required to comply  
26 with subsection (1)(c) of this section, but the requirements of the  
27 remainder of subsection (1) must be satisfied.

28 (6) Disclosure to governmental agencies of information or records  
29 obtained by the employment security department from the federal  
30 government shall be governed by any applicable federal law or any  
31 agreement between the federal government and the employment security  
32 department where so required by federal law. When federal law does not  
33 apply to the records or information state law shall control.

34 (7) The disclosure of any records or information by a governmental  
35 agency which has obtained the records or information under this section  
36 is prohibited unless the disclosure is directly connected to the  
37 official purpose for which the records or information were obtained.

38 (8) In conducting periodic salary or fringe benefit studies  
39 pursuant to law, the department of personnel (~~and the higher education~~

1 personnel board)) shall have access to records of the employment  
2 security department as may be required for such studies. For such  
3 purposes, the requirements of subsection (1)(c) of this section need  
4 not apply.

5 **Sec. 60.** RCW 70.24.300 and 1988 c 206 s 607 are each amended to  
6 read as follows:

7 The ((state)) Washington personnel resources board((~~the higher~~  
8 ~~education personnel board,~~)) and each unit of local government shall  
9 determine whether any employees under their jurisdiction have a  
10 substantial likelihood of exposure in the course of their employment to  
11 the human immunodeficiency virus. If so, the agency or unit of  
12 government shall adopt rules requiring appropriate training and  
13 education for the employees on the prevention, transmission, and  
14 treatment of AIDS. The rules shall specifically provide for such  
15 training and education for law enforcement, correctional, and health  
16 care workers. The ((state)) Washington personnel resources board((~~the higher~~  
17 ~~education personnel board,~~)) and each unit of local  
18 government shall work with the office on AIDS under RCW 70.24.250 to  
19 develop the educational and training material necessary for employees.

20 **Sec. 61.** RCW 70.87.120 and 1983 c 123 s 13 are each amended to  
21 read as follows:

22 (1) The department shall appoint and employ inspectors, as may be  
23 necessary to carry out the provisions of this chapter, under the  
24 provisions of the rules adopted by the ((state)) Washington personnel  
25 resources board in accordance with chapter 41.06 RCW.

26 (2) The department shall cause all conveyances to be inspected and  
27 tested at least once each year. Inspectors have the right during  
28 reasonable hours to enter into and upon any building or premises in the  
29 discharge of their official duties, for the purpose of making any  
30 inspection or testing any conveyance contained thereon or therein.  
31 Inspections and tests shall conform with the rules adopted by the  
32 department. The department shall inspect all installations before it  
33 issues any initial permit for operation. Permits shall not be issued  
34 until the fees required by this chapter have been paid.

35 (3) If inspection shows a conveyance to be in an unsafe condition,  
36 the department shall issue an inspection report in writing requiring  
37 the repairs or alterations to be made to the conveyance that are

1 necessary to render it safe and may also suspend or revoke a permit  
2 pursuant to RCW 70.87.125 or order the operation of a conveyance  
3 discontinued pursuant to RCW 70.87.145.

4 (4) The department may investigate accidents and alleged or  
5 apparent violations of this chapter.

6 **Sec. 62.** RCW 72.01.210 and 1981 c 136 s 69 are each amended to  
7 read as follows:

8 The secretary of corrections shall appoint chaplains for the state  
9 correctional institutions for convicted felons; and the secretary of  
10 social and health services shall appoint chaplains for the correctional  
11 institutions for juveniles found delinquent by the juvenile courts; and  
12 the secretary of corrections and the secretary of social and health  
13 services shall appoint one or more chaplains for other custodial,  
14 correctional and mental institutions under their control. The  
15 chaplains so appointed shall have the qualifications and shall be  
16 compensated in an amount, as shall hereafter be recommended by the  
17 department and approved by the ((state)) Washington personnel resources  
18 board.

19 **Sec. 63.** RCW 72.02.045 and 1988 c 143 s 2 are each amended to read  
20 as follows:

21 The superintendent of each institution has the powers, duties, and  
22 responsibilities specified in this section.

23 (1) Subject to the rules of the department, the superintendent is  
24 responsible for the supervision and management of the institution, the  
25 grounds and buildings, the subordinate officers and employees, and the  
26 prisoners committed, admitted, or transferred to the institution.

27 (2) Subject to the rules of the department and the director of the  
28 division of prisons or his or her designee and the ((state)) Washington  
29 personnel resources board, the superintendent shall appoint all  
30 subordinate officers and employees.

31 (3) The superintendent shall be the custodian of all funds and  
32 valuable personal property of convicted persons as may be in their  
33 possession upon admission to the institution, or which may be sent or  
34 brought in to such persons, or earned by them while in custody, or  
35 which shall be forwarded to the superintendent on behalf of convicted  
36 persons. All such funds shall be deposited in the personal account of  
37 the convicted person and the superintendent shall have authority to

1 disburse moneys from such person's personal account for the personal  
2 and incidental needs of the convicted person as may be deemed  
3 reasonably necessary. When convicted persons are released from the  
4 confines of the institution either on parole, transfer, or discharge,  
5 all funds and valuable personal property in the possession of the  
6 superintendent belonging to such convicted persons shall be delivered  
7 to them. In no case shall the state of Washington, or any state  
8 officer, including state elected officials, employees, or volunteers,  
9 be liable for the loss of such personal property, except upon a showing  
10 that the loss was occasioned by the intentional act, gross negligence,  
11 or negligence of the officer, official, employee, or volunteer, and  
12 that the actions or omissions occurred while the person was performing,  
13 or in good faith purporting to perform, his or her official duties.  
14 Recovery of damages for loss of personal property while in the custody  
15 of the superintendent under this subsection shall be limited to the  
16 lesser of the market value of the item lost at the time of the loss, or  
17 the original purchase price of the item or, in the case of hand-made  
18 goods, the materials used in fabricating the item.

19 (4) The superintendent, subject to the approval of the director of  
20 the division of prisons and the secretary, shall make, amend, and  
21 repeal rules for the administration, supervision, discipline, and  
22 security of the institution.

23 (5) When in the superintendent's opinion an emergency exists, the  
24 superintendent may promulgate temporary rules for the governance of the  
25 institution, which shall remain in effect until terminated by the  
26 director of the division of prisons or the secretary.

27 (6) The superintendent shall perform such other duties as may be  
28 prescribed.

29 **Sec. 64.** RCW 72.09.220 and 1981 c 136 s 33 are each amended to  
30 read as follows:

31 Nothing contained in sections 1 through 13 and 16 through 23 of  
32 this act may be construed to downgrade any rights of any employee under  
33 any existing collective bargaining unit or the provisions of any  
34 existing collective bargaining agreement until the agreement has  
35 expired or until the bargaining unit has been modified by action of the  
36 Washington personnel resources board as provided by law.

1       **Sec. 65.** RCW 72.19.050 and 1979 c 141 s 226 are each amended to  
2 read as follows:

3       The superintendent shall have the following powers, duties and  
4 responsibilities:

5       (1) Subject to the rules (~~(and regulations)~~) of the department, the  
6 superintendent shall have the supervision and management of the  
7 institution, of the grounds and buildings, the subordinate officers and  
8 employees, and of the juveniles received at such institution and the  
9 custody of such persons until released or transferred as provided by  
10 law.

11       (2) Subject to the rules (~~(and regulations)~~) of the department and  
12 the (~~(state)~~) Washington personnel resources board, appoint all  
13 subordinate officers and employees.

14       (3) The superintendent shall be the custodian of the personal  
15 property of all juveniles in the institution and shall make rules (~~(and~~  
16 ~~regulations)~~) governing the accounting and disposition of all moneys  
17 received by such juveniles, not inconsistent with the law, and subject  
18 to the approval of the secretary.

19       **Sec. 66.** RCW 74.09.150 and 1959 c 26 s 74.09.150 are each amended  
20 to read as follows:

21       All personnel employed in the administration of the medical care  
22 program shall be covered by the existing merit system under the  
23 (~~(state)~~) Washington personnel resources board (~~(or its successor)~~).

24       **Sec. 67.** RCW 88.46.927 and 1991 c 200 s 436 are each amended to  
25 read as follows:

26       Nothing contained in RCW 88.46.921 through 88.46.926 may be  
27 construed to alter any existing collective bargaining unit or the  
28 provisions of any existing collective bargaining agreement until the  
29 agreement has expired or until the bargaining unit has been modified by  
30 action of the Washington personnel resources board as provided by law.

31       NEW SECTION. **Sec. 68.** The following acts or parts of acts are  
32 each repealed:

33       (1) RCW 28B.16.010 and 1969 ex.s. c 36 s 1;

34       (2) RCW 28B.16.020 and 1985 c 461 s 8, 1985 c 365 s 2, 1983 1st  
35 ex.s. c 75 s 1, 1982 1st ex.s. c 53 s 14, 1977 ex.s. c 169 s 41, & 1969  
36 ex.s. c 36 s 2;

- 1 (3) RCW 28B.16.030 and 1969 ex.s. c 36 s 3;
- 2 (4) RCW 28B.16.040 and 1990 c 60 s 201, 1982 1st ex.s. c 53 s 15,
- 3 1977 ex.s. c 94 s 1, & 1969 ex.s. c 36 s 4;
- 4 (5) RCW 28B.16.041 and 1985 c 442 s 9;
- 5 (6) RCW 28B.16.042 and 1985 c 266 s 1;
- 6 (7) RCW 28B.16.043 and 1991 c 238 s 107;
- 7 (8) RCW 28B.16.060 and 1984 c 287 s 63, 1981 c 338 s 19, 1975-'76
- 8 2nd ex.s. c 34 s 73, & 1969 ex.s. c 36 s 6;
- 9 (9) RCW 28B.16.070 and 1983 c 23 s 1 & 1969 ex.s. c 36 s 7;
- 10 (10) RCW 28B.16.080 and 1969 ex.s. c 36 s 8;
- 11 (11) RCW 28B.16.090 and 1969 ex.s. c 36 s 9;
- 12 (12) RCW 28B.16.100 and 1990 c 60 s 202;
- 13 (13) RCW 28B.16.101 and 1982 1st ex.s. c 53 s 19 & 1977 ex.s. c 152
- 14 s 9;
- 15 (14) RCW 28B.16.105 and 1985 c 461 s 10, 1982 1st ex.s. c 53 s 17,
- 16 & 1977 ex.s. c 152 s 13;
- 17 (15) RCW 28B.16.110 and 1985 c 94 s 1, 1980 c 11 s 3, 1979 c 151 s
- 18 16, 1977 ex.s. c 152 s 10, 1975 1st ex.s. c 122 s 2, & 1969 ex.s. c 36
- 19 s 11;
- 20 (16) RCW 28B.16.112 and 1987 c 185 s 3, 1986 c 158 s 4, 1979 c 151
- 21 s 17, & 1977 ex.s. c 152 s 11;
- 22 (17) RCW 28B.16.113 and 1977 ex.s. c 152 s 12;
- 23 (18) RCW 28B.16.116 and 1983 1st ex.s. c 75 s 3;
- 24 (19) RCW 28B.16.120 and 1969 ex.s. c 36 s 12;
- 25 (20) RCW 28B.16.130 and 1969 ex.s. c 36 s 13;
- 26 (21) RCW 28B.16.140 and 1969 ex.s. c 36 s 14;
- 27 (22) RCW 28B.16.150 and 1969 ex.s. c 36 s 15;
- 28 (23) RCW 28B.16.160 and 1988 c 202 s 27, 1971 c 81 s 72, & 1969
- 29 ex.s. c 36 s 16;
- 30 (24) RCW 28B.16.170 and 1969 ex.s. c 36 s 26;
- 31 (25) RCW 28B.16.180 and 1973 1st ex.s. c 46 s 3 & 1969 ex.s. c 36
- 32 s 17;
- 33 (26) RCW 28B.16.190 and 1969 ex.s. c 36 s 19;
- 34 (27) RCW 28B.16.200 and 1979 c 151 s 18 and 1969 ex.s. c 36 s 20;
- 35 (28) RCW 28B.16.210 and 1969 ex.s. c 36 s 29;
- 36 (29) RCW 28B.16.220 and 1969 ex.s. c 36 s 31;
- 37 (30) RCW 28B.16.230 and 1973 c 62 s 6 & 1969 ex.s. c 215 s 14;
- 38 (31) RCW 28B.16.255 and 1985 c 461 s 11;
- 39 (32) RCW 28B.16.265 and 1985 c 461 s 12;

- 1 (33) RCW 28B.16.275 and 1985 c 461 s 13;  
2 (34) RCW 28B.16.300 and 1990 c 204 s 4;  
3 (35) RCW 28B.16.900 and 1969 ex.s. c 36 s 18;  
4 (36) RCW 28B.16.910 and 1969 ex.s. c 36 s 27;  
5 (37) RCW 28B.16.920 and 1969 ex.s. c 36 s 30; and  
6 (38) RCW 28B.16.930 and 1969 ex.s. c 36 s 28.

7 NEW SECTION. **Sec. 69.** RCW 41.06.430 and 1990 c 60 s 102 and 1980  
8 c 118 s 7 are each repealed.

9 NEW SECTION. **Sec. 70.** RCW 28B.16.240 is recodified as a new  
10 section in chapter 41.06 RCW.

11 NEW SECTION. **Sec. 71.** RCW 41.06.230, 41.06.240, 41.06.310, and  
12 41.64.900 are each decodified.

13 NEW SECTION. **Sec. 72.** (1) The legislature recognizes that the  
14 most vital asset of state government is the people who design, manage,  
15 and implement its programs and deliver its services. The quality and  
16 effectiveness of state service depends on many factors, including  
17 adequate resources, personal dedication, proper training, skilled and  
18 sensitive management, and the removal of artificial barriers to  
19 personal and organizational success.

20 (2) The legislature further recognizes that due to increasing  
21 demands on state government requiring new levels of efficiency and  
22 effectiveness in service delivery, and the impact of the total system  
23 of laws and rules governing recruitment, development, and management of  
24 personnel resources in state government, it is imperative to  
25 immediately and comprehensively examine all aspects of that system, and  
26 make whatever changes are indicated forthwith.

27 (3) To that end, there is hereby created a study task force  
28 composed of the following members: Three members of the house of  
29 representatives appointed by the speaker of the house of  
30 representatives, three members of the senate appointed by the president  
31 of the senate, five members appointed by the governor, and one  
32 representative from each employee organization that has at least five  
33 hundred dues-paying members employed by the state of Washington. The  
34 charge of the task force is to make a comprehensive recommendation to  
35 the legislature no later than December 1, 1993, in the form of proposed  
36 legislation, regarding the provision of personnel resources in state

1 government. The task force shall address at least the following  
2 issues:

3 (a) Overall organization of the personnel resources apparatus in  
4 state government:

5 (i) Consolidation or decentralization of all personnel services;  
6 and

7 (ii) The appropriate role and degree of control of the governor,  
8 the Washington personnel resources board, agency directors, and other  
9 elected officials;

10 (b) Efficiency in management and service delivery:

11 (i) Identify the principal barriers to, and successes in, effective  
12 recruitment, retention, development, and assignment of a quality work  
13 force in state service;

14 (ii) Analyze the extent to which improvement in these areas is best  
15 achieved by changes in civil service reform, or from management and  
16 organizational initiatives of the governor, agency directors, employee  
17 organizations, employees, and other elected officials; and

18 (iii) Develop principles regarding the purchase of services by  
19 state government;

20 (c) Employee rights and participation:

21 (i) Identify areas and issues that are appropriately decided  
22 cooperatively between classified employees and management through  
23 collective bargaining or otherwise, and those areas that are inherently  
24 management prerogatives and responsibilities;

25 (ii) Analyze the full range of collective bargaining or other  
26 collaborative process issues, and identify those features that are the  
27 most effective and equitable, including grievance procedures,  
28 bargaining units, representation, union security, negotiations, and  
29 unfair labor practices;

30 (iii) Analyze the duty of the state to provide job stability and  
31 termination rights such as notice for exempt employees and develop a  
32 policy of equitable protection for exempt employees; and

33 (d) Any other related issue that comes to light during the course  
34 of the study may properly be examined. This list of issues is in no  
35 way intended to limit the inquiry and exploration of the task force in  
36 its pursuit of its principal charge.

37 (4) In developing its recommendation the task force shall draw upon  
38 the following resources:

1 (a) Full and frequent consultation with particular interest groups,  
2 including state employees and their organizations, managers, and  
3 directors at all levels of state service, elected officials, and  
4 academic and private sector personnel resource specialists;

5 (b) The experience of other states, particularly those who have  
6 recently made significant changes in this area; and

7 (c) The experience of private sector organizations that are  
8 recognized for innovative and effective accomplishment in this field.

9 (5) The task force shall meet at least monthly, and shall hold  
10 meetings in different regions of the state. Staff services shall be  
11 provided by legislative and governor's office staff.

12 (6) This section shall expire December 31, 1993.

13 NEW SECTION. **Sec. 73.** Section 67 of this act shall take effect  
14 July 1, 1997.

15 NEW SECTION. **Sec. 74.** Sections 1 through 66 and 68 through 71 of  
16 this act are necessary for the immediate preservation of the public  
17 peace, health, or safety, or support of the state government and its  
18 existing public institutions, and shall take effect July 1, 1993.

Passed the House April 22, 1993.

Passed the Senate April 21, 1993.

Approved by the Governor May 10, 1993.

Filed in Office of Secretary of State May 10, 1993.

## **Appendix B**

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5569**

Chapter 203, Laws of 1997

(partial veto)

55th Legislature  
1997 Regular Session

OVERTIME COMPENSATION FOR COMMISSIONED SALES PERSONS

EFFECTIVE DATE: 7/27/97

Passed by the Senate March 13, 1997  
YEAS 33 NAYS 16

BRAD OWEN

President of the Senate

Passed by the House April 16, 1997  
YEAS 61 NAYS 36

CLYDE BALLARD

Speaker of the  
House of Representatives

Approved April 24, 1997, with the  
exception of sections 1 and 5, which  
are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the  
Senate of the State of Washington, do  
hereby certify that the attached is  
**SUBSTITUTE SENATE BILL 5569** as passed  
by the Senate and the House of  
Representatives on the dates hereon  
set forth.

MIKE O'CONNELL

Secretary

FILED

April 24, 1997 - 4:42 p.m.

Secretary of State  
State of Washington

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SUBSTITUTE SENATE BILL 5569

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Passed Legislature - 1997 Regular Session

State of Washington                      55th Legislature                      1997 Regular Session

By Senate Committee on Commerce & Labor (originally sponsored by  
Senators Schow, Sellar and Wood)

Read first time 02/12/97.

1            AN ACT Relating to overtime compensation for commissioned  
2 salespersons; amending RCW 49.46.130 and 49.46.010; adding a new  
3 section to chapter 49.46 RCW; creating a new section; and declaring an  
4 emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            *\*NEW SECTION. Sec. 1. A new section is added to chapter 49.46 RCW*  
7 *to read as follows:*

8            *Section 3, chapter 289, Laws of 1975 1st ex. sess., codified as RCW*  
9 *49.46.130, was adopted for the purpose of creating conformity between*  
10 *state overtime pay standards and the federal fair labor standards act.*  
11 *RCW 49.46.130(2)(h) was intended to incorporate alternative federal*  
12 *premium guarantee standards for retail commissioned salespersons, found*  
13 *at 29 U.S.C. 207(i), into the state wage and hour law.*

14            *The legislature finds that retail sales typically peak during*  
15 *holiday seasons and events such as product promotions and new product*  
16 *arrivals. Retail commissioned salespersons can maximize their incomes,*  
17 *and are therefore most benefited, by maximizing the hours they work*  
18 *during periods when the sales per hour ratio is high. Employment*  
19 *policies that penalize employers for working retail commissioned*

1 *salespersons more than forty hours in a peak sales work week are*  
2 *detrimental to the well-being of Washington's retail commissioned*  
3 *salespersons.*

4 \*Sec. 1 was vetoed. See message at end of chapter.

5       **Sec. 2.** RCW 49.46.130 and 1995 c 5 s 1 are each amended to read as  
6 follows:

7       (1) Except as otherwise provided in this section, no employer shall  
8 employ any of his employees for a work week longer than forty hours  
9 unless such employee receives compensation for his employment in excess  
10 of the hours above specified at a rate not less than one and one-half  
11 times the regular rate at which he is employed.

12       (2) This section does not apply to:

13       (a) Any person exempted pursuant to RCW 49.46.010(5). The payment  
14 of compensation or provision of compensatory time off in addition to a  
15 salary shall not be a factor in determining whether a person is  
16 exempted under RCW 49.46.010(5)(c);

17       (b) Employees who request compensating time off in lieu of overtime  
18 pay;

19       (c) Any individual employed as a seaman whether or not the seaman  
20 is employed on a vessel other than an American vessel;

21       (d) Seasonal employees who are employed at concessions and  
22 recreational establishments at agricultural fairs, including those  
23 seasonal employees employed by agricultural fairs, within the state  
24 provided that the period of employment for any seasonal employee at any  
25 or all agricultural fairs does not exceed fourteen working days a year;

26       (e) Any individual employed as a motion picture projectionist if  
27 that employee is covered by a contract or collective bargaining  
28 agreement which regulates hours of work and overtime pay;

29       (f) An individual employed as a truck or bus driver who is subject  
30 to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101  
31 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system  
32 under which the truck or bus driver is paid includes overtime pay,  
33 reasonably equivalent to that required by this subsection, for working  
34 longer than forty hours per week;

35       (g) Any individual employed (i) on a farm, in the employ of any  
36 person, in connection with the cultivation of the soil, or in  
37 connection with raising or harvesting any agricultural or horticultural  
38 commodity, including raising, shearing, feeding, caring for, training,

1 and management of livestock, bees, poultry, and furbearing animals and  
2 wildlife, or in the employ of the owner or tenant or other operator of  
3 a farm in connection with the operation, management, conservation,  
4 improvement, or maintenance of such farm and its tools and equipment;  
5 or (ii) in packing, packaging, grading, storing or delivering to  
6 storage, or to market or to a carrier for transportation to market, any  
7 agricultural or horticultural commodity; or (iii) commercial canning,  
8 commercial freezing, or any other commercial processing, or with  
9 respect to services performed in connection with the cultivation,  
10 raising, harvesting, and processing of oysters or in connection with  
11 any agricultural or horticultural commodity after its delivery to a  
12 terminal market for distribution for consumption;

13 (h) Any industry in which federal law provides for an overtime  
14 payment based on a work week other than forty hours. However, the  
15 provisions of the federal law regarding overtime payment based on a  
16 work week other than forty hours shall nevertheless apply to employees  
17 covered by this section without regard to the existence of actual  
18 federal jurisdiction over the industrial activity of the particular  
19 employer within this state. For the purposes of this subsection,  
20 "industry" means a trade, business, industry, or other activity, or  
21 branch, or group thereof, in which individuals are gainfully employed  
22 (section 3(h) of the Fair Labor Standards Act of 1938, as amended  
23 (Public Law 93-259).

24 (3) No employer shall be deemed to have violated subsection (1) of  
25 this section by employing any employee of a retail or service  
26 establishment for a work week in excess of the applicable work week  
27 specified in subsection (1) of this section if:

28 (a) The regular rate of pay of the employee is in excess of one and  
29 one-half times the minimum hourly rate required under RCW 49.46.020;  
30 and

31 (b) More than half of the employee's compensation for a  
32 representative period, of not less than one month, represents  
33 commissions on goods or services.

34 In determining the proportion of compensation representing  
35 commissions, all earnings resulting from the application of a bona fide  
36 commission rate is to be deemed commissions on goods or services  
37 without regard to whether the computed commissions exceed the draw or  
38 guarantee.

1        (4) No employer of commissioned salespeople primarily engaged in  
2 the business of selling automobiles, trucks, recreational vessels,  
3 recreational vessel trailers, recreational vehicle trailers,  
4 recreational campers, or manufactured housing to ultimate purchasers  
5 shall violate subsection (1) of this section with respect to such  
6 commissioned salespeople if the commissioned salespeople are paid the  
7 greater of:

8        (a) Compensation at the hourly rate, which may not be less than the  
9 rate required under RCW 49.46.020, for each hour worked up to forty  
10 hours per week, and compensation of one and one-half times that hourly  
11 rate for all hours worked over forty hours in one week; or

12        (b) A straight commission, a salary plus commission, or a salary  
13 plus bonus applied to gross salary.

14        (~~((4))~~) (5) No public agency shall be deemed to have violated  
15 subsection (1) of this section with respect to the employment of any  
16 employee in fire protection activities or any employee in law  
17 enforcement activities (including security personnel in correctional  
18 institutions) if: (a) In a work period of twenty-eight consecutive  
19 days the employee receives for tours of duty which in the aggregate  
20 exceed two hundred forty hours; or (b) in the case of such an employee  
21 to whom a work period of at least seven but less than twenty-eight days  
22 applies, in his or her work period the employee receives for tours of  
23 duty which in the aggregate exceed a number of hours which bears the  
24 same ratio to the number of consecutive days in his or her work period  
25 as two hundred forty hours bears to twenty-eight days; compensation at  
26 a rate not less than one and one-half times the regular rate at which  
27 he or she is employed.

28        **Sec. 3.** RCW 49.46.010 and 1993 c 281 s 56 are each amended to read  
29 as follows:

30        As used in this chapter:

31        (1) "Director" means the director of labor and industries;

32        (2) "Wage" means compensation due to an employee by reason of  
33 employment, payable in legal tender of the United States or checks on  
34 banks convertible into cash on demand at full face value, subject to  
35 such deductions, charges, or allowances as may be permitted by rules of  
36 the director;

37        (3) "Employ" includes to permit to work;

1 (4) "Employer" includes any individual, partnership, association,  
2 corporation, business trust, or any person or group of persons acting  
3 directly or indirectly in the interest of an employer in relation to an  
4 employee;

5 (5) "Employee" includes any individual employed by an employer but  
6 shall not include:

7 (a) Any individual (i) employed as a hand harvest laborer and paid  
8 on a piece rate basis in an operation which has been, and is generally  
9 and customarily recognized as having been, paid on a piece rate basis  
10 in the region of employment; (ii) who commutes daily from his or her  
11 permanent residence to the farm on which he or she is employed; and  
12 (iii) who has been employed in agriculture less than thirteen weeks  
13 during the preceding calendar year;

14 (b) Any individual employed in casual labor in or about a private  
15 home, unless performed in the course of the employer's trade, business,  
16 or profession;

17 (c) Any individual employed in a bona fide executive,  
18 administrative, or professional capacity or in the capacity of outside  
19 salesman as those terms are defined and delimited by rules of the  
20 director. However, those terms shall be defined and delimited by the  
21 Washington personnel resources board pursuant to chapter 41.06 RCW;

22 (d) Any individual engaged in the activities of an educational,  
23 charitable, religious, state or local governmental body or agency, or  
24 nonprofit organization where the employer-employee relationship does  
25 not in fact exist or where the services are rendered to such  
26 organizations gratuitously. If the individual receives reimbursement  
27 in lieu of compensation for normally incurred out-of-pocket expenses or  
28 receives a nominal amount of compensation per unit of voluntary service  
29 rendered, an employer-employee relationship is deemed not to exist for  
30 the purpose of this section or for purposes of membership or  
31 qualification in any state, local government or publicly supported  
32 retirement system other than that provided under chapter 41.24 RCW;

33 (e) Any individual employed full time by any state or local  
34 governmental body or agency who provides voluntary services but only  
35 with regard to the provision of the voluntary services. The voluntary  
36 services and any compensation therefor shall not affect or add to  
37 qualification, entitlement or benefit rights under any state, local  
38 government, or publicly supported retirement system other than that  
39 provided under chapter 41.24 RCW;

1 (f) Any newspaper vendor or carrier;

2 (g) Any carrier subject to regulation by Part 1 of the Interstate  
3 Commerce Act;

4 (h) Any individual engaged in forest protection and fire prevention  
5 activities;

6 (i) Any individual employed by any charitable institution charged  
7 with child care responsibilities engaged primarily in the development  
8 of character or citizenship or promoting health or physical fitness or  
9 providing or sponsoring recreational opportunities or facilities for  
10 young people or members of the armed forces of the United States ;

11 (j) Any individual whose duties require that he or she reside or  
12 sleep at the place of his or her employment or who otherwise spends a  
13 substantial portion of his or her work time subject to call, and not  
14 engaged in the performance of active duties;

15 (k) Any resident, inmate, or patient of a state, county, or  
16 municipal correctional, detention, treatment or rehabilitative  
17 institution;

18 (l) Any individual who holds a public elective or appointive office  
19 of the state, any county, city, town, municipal corporation or quasi  
20 municipal corporation, political subdivision, or any instrumentality  
21 thereof, or any employee of the state legislature;

22 (m) All vessel operating crews of the Washington state ferries  
23 operated by the department of transportation;

24 (n) Any individual employed as a seaman on a vessel other than an  
25 American vessel((-));

26 (6) "Occupation" means any occupation, service, trade, business,  
27 industry, or branch or group of industries or employment or class of  
28 employment in which employees are gainfully employed;

29 (7) "Retail or service establishment" means an establishment  
30 seventy-five percent of whose annual dollar volume of sales of goods or  
31 services, or both, is not for resale and is recognized as retail sales  
32 or services in the particular industry.

33 NEW SECTION. **Sec. 4.** Nothing in this act shall be construed to  
34 alter the terms, conditions, or practices contained in any collective  
35 bargaining agreement in effect at the time of the effective date of  
36 this act until the expiration date of such agreement.

1        *\*NEW SECTION. Sec. 5. This act is necessary for the immediate*  
2 *preservation of the public peace, health, or safety, or support of the*  
3 *state government and its existing public institutions, and takes effect*  
4 *immediately.*

5        \*Sec. 5 was vetoed. See message at end of chapter.

        Passed the Senate March 13, 1997.

        Passed the House April 16, 1997.

        Approved by the Governor April 24, 1997, with the exception of  
        certain items that were vetoed.

        Filed in Office of Secretary of State April 24, 1997.

1        Note: Governor's explanation of partial veto is as follows:

2        "I am returning herewith, without my approval as to sections 1 and  
3 5, Substitute Senate Bill No. 5569 entitled:

4        "AN ACT Relating to overtime compensation for commissioned  
5 salespersons;"

6        Section 1 of SSB 5569 is an attempt to interpret the legislative  
7 intent of the state wage and hour law, passed in 1975, and to thereby  
8 influence pending litigation. This is not only unfair and unjust, but  
9 also it raises constitutional questions. The power to interpret  
10 legislative intent rests with the judiciary. It is my opinion that a  
11 legislative body should not attempt to usurp that duty or interpret the  
12 intent or thoughts of a legislative body which met over twenty years  
13 ago.

14        The possibility of abuse by unscrupulous employers also concerns  
15 me. Under the auspices of this bill, an employer might attempt to  
16 assign commissioned sales person to non-sales duties in order to avoid  
17 paying overtime. I will direct the Department of Labor and Industries  
18 to assess the implementation of this statute and report its impact to  
19 both the legislature and my office.

20        Section 5 is an emergency clause, and is unnecessary.

21        For these reasons, I have vetoed sections 1 and 5 of Substitute  
22 Senate Bill No. 5569.

23        With the exceptions of sections 1 and 5, Substitute Senate Bill No.  
24 5569 is approved."

## **Appendix C**

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1268**

Chapter 354, Laws of 2002

(partial veto)

57th Legislature  
2002 Regular Session

PERSONNEL SYSTEM REFORM ACT

EFFECTIVE DATE: 6/13/02 - Except sections 203, 204, 213 through 223, 227, 229 through 231, 241, 243, 246, 248, 301 through 307, 309 through 316, 318, 319, and 402, which become effective 7/1/04; section 224, which becomes effective 3/15/05; sections 208, 234 through 238, and 403, which become effective 7/1/05; and sections 225, 226, 233, and 404, which become effective 7/1/06.

Passed by the House March 11, 2002  
Yeas 56 Nays 40

FRANK CHOPP  
Speaker of the House of Representatives

Passed by the Senate March 8, 2002  
Yeas 29 Nays 19

BRAD OWEN  
President of the Senate

Approved April 3, 2002, with the exception of section 237, which is vetoed.

GARY F. LOCKE  
Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1268** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER  
Chief Clerk

FILED

April 3, 2002 - 12:36 p.m.

Secretary of State  
State of Washington





1       (11) (~~Determination of appropriate bargaining units within any~~  
2 ~~agency: PROVIDED, That in making such determination the board shall~~  
3 ~~consider the duties, skills, and working conditions of the employees,~~  
4 ~~the history of collective bargaining by the employees and their~~  
5 ~~bargaining representatives, the extent of organization among the~~  
6 ~~employees, and the desires of the employees;~~

7       ~~(12) Certification and decertification of exclusive bargaining~~  
8 ~~representatives: PROVIDED, That)) Collective bargaining procedures:~~

9       (a) After certification of an exclusive bargaining representative  
10 and upon the representative's request, the director shall hold an  
11 election among employees in a bargaining unit to determine by a  
12 majority whether to require as a condition of employment membership in  
13 the certified exclusive bargaining representative on or after the  
14 thirtieth day following the beginning of employment or the date of such  
15 election, whichever is the later, and the failure of an employee to  
16 comply with such a condition of employment constitutes cause for  
17 dismissal: PROVIDED FURTHER, That no more often than once in each  
18 twelve-month period after expiration of twelve months following the  
19 date of the original election in a bargaining unit and upon petition of  
20 thirty percent of the members of a bargaining unit the director shall  
21 hold an election to determine whether a majority wish to rescind such  
22 condition of employment: PROVIDED FURTHER, That for purposes of this  
23 clause, membership in the certified exclusive bargaining representative  
24 is satisfied by the payment of monthly or other periodic dues and does  
25 not require payment of initiation, reinstatement, or any other fees or  
26 fines and includes full and complete membership rights: AND PROVIDED  
27 FURTHER, That in order to safeguard the right of nonassociation of  
28 public employees, based on bona fide religious tenets or teachings of  
29 a church or religious body of which such public employee is a member,  
30 such public employee shall pay to the union, for purposes within the  
31 program of the union as designated by such employee that would be in  
32 harmony with his or her individual conscience, an amount of money  
33 equivalent to regular union dues minus any included monthly premiums  
34 for union-sponsored insurance programs, and such employee shall not be  
35 a member of the union but is entitled to all the representation rights  
36 of a union member;

37       (~~(13)~~) (b) Agreements between agencies and certified exclusive  
38 bargaining representatives providing for grievance procedures and  
39 collective negotiations on all personnel matters over which the

1 appointing authority of the appropriate bargaining unit of such agency  
2 may lawfully exercise discretion;

3 ~~((14))~~ (c) Written agreements may contain provisions for payroll  
4 deductions of employee organization dues upon authorization by the  
5 employee member and for the cancellation of such payroll deduction by  
6 the filing of a proper prior notice by the employee with the appointing  
7 authority and the employee organization: PROVIDED, That nothing  
8 contained herein permits or grants to any employee the right to strike  
9 or refuse to perform his or her official duties;

10 ~~((15))~~ (d) A collective bargaining agreement entered into under  
11 this subsection before July 1, 2004, covering employees subject to  
12 sections 301 through 314 of this act, that expires after July 1, 2004,  
13 shall remain in full force during its duration, or until superseded by  
14 a collective bargaining agreement entered into by the parties under  
15 sections 301 through 314 of this act. However, an agreement entered  
16 into before July 1, 2004, may not be renewed or extended beyond July 1,  
17 2005. This subsection (11) does not apply to collective bargaining  
18 negotiations or collective bargaining agreements entered into under  
19 sections 301 through 314 of this act;

20 (12) Adoption and revision of a comprehensive classification plan  
21 for all positions in the classified service, based on investigation and  
22 analysis of the duties and responsibilities of each such position.

23 (a) The board shall not adopt job classification revisions or class  
24 studies unless implementation of the proposed revision or study will  
25 result in net cost savings, increased efficiencies, or improved  
26 management of personnel or services, and the proposed revision or study  
27 has been approved by the director of financial management in accordance  
28 with chapter 43.88 RCW.

29 (b) ~~((Beginning July 1, 1995, through June 30, 1997, in addition to~~  
30 ~~the requirements of (a) of this subsection:~~

31 ~~(i) The board may approve the implementation of salary increases~~  
32 ~~resulting from adjustments to the classification plan during the 1995-~~  
33 ~~97 fiscal biennium only if:~~

34 ~~(A) The implementation will not result in additional net costs and~~  
35 ~~the proposed implementation has been approved by the director of~~  
36 ~~financial management in accordance with chapter 43.88 RCW;~~

37 ~~(B) The implementation will take effect on July 1, 1996, and the~~  
38 ~~total net cost of all such actions approved by the board for~~

1 implementation during the 1995-97 fiscal biennium does not exceed the  
2 amounts specified by the legislature specifically for this purpose; or

3 ~~(C) The implementation is a result of emergent conditions.~~  
4 ~~Emergent conditions are defined as emergency situations requiring the~~  
5 ~~establishment of positions necessary for the preservation of the public~~  
6 ~~health, safety, or general welfare, which do not exceed \$250,000 of the~~  
7 ~~moneys identified in section 718(2), chapter 18, Laws of 1995 2nd sp.~~  
8 ~~sess.~~

9 ~~(ii) The board shall approve only those salary increases resulting~~  
10 ~~from adjustments to the classification plan if they are due to~~  
11 ~~documented recruitment and retention difficulties, salary compression~~  
12 ~~or inversion, increased duties and responsibilities, or inequities.~~  
13 ~~For these purposes, inequities are defined as similar work assigned to~~  
14 ~~different job classes with a salary disparity greater than 7.5 percent.~~

15 ~~(iii) Adjustments made to the higher education hospital special pay~~  
16 ~~plan are exempt from (b)(i) through (ii) of this subsection.~~

17 ~~(e)) Reclassifications, class studies, and salary adjustments ((to~~  
18 ~~be implemented during the 1997-99 and subsequent fiscal biennia)) are~~  
19 governed by (a) of this subsection and RCW 41.06.152;

20 ~~((16)) (13) Allocation and reallocation of positions within the~~  
21 classification plan;

22 ~~((17)) (14) Adoption and revision of a state salary schedule to~~  
23 reflect the prevailing rates in Washington state private industries and  
24 other governmental units but the rates in the salary schedules or plans  
25 shall be increased if necessary to attain comparable worth under an  
26 implementation plan under RCW 41.06.155 and that, for institutions of  
27 higher education and related boards, shall be competitive for positions  
28 of a similar nature in the state or the locality in which an  
29 institution of higher education or related board is located, such  
30 adoption and revision subject to approval by the director of financial  
31 management in accordance with the provisions of chapter 43.88 RCW;

32 ~~((18)) (15) Increment increases within the series of steps for~~  
33 each pay grade based on length of service for all employees whose  
34 standards of performance are such as to permit them to retain job  
35 status in the classified service;

36 ~~((19)) (16) Optional lump sum relocation compensation approved by~~  
37 the agency director, whenever it is reasonably necessary that a person  
38 make a domiciliary move in accepting a transfer or other employment  
39 with the state. An agency must provide lump sum compensation within

1 existing resources. If the person receiving the relocation payment  
2 terminates or causes termination with the state, for reasons other than  
3 layoff, disability separation, or other good cause as determined by an  
4 agency director, within one year of the date of the employment, the  
5 state is entitled to reimbursement of the lump sum compensation from  
6 the person;

7 ~~((+20+))~~ (17) Providing for veteran's preference as required by  
8 existing statutes, with recognition of preference in regard to layoffs  
9 and subsequent reemployment for veterans and their surviving spouses by  
10 giving such eligible veterans and their surviving spouses additional  
11 credit in computing their seniority by adding to their unbroken state  
12 service, as defined by the board, the veteran's service in the military  
13 not to exceed five years. For the purposes of this section, "veteran"  
14 means any person who has one or more years of active military service  
15 in any branch of the armed forces of the United States or who has less  
16 than one year's service and is discharged with a disability incurred in  
17 the line of duty or is discharged at the convenience of the government  
18 and who, upon termination of such service has received an honorable  
19 discharge, a discharge for physical reasons with an honorable record,  
20 or a release from active military service with evidence of service  
21 other than that for which an undesirable, bad conduct, or dishonorable  
22 discharge shall be given: PROVIDED, HOWEVER, That the surviving spouse  
23 of a veteran is entitled to the benefits of this section regardless of  
24 the veteran's length of active military service: PROVIDED FURTHER,  
25 That for the purposes of this section "veteran" does not include any  
26 person who has voluntarily retired with twenty or more years of active  
27 military service and whose military retirement pay is in excess of five  
28 hundred dollars per month;

29 ~~((+21+))~~ (18) Permitting agency heads to delegate the authority to  
30 appoint, reduce, dismiss, suspend, or demote employees within their  
31 agencies if such agency heads do not have specific statutory authority  
32 to so delegate: PROVIDED, That the board may not authorize such  
33 delegation to any position lower than the head of a major subdivision  
34 of the agency;

35 ~~((+22+))~~ (19) Assuring persons who are or have been employed in  
36 classified positions before July 1, 1993, will be eligible for  
37 employment, reemployment, transfer, and promotion in respect to  
38 classified positions covered by this chapter;

1       (~~(23)~~) (20) Affirmative action in appointment, promotion,  
2 transfer, recruitment, training, and career development; development  
3 and implementation of affirmative action goals and timetables; and  
4 monitoring of progress against those goals and timetables.

5       The board shall consult with the human rights commission in the  
6 development of rules pertaining to affirmative action. The department  
7 of personnel shall transmit a report annually to the human rights  
8 commission which states the progress each state agency has made in  
9 meeting affirmative action goals and timetables.

10       **Sec. 203.** RCW 41.06.150 and 2002 c . . . s 202 (section 202 of  
11 this act) are each amended to read as follows:

12       The (~~board~~) director shall adopt rules, consistent with the  
13 purposes and provisions of this chapter(~~(, as now or hereafter~~  
14 ~~amended,~~) and with the best standards of personnel administration,  
15 regarding the basis and procedures to be followed for:

16       (1) (~~The reduction, dismissal, suspension, or demotion of an~~  
17 ~~employee,~~

18       ~~(2)) Certification of names for vacancies(~~(, including~~  
19 ~~departmental promotions, with the number of names equal to six more~~  
20 ~~names than there are vacancies to be filled, such names representing~~  
21 ~~applicants rated highest on eligibility lists: PROVIDED, That when~~  
22 ~~other applicants have scores equal to the lowest score among the names~~  
23 ~~certified, their names shall also be certified))~~);~~

24       (~~(3)~~) (2) Examinations for all positions in the competitive and  
25 noncompetitive service;

26       (~~(4)~~) (3) Appointments;

27       (~~(5)~~ Training and career development;

28       ~~(6) Probationary periods of six to twelve months and rejections of~~  
29 ~~probationary employees, depending on the job requirements of the class,~~  
30 ~~except that entry level state park rangers shall serve a probationary~~  
31 ~~period of twelve months;~~

32       ~~(7) Transfers;~~

33       ~~(8) Sick leaves and vacations;~~

34       ~~(9) Hours of work;~~

35       ~~(10) Layoffs when necessary and subsequent reemployment, both~~  
36 ~~according to seniority;~~

37       ~~(11) Collective bargaining procedures.~~

1       ~~(a) After certification of an exclusive bargaining representative~~  
2 ~~and upon the representative's request, the director shall hold an~~  
3 ~~election among employees in a bargaining unit to determine by a~~  
4 ~~majority whether to require as a condition of employment membership in~~  
5 ~~the certified exclusive bargaining representative on or after the~~  
6 ~~thirtieth day following the beginning of employment or the date of such~~  
7 ~~election, whichever is the later, and the failure of an employee to~~  
8 ~~comply with such a condition of employment constitutes cause for~~  
9 ~~dismissal: PROVIDED FURTHER, That no more often than once in each~~  
10 ~~twelve-month period after expiration of twelve months following the~~  
11 ~~date of the original election in a bargaining unit and upon petition of~~  
12 ~~thirty percent of the members of a bargaining unit the director shall~~  
13 ~~hold an election to determine whether a majority wish to rescind such~~  
14 ~~condition of employment: PROVIDED FURTHER, That for purposes of this~~  
15 ~~clause, membership in the certified exclusive bargaining representative~~  
16 ~~is satisfied by the payment of monthly or other periodic dues and does~~  
17 ~~not require payment of initiation, reinstatement, or any other fees or~~  
18 ~~finer and includes full and complete membership rights: AND PROVIDED~~  
19 ~~FURTHER, That in order to safeguard the right of nonassociation of~~  
20 ~~public employees, based on bona fide religious tenets or teachings of~~  
21 ~~a church or religious body of which such public employee is a member,~~  
22 ~~such public employee shall pay to the union, for purposes within the~~  
23 ~~program of the union as designated by such employee that would be in~~  
24 ~~harmony with his or her individual conscience, an amount of money~~  
25 ~~equivalent to regular union dues minus any included monthly premiums~~  
26 ~~for union-sponsored insurance programs, and such employee shall not be~~  
27 ~~a member of the union but is entitled to all the representation rights~~  
28 ~~of a union member;~~

29       ~~(b) Agreements between agencies and certified exclusive bargaining~~  
30 ~~representatives providing for grievance procedures and collective~~  
31 ~~negotiations on all personnel matters over which the appointing~~  
32 ~~authority of the appropriate bargaining unit of such agency may~~  
33 ~~lawfully exercise discretion;~~

34       ~~(c) Written agreements may contain provisions for payroll~~  
35 ~~deductions of employee organization dues upon authorization by the~~  
36 ~~employee member and for the cancellation of such payroll deduction by~~  
37 ~~the filing of a proper prior notice by the employee with the appointing~~  
38 ~~authority and the employee organization: PROVIDED, That nothing~~

1 contained herein permits or grants to any employee the right to strike  
2 or refuse to perform his or her official duties;

3 ~~(d) A collective bargaining agreement entered into under this~~  
4 ~~subsection before July 1, 2002, covering employees subject to sections~~  
5 ~~301 through 314 of this act, that expires after July 1, 2002, shall~~  
6 ~~remain in full force during its duration, or until superseded by a~~  
7 ~~collective bargaining agreement entered into by the parties under~~  
8 ~~sections 301 through 314 of this act. However, an agreement entered~~  
9 ~~into before July 1, 2002, may not be renewed or extended beyond July 1,~~  
10 ~~2003. This subsection (11) does not apply to collective bargaining~~  
11 ~~negotiations or collective bargaining agreements entered into under~~  
12 ~~sections 301 through 314 of this act;~~

13 ~~(12)) (4) Adoption and revision of a comprehensive classification~~  
14 ~~plan, in accordance with rules adopted by the board under section 205~~  
15 ~~of this act, for all positions in the classified service, based on~~  
16 ~~investigation and analysis of the duties and responsibilities of each~~  
17 ~~such position and allocation and reallocation of positions within the~~  
18 ~~classification plan.~~

19 (a) The ~~((board))~~ director shall not adopt job classification  
20 revisions or class studies unless implementation of the proposed  
21 revision or study will result in net cost savings, increased  
22 efficiencies, or improved management of personnel or services, and the  
23 proposed revision or study has been approved by the director of  
24 financial management in accordance with chapter 43.88 RCW.

25 (b) Reclassifications, class studies, and salary adjustments are  
26 governed by (a) of this subsection and RCW 41.06.152;

27 ~~((13) Allocation and reallocation of positions within the~~  
28 ~~classification plan;~~

29 ~~(14) Adoption and revision of a state salary schedule to reflect~~  
30 ~~the prevailing rates in Washington state private industries and other~~  
31 ~~governmental units but the rates in the salary schedules or plans shall~~  
32 ~~be increased if necessary to attain comparable worth under an~~  
33 ~~implementation plan under RCW 41.06.155 and that, for institutions of~~  
34 ~~higher education and related boards, shall be competitive for positions~~  
35 ~~of a similar nature in the state or the locality in which an~~  
36 ~~institution of higher education or related board is located, such~~  
37 ~~adoption and revision subject to approval by the director of financial~~  
38 ~~management in accordance with the provisions of chapter 43.88 RCW;~~

1       ~~(15) Increment increases within the series of steps for each pay~~  
2 ~~grade based on length of service for all employees whose standards of~~  
3 ~~performance are such as to permit them to retain job status in the~~  
4 ~~classified service;~~

5       ~~(16) Optional lump sum relocation compensation approved by the~~  
6 ~~agency director, whenever it is reasonably necessary that a person make~~  
7 ~~a domiciliary move in accepting a transfer or other employment with the~~  
8 ~~state. An agency must provide lump sum compensation within existing~~  
9 ~~resources. If the person receiving the relocation payment terminates~~  
10 ~~or causes termination with the state, for reasons other than layoff,~~  
11 ~~disability separation, or other good cause as determined by an agency~~  
12 ~~director, within one year of the date of the employment, the state is~~  
13 ~~entitled to reimbursement of the lump sum compensation from the person;~~

14       ~~(17) Providing for veteran's preference as required by existing~~  
15 ~~statutes, with recognition of preference in regard to layoffs and~~  
16 ~~subsequent reemployment for veterans and their surviving spouses by~~  
17 ~~giving such eligible veterans and their surviving spouses additional~~  
18 ~~credit in computing their seniority by adding to their unbroken state~~  
19 ~~service, as defined by the board, the veteran's service in the military~~  
20 ~~not to exceed five years. For the purposes of this section, "veteran"~~  
21 ~~means any person who has one or more years of active military service~~  
22 ~~in any branch of the armed forces of the United States or who has less~~  
23 ~~than one year's service and is discharged with a disability incurred in~~  
24 ~~the line of duty or is discharged at the convenience of the government~~  
25 ~~and who, upon termination of such service has received an honorable~~  
26 ~~discharge, a discharge for physical reasons with an honorable record,~~  
27 ~~or a release from active military service with evidence of service~~  
28 ~~other than that for which an undesirable, bad conduct, or dishonorable~~  
29 ~~discharge shall be given: PROVIDED, HOWEVER, That the surviving spouse~~  
30 ~~of a veteran is entitled to the benefits of this section regardless of~~  
31 ~~the veteran's length of active military service: PROVIDED FURTHER,~~  
32 ~~That for the purposes of this section "veteran" does not include any~~  
33 ~~person who has voluntarily retired with twenty or more years of active~~  
34 ~~military service and whose military retirement pay is in excess of five~~  
35 ~~hundred dollars per month;~~

36       ~~(18)) (5) Permitting agency heads to delegate the authority to~~  
37 ~~appoint, reduce, dismiss, suspend, or demote employees within their~~  
38 ~~agencies if such agency heads do not have specific statutory authority~~  
39 ~~to so delegate: PROVIDED, That the ((board)) director may not~~

1 authorize such delegation to any position lower than the head of a  
2 major subdivision of the agency;

3 ~~((+19))~~ (6) Assuring persons who are or have been employed in  
4 classified positions before July 1, 1993, will be eligible for  
5 employment, reemployment, transfer, and promotion in respect to  
6 classified positions covered by this chapter;

7 ~~((+20))~~ (7) Affirmative action in appointment, promotion,  
8 transfer, recruitment, training, and career development; development  
9 and implementation of affirmative action goals and timetables; and  
10 monitoring of progress against those goals and timetables.

11 The ~~((board))~~ director shall consult with the human rights  
12 commission in the development of rules pertaining to affirmative  
13 action. The department of personnel shall transmit a report annually  
14 to the human rights commission which states the progress each state  
15 agency has made in meeting affirmative action goals and timetables.

16 Rules adopted under this section by the director shall provide for  
17 local administration and management by the institutions of higher  
18 education and related boards, subject to periodic audit and review by  
19 the director.

20 NEW SECTION. Sec. 204. A new section is added to chapter 41.06  
21 RCW to read as follows:

22 The director shall adopt rules, consistent with the purposes and  
23 provisions of this chapter and with the best standards of personnel  
24 administration, regarding the basis and procedures to be followed for:

25 (1) The reduction, dismissal, suspension, or demotion of an  
26 employee;

27 (2) Training and career development;

28 (3) Probationary periods of six to twelve months and rejections of  
29 probationary employees, depending on the job requirements of the class,  
30 except that entry level state park rangers shall serve a probationary  
31 period of twelve months;

32 (4) Transfers;

33 (5) Promotional preferences;

34 (6) Sick leaves and vacations;

35 (7) Hours of work;

36 (8) Layoffs when necessary and subsequent reemployment, except for  
37 the financial basis for layoffs;

38 (9) The number of names to be certified for vacancies;

1 (10) Adoption and revision of a state salary schedule to reflect  
2 the prevailing rates in Washington state private industries and other  
3 governmental units. The rates in the salary schedules or plans shall  
4 be increased if necessary to attain comparable worth under an  
5 implementation plan under RCW 41.06.155 and, for institutions of higher  
6 education and related boards, shall be competitive for positions of a  
7 similar nature in the state or the locality in which an institution of  
8 higher education or related board is located. Such adoption and  
9 revision is subject to approval by the director of financial management  
10 in accordance with chapter 43.88 RCW;

11 (11) Increment increases within the series of steps for each pay  
12 grade based on length of service for all employees whose standards of  
13 performance are such as to permit them to retain job status in the  
14 classified service;

15 (12) Optional lump sum relocation compensation approved by the  
16 agency director, whenever it is reasonably necessary that a person make  
17 a domiciliary move in accepting a transfer or other employment with the  
18 state. An agency must provide lump sum compensation within existing  
19 resources. If the person receiving the relocation payment terminates  
20 or causes termination with the state, for reasons other than layoff,  
21 disability separation, or other good cause as determined by an agency  
22 director, within one year of the date of the employment, the state is  
23 entitled to reimbursement of the lump sum compensation from the person;

24 (13) Providing for veteran's preference as required by existing  
25 statutes, with recognition of preference in regard to layoffs and  
26 subsequent reemployment for veterans and their surviving spouses by  
27 giving such eligible veterans and their surviving spouses additional  
28 credit in computing their seniority by adding to their unbroken state  
29 service, as defined by the director, the veteran's service in the  
30 military not to exceed five years. For the purposes of this section,  
31 "veteran" means any person who has one or more years of active military  
32 service in any branch of the armed forces of the United States or who  
33 has less than one year's service and is discharged with a disability  
34 incurred in the line of duty or is discharged at the convenience of the  
35 government and who, upon termination of such service, has received an  
36 honorable discharge, a discharge for physical reasons with an honorable  
37 record, or a release from active military service with evidence of  
38 service other than that for which an undesirable, bad conduct, or  
39 dishonorable discharge shall be given. However, the surviving spouse

1 of a veteran is entitled to the benefits of this section regardless of  
2 the veteran's length of active military service. For the purposes of  
3 this section, "veteran" does not include any person who has voluntarily  
4 retired with twenty or more years of active military service and whose  
5 military retirement pay is in excess of five hundred dollars per month.

6 Rules adopted under this section by the director shall provide for  
7 local administration and management by the institutions of higher  
8 education and related boards, subject to periodic audit and review by  
9 the director.

10 Rules adopted by the director under this section may be superseded  
11 by the provisions of a collective bargaining agreement negotiated under  
12 sections 301 through 314 of this act. The supersession of such rules  
13 shall only affect employees in the respective collective bargaining  
14 units.

15 NEW SECTION. **Sec. 205.** A new section is added to chapter 41.06  
16 RCW to read as follows:

17 (1) The board shall conduct a comprehensive review of all rules in  
18 effect on the effective date of this section governing the  
19 classification, allocation, and reallocation of positions within the  
20 classified service. In conducting this review, the board shall consult  
21 with state agencies, institutions of higher education, employee  
22 organizations, and members of the general public. The department shall  
23 assist the board in the conduct of this review, which shall be  
24 completed by the board no later than July 1, 2003.

25 (2) By March 15, 2004, the board shall adopt new rules governing  
26 the classification, allocation, and reallocation of positions in the  
27 classified service. In adopting such rules, the board shall adhere to  
28 the following goals:

29 (a) To improve the effectiveness and efficiency of the delivery of  
30 services to the citizens of the state through the use of current  
31 personnel management processes and to promote a workplace where the  
32 overall focus is on the recipient of governmental services;

33 (b) To develop a simplified classification system that will  
34 substantially reduce the number of job classifications in the  
35 classified service and facilitate the most effective use of the state  
36 personnel resources;

1 (c) To develop a classification system to permit state agencies to  
2 respond flexibly to changing technologies, economic and social  
3 conditions, and the needs of its citizens;

4 (d) To value workplace diversity;

5 (e) To facilitate the reorganization and decentralization of  
6 governmental services; and

7 (f) To enhance mobility and career advancement opportunities.

8 (3) Rules adopted by the board under subsection (2) of this section  
9 shall permit an appointing authority and an employee organization  
10 representing classified employees of the appointing authority for  
11 collective bargaining purposes to make a joint request for the  
12 initiation of a classification study.

13 NEW SECTION. **Sec. 206.** A new section is added to chapter 41.06  
14 RCW to read as follows:

15 In accordance with rules adopted by the board under section 205 of  
16 this act, the director shall, by January 1, 2005, begin to implement a  
17 new classification system for positions in the classified service. Any  
18 employee who believes that the director has incorrectly applied the  
19 rules of the board in determining a job classification for a job held  
20 by that employee may appeal the director's decision to the board by  
21 filing a notice in writing within thirty days of the action from which  
22 the appeal is taken. Decisions of the board concerning such appeals  
23 are final and not subject to further appeal.

24 **Sec. 207.** RCW 41.06.022 and 1993 c 281 s 8 are each amended to  
25 read as follows:

26 For purposes of this chapter, "manager" means any employee who:

27 (1) Formulates statewide policy or directs the work of an agency or  
28 agency subdivision;

29 (2) Is responsible to administer one or more statewide policies or  
30 programs of an agency or agency subdivision;

31 (3) Manages, administers, and controls a local branch office of an  
32 agency or agency subdivision, including the physical, financial, or  
33 personnel resources;

34 (4) Has substantial responsibility in personnel administration,  
35 legislative relations, public information, or the preparation and  
36 administration of budgets; or

1 (5) Functionally is above the first level of supervision and  
2 exercises authority that is not merely routine or clerical in nature  
3 and requires the consistent use of independent judgment.

4 No employee who is a member of the Washington management service  
5 may be included in a collective bargaining unit established under  
6 sections 301 through 314 of this act.

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

9 (1) Any department, agency, or institution of higher education may  
10 purchase services, including services that have been customarily and  
11 historically provided by employees in the classified service under this  
12 chapter, by contracting with individuals, nonprofit organizations,  
13 businesses, employee business units, or other entities if the following  
14 criteria are met:

15 (a) The invitation for bid or request for proposal contains  
16 measurable standards for the performance of the contract;

17 (b) Employees in the classified service whose positions or work  
18 would be displaced by the contract are provided an opportunity to offer  
19 alternatives to purchasing services by contract and, if these  
20 alternatives are not accepted, compete for the contract under  
21 competitive contracting procedures in subsection (4) of this section;

22 (c) The contract with an entity other than an employee business  
23 unit includes a provision requiring the entity to consider employment  
24 of state employees who may be displaced by the contract;

25 (d) The department, agency, or institution of higher education has  
26 established a contract monitoring process to measure contract  
27 performance, costs, service delivery quality, and other contract  
28 standards, and to cancel contracts that do not meet those standards;  
29 and

30 (e) The department, agency, or institution of higher education has  
31 determined that the contract results in savings or efficiency  
32 improvements. The contracting agency must consider the consequences  
33 and potential mitigation of improper or failed performance by the  
34 contractor.

35 (2) Any provision contrary to or in conflict with this section in  
36 any collective bargaining agreement in effect on the effective date of  
37 this section is not effective beyond the expiration date of the  
38 agreement.

1 (3) Contracting for services that is expressly mandated by the  
2 legislature or was authorized by law prior to the effective date of  
3 this section, including contracts and agreements between public  
4 entities, shall not be subject to the processes set forth in  
5 subsections (1) and (4) through (6) of this section.

6 (4) Competitive contracting shall be implemented as follows:

7 (a) At least ninety days prior to the date the contracting agency  
8 requests bids from private entities for a contract for services  
9 provided by classified employees, the contracting agency shall notify  
10 the classified employees whose positions or work would be displaced by  
11 the contract. The employees shall have sixty days from the date of  
12 notification to offer alternatives to purchasing services by contract,  
13 and the agency shall consider the alternatives before requesting bids.

14 (b) If the employees decide to compete for the contract, they shall  
15 notify the contracting agency of their decision. Employees must form  
16 one or more employee business units for the purpose of submitting a bid  
17 or bids to perform the services.

18 (c) The director of personnel, with the advice and assistance of  
19 the department of general administration, shall develop and make  
20 available to employee business units training in the bidding process  
21 and general bid preparation.

22 (d) The director of general administration, with the advice and  
23 assistance of the department of personnel, shall, by rule, establish  
24 procedures to ensure that bids are submitted and evaluated in a fair  
25 and objective manner and that there exists a competitive market for the  
26 service. Such rules shall include, but not be limited to: (i)  
27 Prohibitions against participation in the bid evaluation process by  
28 employees who prepared the business unit's bid or who perform any of  
29 the services to be contracted; (ii) provisions to ensure no bidder  
30 receives an advantage over other bidders and that bid requirements are  
31 applied equitably to all parties; and (iii) procedures that require the  
32 contracting agency to receive complaints regarding the bidding process  
33 and to consider them before awarding the contract. Appeal of an  
34 agency's actions under this subsection is an adjudicative proceeding  
35 and subject to the applicable provisions of chapter 34.05 RCW, the  
36 administrative procedure act, with the final decision to be rendered by  
37 an administrative law judge assigned under chapter 34.12 RCW.

38 (e) An employee business unit's bid must include the fully  
39 allocated costs of the service, including the cost of the employees'

1 salaries and benefits, space, equipment, materials, and other costs  
2 necessary to perform the function. An employee business unit's cost  
3 shall not include the state's indirect overhead costs unless those  
4 costs can be attributed directly to the function in question and would  
5 not exist if that function were not performed in state service.

6 (f) A department, agency, or institution of higher education may  
7 contract with the department of general administration to conduct the  
8 bidding process.

9 (5) As used in this section:

10 (a) "Employee business unit" means a group of employees who perform  
11 services to be contracted under this section and who submit a bid for  
12 the performance of those services under subsection (4) of this section.

13 (b) "Indirect overhead costs" means the pro rata share of existing  
14 agency administrative salaries and benefits, and rent, equipment costs,  
15 utilities, and materials associated with those administrative  
16 functions.

17 (c) "Competitive contracting" means the process by which classified  
18 employees of a department, agency, or institution of higher education  
19 compete with businesses, individuals, nonprofit organizations, or other  
20 entities for contracts authorized by subsection (1) of this section.

21 (6) The joint legislative audit and review committee shall conduct  
22 a performance audit of the implementation of this section, including  
23 the adequacy of the appeals process in subsection (4)(d) of this  
24 section, and report to the legislature by January 1, 2007, on the  
25 results of the audit.

26 **Sec. 209.** RCW 41.06.070 and 1998 c 245 s 40 are each amended to  
27 read as follows:

28 (1) The provisions of this chapter do not apply to:

29 (a) The members of the legislature or to any employee of, or  
30 position in, the legislative branch of the state government including  
31 members, officers, and employees of the legislative council, joint  
32 legislative audit and review committee, statute law committee, and any  
33 interim committee of the legislature;

34 (b) The justices of the supreme court, judges of the court of  
35 appeals, judges of the superior courts or of the inferior courts, or to  
36 any employee of, or position in the judicial branch of state  
37 government;

1 (c) Officers, academic personnel, and employees of technical  
2 colleges;

3 (d) The officers of the Washington state patrol;

4 (e) Elective officers of the state;

5 (f) The chief executive officer of each agency;

6 (g) In the departments of employment security and social and health  
7 services, the director and the director's confidential secretary; in  
8 all other departments, the executive head of which is an individual  
9 appointed by the governor, the director, his or her confidential  
10 secretary, and his or her statutory assistant directors;

11 (h) In the case of a multimember board, commission, or committee,  
12 whether the members thereof are elected, appointed by the governor or  
13 other authority, serve ex officio, or are otherwise chosen:

14 (i) All members of such boards, commissions, or committees;

15 (ii) If the members of the board, commission, or committee serve on  
16 a part-time basis and there is a statutory executive officer: The  
17 secretary of the board, commission, or committee; the chief executive  
18 officer of the board, commission, or committee; and the confidential  
19 secretary of the chief executive officer of the board, commission, or  
20 committee;

21 (iii) If the members of the board, commission, or committee serve  
22 on a full-time basis: The chief executive officer or administrative  
23 officer as designated by the board, commission, or committee; and a  
24 confidential secretary to the chair of the board, commission, or  
25 committee;

26 (iv) If all members of the board, commission, or committee serve ex  
27 officio: The chief executive officer; and the confidential secretary  
28 of such chief executive officer;

29 (i) The confidential secretaries and administrative assistants in  
30 the immediate offices of the elective officers of the state;

31 (j) Assistant attorneys general;

32 (k) Commissioned and enlisted personnel in the military service of  
33 the state;

34 (l) Inmate, student, part-time, or temporary employees, and part-  
35 time professional consultants, as defined by the Washington personnel  
36 resources board;

37 (m) The public printer or to any employees of or positions in the  
38 state printing plant;

1 (n) Officers and employees of the Washington state fruit  
2 commission;

3 (o) Officers and employees of the Washington state apple  
4 advertising commission;

5 (p) Officers and employees of the Washington state dairy products  
6 commission;

7 (q) Officers and employees of the Washington tree fruit research  
8 commission;

9 (r) Officers and employees of the Washington state beef commission;

10 (s) Officers and employees of any commission formed under chapter  
11 15.66 RCW;

12 ~~(t) ((Officers and employees of the state wheat commission formed  
13 under chapter 15.63 RCW;~~

14 ~~(u))~~ Officers and employees of agricultural commissions formed  
15 under chapter 15.65 RCW;

16 ~~((v))~~ (u) Officers and employees of the nonprofit corporation  
17 formed under chapter 67.40 RCW;

18 ~~((w))~~ (y) Executive assistants for personnel administration and  
19 labor relations in all state agencies employing such executive  
20 assistants including but not limited to all departments, offices,  
21 commissions, committees, boards, or other bodies subject to the  
22 provisions of this chapter and this subsection shall prevail over any  
23 provision of law inconsistent herewith unless specific exception is  
24 made in such law;

25 ~~((x))~~ (w) In each agency with fifty or more employees: Deputy  
26 agency heads, assistant directors or division directors, and not more  
27 than three principal policy assistants who report directly to the  
28 agency head or deputy agency heads;

29 ~~((y))~~ (x) All employees of the marine employees' commission;

30 ~~((z) Up to a total of five senior staff positions of the western  
31 library network under chapter 27.26 RCW responsible for formulating  
32 policy or for directing program management of a major administrative  
33 unit. This subsection (1)(z) shall expire on June 30, 1997;~~

34 ~~(aa))~~ (y) Staff employed by the department of community, trade,  
35 and economic development to administer energy policy functions and  
36 manage energy site evaluation council activities under RCW  
37 43.21F.045(2)(m);

1       (~~(b)~~) (z) Staff employed by Washington State University to  
2 administer energy education, applied research, and technology transfer  
3 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

4       (2) The following classifications, positions, and employees of  
5 institutions of higher education and related boards are hereby exempted  
6 from coverage of this chapter:

7       (a) Members of the governing board of each institution of higher  
8 education and related boards, all presidents, vice-presidents, and  
9 their confidential secretaries, administrative, and personal  
10 assistants; deans, directors, and chairs; academic personnel; and  
11 executive heads of major administrative or academic divisions employed  
12 by institutions of higher education; principal assistants to executive  
13 heads of major administrative or academic divisions; other managerial  
14 or professional employees in an institution or related board having  
15 substantial responsibility for directing or controlling program  
16 operations and accountable for allocation of resources and program  
17 results, or for the formulation of institutional policy, or for  
18 carrying out personnel administration or labor relations functions,  
19 legislative relations, public information, development, senior computer  
20 systems and network programming, or internal audits and investigations;  
21 and any employee of a community college district whose place of work is  
22 one which is physically located outside the state of Washington and who  
23 is employed pursuant to RCW 28B.50.092 and assigned to an educational  
24 program operating outside of the state of Washington;

25       (b) (~~Student, part-time, or temporary employees, and part-time~~  
26 ~~professional consultants, as defined by the Washington personnel~~  
27 ~~resources board, employed by institutions of higher education and~~  
28 ~~related boards;~~

29       (~~(c)~~) The governing board of each institution, and related boards,  
30 may also exempt from this chapter classifications involving research  
31 activities, counseling of students, extension or continuing education  
32 activities, graphic arts or publications activities requiring  
33 prescribed academic preparation or special training as determined by  
34 the board: PROVIDED, That no nonacademic employee engaged in office,  
35 clerical, maintenance, or food and trade services may be exempted by  
36 the board under this provision;

37       (~~(d)~~) (c) Printing craft employees in the department of printing  
38 at the University of Washington.

1 (3) In addition to the exemptions specifically provided by this  
2 chapter, the (~~Washington personnel resources board~~) director of  
3 personnel may provide for further exemptions pursuant to the following  
4 procedures. The governor or other appropriate elected official may  
5 submit requests for exemption to the (~~Washington personnel resources~~  
6 ~~board~~) director of personnel stating the reasons for requesting such  
7 exemptions. The (~~Washington personnel resources board~~) director of  
8 personnel shall hold a public hearing, after proper notice, on requests  
9 submitted pursuant to this subsection. If the (~~board~~) director  
10 determines that the position for which exemption is requested is one  
11 involving substantial responsibility for the formulation of basic  
12 agency or executive policy or one involving directing and controlling  
13 program operations of an agency or a major administrative division  
14 thereof, the (~~Washington personnel resources board~~) director of  
15 personnel shall grant the request and such determination shall be final  
16 as to any decision made before July 1, 1993. The total number of  
17 additional exemptions permitted under this subsection shall not exceed  
18 one percent of the number of employees in the classified service not  
19 including employees of institutions of higher education and related  
20 boards for those agencies not directly under the authority of any  
21 elected public official other than the governor, and shall not exceed  
22 a total of twenty-five for all agencies under the authority of elected  
23 public officials other than the governor.

24 The salary and fringe benefits of all positions presently or  
25 hereafter exempted except for the chief executive officer of each  
26 agency, full-time members of boards and commissions, administrative  
27 assistants and confidential secretaries in the immediate office of an  
28 elected state official, and the personnel listed in subsections (1)(j)  
29 through (~~(v), (y), (z),~~) (u) and (x) and (2) of this section, shall  
30 be determined by the (~~Washington personnel resources board~~) director  
31 of personnel. (~~However, beginning with changes proposed for the 1997-~~  
32 ~~99 fiscal biennium,~~) Changes to the classification plan affecting  
33 exempt salaries must meet the same provisions for classified salary  
34 increases resulting from adjustments to the classification plan as  
35 outlined in RCW 41.06.152.

36 Any person holding a classified position subject to the provisions  
37 of this chapter shall, when and if such position is subsequently  
38 exempted from the application of this chapter, be afforded the  
39 following rights: If such person previously held permanent status in

1 another classified position, such person shall have a right of  
2 reversion to the highest class of position previously held, or to a  
3 position of similar nature and salary.

4 Any classified employee having civil service status in a classified  
5 position who accepts an appointment in an exempt position shall have  
6 the right of reversion to the highest class of position previously  
7 held, or to a position of similar nature and salary.

8 A person occupying an exempt position who is terminated from the  
9 position for gross misconduct or malfeasance does not have the right of  
10 reversion to a classified position as provided for in this section.

11 **Sec. 210.** RCW 41.06.110 and 1993 c 281 s 25 are each amended to  
12 read as follows:

13 (1) There is hereby created a Washington personnel resources board  
14 composed of three members appointed by the governor, subject to  
15 confirmation by the senate. The members of the personnel board serving  
16 June 30, 1993, shall be the members of the Washington personnel  
17 resources board, and they shall complete their terms as under the  
18 personnel board. Each odd-numbered year thereafter the governor shall  
19 appoint a member for a six-year term. Each member shall continue to  
20 hold office after the expiration of the member's term until a successor  
21 has been appointed. Persons so appointed shall have clearly  
22 demonstrated an interest and belief in the merit principle, shall not  
23 hold any other employment with the state, shall not have been an  
24 officer of a political party for a period of one year immediately prior  
25 to such appointment, and shall not be or become a candidate for  
26 partisan elective public office during the term to which they are  
27 appointed;

28 (2) Each member of the board shall be compensated in accordance  
29 with RCW 43.03.250. The members of the board may receive any number of  
30 daily payments for official meetings of the board actually attended.  
31 Members of the board shall also be reimbursed for travel expenses  
32 incurred in the discharge of their official duties in accordance with  
33 RCW 43.03.050 and 43.03.060.

34 (3) At its first meeting following the appointment of all of its  
35 members, and annually thereafter, the board shall elect a chair and  
36 vice-chair from among its members to serve one year. The presence of  
37 at least two members of the board shall constitute a quorum to transact  
38 business. A written public record shall be kept by the board of all

1 actions of the board. The director of personnel shall serve as  
2 secretary.  
3 (4) The board may appoint and compensate hearing officers to hear  
4 and conduct appeals (until December 31, 1982). Such compensation  
5 shall be paid on a contractual basis for each hearing, in accordance  
6 with the provisions of chapter 43.88 RCW and rules adopted pursuant  
7 thereto, as they relate to personal service contracts.

8 **Sec. 211.** RCW 41.06.160 and 1993 c 281 s 29 are each amended to  
9 read as follows:  
10 In preparing classification and salary schedules as set forth in  
11 RCW 41.06.150 (as now or hereafter amended) the department of  
12 personnel shall give full consideration to prevailing rates in other  
13 public employment and in private employment in this state. For this  
14 purpose the department shall undertake comprehensive salary and fringe  
15 benefit surveys (, with such surveys to be conducted in the year prior  
16 to the convening of every other one hundred five day regular session of  
17 the state legislature. In the year prior to the convening of each one  
18 hundred five day regular session during which a comprehensive salary  
19 and fringe benefit survey is not conducted, the department shall plan  
20 and conduct a trend salary and fringe benefit survey. This survey  
21 shall measure average salary and fringe benefit movement for broad  
22 occupational groups which has occurred since the last comprehensive  
23 salary and fringe benefit survey was conducted. The results of each  
24 comprehensive and trend salary and fringe benefit survey shall be  
25 completed and forwarded by September 30 with a recommended state salary  
26 schedule to the governor and director of financial management for their  
27 use in preparing budgets to be submitted to the succeeding legislature.  
28 A copy of the data and supporting documentation shall be furnished by  
29 the department of personnel to the standing committees for  
30 appropriations of the senate and house of representatives.  
31 In the case of comprehensive salary and fringe benefit surveys, the  
32 department shall furnish the following supplementary data in support of  
33 its recommended salary schedule:  
34 (1) A total dollar figure which reflects the recommended increase  
35 or decrease in state salaries as a direct result of the specific salary  
36 and fringe benefit survey that has been conducted and which is  
37 categorized to indicate what portion of the increase or decrease is

1 represented by salary survey data and what portion is represented by  
2 fringe benefit survey data;

3 ~~(2) An additional total dollar figure which reflects the impact of~~  
4 ~~recommended increases or decreases to state salaries based on other~~  
5 ~~factors rather than directly on prevailing rate data obtained through~~  
6 ~~the survey process and which is categorized to indicate the sources of~~  
7 ~~the requests for deviation from prevailing rates and the reasons for~~  
8 ~~the changes;~~

9 ~~(3) A list of class codes and titles indicating recommended monthly~~  
10 ~~salary ranges for all state classes under the control of the department~~  
11 ~~of personnel with those salary ranges which do not substantially~~  
12 ~~conform to the prevailing rates developed from the salary and fringe~~  
13 ~~benefit survey distinctly marked and an explanation of the reason for~~  
14 ~~the deviation included;~~

15 ~~(4) A supplemental salary schedule which indicates the additional~~  
16 ~~salary to be paid state employees for hazardous duties or other~~  
17 ~~considerations requiring extra compensation under specific~~  
18 ~~circumstances. Additional compensation for these circumstances shall~~  
19 ~~not be included in the basic salary schedule but shall be maintained as~~  
20 ~~a separate pay schedule for purposes of full disclosure and visibility;~~  
21 ~~and~~

22 ~~(5) A supplemental salary schedule which indicates those cases~~  
23 ~~where the board determines that prevailing rates do not provide similar~~  
24 ~~salaries for positions that require or impose similar responsibilities,~~  
25 ~~judgment, knowledge, skills, and working conditions. This~~  
26 ~~supplementary salary schedule shall contain proposed salary adjustments~~  
27 ~~necessary to eliminate any such dissimilarities in compensation.~~  
28 ~~Additional compensation needed to eliminate such salary dissimilarities~~  
29 ~~shall not be included in the basic salary schedule but shall be~~  
30 ~~maintained as a separate salary schedule for purposes of full~~  
31 ~~disclosure and visibility.~~

32 ~~It is the intention of the legislature that requests for funds to~~  
33 ~~support recommendations for salary deviations from the prevailing rate~~  
34 ~~survey data shall be kept to a minimum, and that the requests be fully~~  
35 ~~documented when forwarded by the department of personnel).~~

36 Salary and fringe benefit survey information collected from private  
37 employers which identifies a specific employer with the salary and  
38 fringe benefit rates which that employer pays to its employees shall  
39 not be subject to public disclosure under chapter 42.17 RCW.

1       (~~The first comprehensive salary and fringe benefit survey required~~  
2 ~~by this section shall be completed and forwarded to the governor and~~  
3 ~~the director of financial management by September 30, 1986. The first~~  
4 ~~trend salary and fringe benefit survey required by this section shall~~  
5 ~~be completed and forwarded to the governor and the director of~~  
6 ~~financial management by September 30, 1988.))~~

7       **Sec. 212.** RCW 41.06.167 and 1991 c 196 s 1 are each amended to  
8 read as follows:

9       The department of personnel shall undertake comprehensive  
10 compensation surveys for officers and entry-level officer candidates of  
11 the Washington state patrol, with such surveys to be conducted in the  
12 year prior to the convening of every other one hundred five day regular  
13 session of the state legislature. (~~In the year prior to the convening~~  
14 ~~of each one hundred five day regular session during which a~~  
15 ~~comprehensive compensation survey is not conducted, the department~~  
16 ~~shall conduct a trend compensation survey. This survey shall measure~~  
17 ~~average compensation movement which has occurred since the last~~  
18 ~~comprehensive compensation survey was conducted. The results of each~~  
19 ~~comprehensive and trend survey shall be completed and forwarded by~~  
20 ~~September 30th, after review and preparation of recommendations by the~~  
21 ~~chief of the Washington state patrol, to the governor and director of~~  
22 ~~financial management for their use in preparing budgets to be submitted~~  
23 ~~to the succeeding legislature. A copy of the data and supporting~~  
24 ~~documentation shall be furnished by the department of personnel to the~~  
25 ~~legislative transportation committee and the standing committees for~~  
26 ~~appropriations of the senate and house of representatives. The office~~  
27 ~~of financial management shall analyze the survey results and conduct~~  
28 ~~investigations which may be necessary to arbitrate differences between~~  
29 ~~interested parties regarding the accuracy of collected survey data and~~  
30 ~~the use of such data for salary adjustment.~~

31       ~~Surveys conducted by the department of personnel for the Washington~~  
32 ~~state patrol shall be undertaken in a manner consistent with~~  
33 ~~statistically accurate sampling techniques, including comparisons of~~  
34 ~~medians, base ranges, and weighted averages of salaries. The surveys~~  
35 ~~shall compare competitive labor markets of law enforcement officers.~~  
36 ~~This service performed by the department of personnel shall be on a~~  
37 ~~reimbursable basis in accordance with the provisions of RCW 41.06.080.~~

1        ~~A comprehensive compensation survey plan and the recommendations of~~  
2 ~~the chief of the Washington state patrol shall be submitted jointly by~~  
3 ~~the department of personnel and the Washington state patrol to the~~  
4 ~~director of financial management, the legislative transportation~~  
5 ~~committee, the committee on ways and means of the senate, and the~~  
6 ~~committee on appropriations of the house of representatives six months~~  
7 ~~before the beginning of each periodic survey.))~~ Salary and fringe  
8 benefit survey information collected from private employers which  
9 identifies a specific employer with the salary and fringe benefit rates  
10 which that employer pays to its employees shall not be subject to  
11 public disclosure under chapter 42.17 RCW.

12        **Sec. 213.** RCW 41.06.170 and 1993 c 281 s 31 are each amended to  
13 read as follows:

14        (1) The (~~board or~~) director, in the adoption of rules governing  
15 suspensions for cause, shall not authorize an appointing authority to  
16 suspend an employee for more than fifteen calendar days as a single  
17 penalty or more than thirty calendar days in any one calendar year as  
18 an accumulation of several penalties. The (~~board or~~) director shall  
19 require that the appointing authority give written notice to the  
20 employee not later than one day after the suspension takes effect,  
21 stating the reasons for and the duration thereof.

22        (2) Any employee who is reduced, dismissed, suspended, or demoted,  
23 after completing his or her probationary period of service as provided  
24 by the rules of the (~~board~~) director, or any employee who is  
25 adversely affected by a violation of the state civil service law,  
26 chapter 41.06 RCW, or rules adopted under it, shall have the right to  
27 appeal (~~to the personnel appeals board created by RCW 41.64.010~~),  
28 either individually or through his or her authorized representative,  
29 not later than thirty days after the effective date of such action to  
30 the personnel appeals board through June 30, 2005, and to the  
31 Washington personnel resources board after June 30, 2005. The employee  
32 shall be furnished with specified charges in writing when a reduction,  
33 dismissal, suspension, or demotion action is taken. Such appeal shall  
34 be in writing. Decisions of the Washington personnel resources board  
35 on appeals filed after June 30, 2005, shall be final and not subject to  
36 further appeal.

37        (3) Any employee whose position has been exempted after July 1,  
38 1993, shall have the right to appeal (~~to the personnel appeals board~~

1 ~~created by RCW 41.64.010~~), either individually or through his or her  
2 authorized representative, not later than thirty days after the  
3 effective date of such action to the personnel appeals board through  
4 June 30, 2005, and to the Washington personnel resources board after  
5 June 30, 2005.

6 (4) An employee incumbent in a position at the time of its  
7 allocation or reallocation, or the agency utilizing the position, may  
8 appeal the allocation or reallocation to the personnel appeals board  
9 ~~((created by RCW 41.64.010))~~ through December 31, 2005, and to the  
10 Washington personnel resources board after December 31, 2005. Notice  
11 of such appeal must be filed in writing within thirty days of the  
12 action from which appeal is taken.

13 (5) Subsections (1) and (2) of this section do not apply to any  
14 employee who is subject to the provisions of a collective bargaining  
15 agreement negotiated under sections 301 through 314 of this act.

16 NEW SECTION. Sec. 214. The transfer of the powers, duties, and  
17 functions of the personnel appeals board to the personnel resources  
18 board under section 233 of this act and the transfer of jurisdiction  
19 for appeals filed under section 213, chapter . . ., Laws of 2002  
20 (section 213 of this act) after June 30, 2005, shall not affect the  
21 right of an appellant to have an appeal filed on or before June 30,  
22 2005, resolved by the personnel appeals board in accordance with the  
23 authorities, rules, and procedures that were established under chapter  
24 41.64 RCW as it existed before the effective date of this section.

25 **Sec. 215.** RCW 41.06.186 and 1993 c 281 s 32 are each amended to  
26 read as follows:

27 The ~~((Washington personnel resources board))~~ director shall adopt  
28 rules designed to terminate the state employment of any employee whose  
29 performance is so inadequate as to warrant termination.

30 **Sec. 216.** RCW 41.06.196 and 1993 c 281 s 33 are each amended to  
31 read as follows:

32 The ~~((Washington personnel resources board))~~ director shall adopt  
33 rules designed to remove from supervisory positions those supervisors  
34 who in violation of the rules adopted under RCW 41.06.186 have  
35 tolerated the continued employment of employees under their supervision  
36 whose performance has warranted termination from state employment.

1       **Sec. 217.** RCW 41.06.270 and 1979 c 151 s 61 are each amended to  
2 read as follows:

3       A disbursing officer shall not pay any employee holding a position  
4 covered by this chapter unless the employment is in accordance with  
5 this chapter or the rules, regulations and orders issued hereunder.  
6 The ~~((board and the))~~ directors of personnel and financial management  
7 shall jointly establish procedures for the certification of payrolls.

8       **Sec. 218.** RCW 41.06.350 and 1993 c 281 s 36 are each amended to  
9 read as follows:

10       The ~~((Washington personnel resources board))~~ director is authorized  
11 to receive federal funds now available or hereafter made available for  
12 the assistance and improvement of public personnel administration,  
13 which may be expended in addition to the department of personnel  
14 service fund established by RCW 41.06.280.

15       **Sec. 219.** RCW 41.06.400 and 1980 c 118 s 4 are each amended to  
16 read as follows:

17       (1) In addition to other powers and duties specified in this  
18 chapter, the ~~((board))~~ director shall, by rule, prescribe the purpose  
19 and minimum standards for training and career development programs and,  
20 in so doing, regularly consult with and consider the needs of  
21 individual agencies and employees.

22       (2) In addition to other powers and duties specified in this  
23 chapter, the director shall:

24       (a) Provide for the evaluation of training and career development  
25 programs and plans of agencies ~~((based on minimum standards established~~  
26 ~~by the board))~~. The director shall report the results of such  
27 evaluations to the agency which is the subject of the evaluation;

28       (b) Provide training and career development programs which may be  
29 conducted more efficiently and economically on an interagency basis;

30       (c) Promote interagency sharing of resources for training and  
31 career development;

32       (d) Monitor and review the impact of training and career  
33 development programs to ensure that the responsibilities of the state  
34 to provide equal employment opportunities are diligently carried out.  
35 ~~((The director shall report to the board the impact of training and~~  
36 ~~career development programs on the fulfillment of such~~  
37 ~~responsibilities.))~~

1 (3) At an agency's request, the director may provide training and  
2 career development programs for an agency's internal use which may be  
3 conducted more efficiently and economically by the department of  
4 personnel.

5 **Sec. 220.** RCW 41.06.410 and 1980 c 118 s 5 are each amended to  
6 read as follows:

7 Each agency subject to the provisions of this chapter shall:

8 (1) Prepare an employee training and career development plan which  
9 shall at least meet minimum standards established by the ((board))  
10 director. A copy of such plan shall be submitted to the director for  
11 purposes of administering the provisions of RCW 41.06.400(2);

12 (2) Provide for training and career development for its employees  
13 in accordance with the agency plan;

14 (3) Report on its training and career development program  
15 operations and costs to the director in accordance with reporting  
16 procedures adopted by the ((board)) director;

17 (4) Budget for training and career development in accordance with  
18 procedures of the office of financial management.

19 **Sec. 221.** RCW 41.06.450 and 1993 c 281 s 37 are each amended to  
20 read as follows:

21 (1) ((By January 1, 1983, the Washington personnel resources  
22 board)) The director shall adopt rules applicable to each agency to  
23 ensure that information relating to employee misconduct or alleged  
24 misconduct is destroyed or maintained as follows:

25 (a) All such information determined to be false and all such  
26 information in situations where the employee has been fully exonerated  
27 of wrongdoing, shall be promptly destroyed;

28 (b) All such information having no reasonable bearing on the  
29 employee's job performance or on the efficient and effective management  
30 of the agency, shall be promptly destroyed;

31 (c) All other information shall be retained only so long as it has  
32 a reasonable bearing on the employee's job performance or on the  
33 efficient and effective management of the agency.

34 (2) Notwithstanding subsection (1) of this section, an agency may  
35 retain information relating to employee misconduct or alleged  
36 misconduct if:

37 (a) The employee requests that the information be retained; or

1 (b) The information is related to pending legal action or legal  
2 action may be reasonably expected to result.

3 (3) In adopting rules under this section, the (~~Washington~~  
4 ~~personnel resources board~~) director shall consult with the public  
5 disclosure commission to ensure that the public policy of the state, as  
6 expressed in chapter 42.17 RCW, is adequately protected.

7 **Sec. 222.** RCW 41.06.475 and 1993 c 281 s 38 are each amended to  
8 read as follows:

9 The (~~Washington personnel resources board~~) director shall adopt  
10 rules, in cooperation with the secretary of social and health services,  
11 for the background investigation of persons being considered for state  
12 employment in positions directly responsible for the supervision, care,  
13 or treatment of children or developmentally disabled persons.

14 **Sec. 223.** RCW 41.06.490 and 1990 c 204 s 3 are each amended to  
15 read as follows:

16 (1) In addition to the rules adopted under RCW 41.06.150, the  
17 (~~board~~) director shall adopt rules establishing a state employee  
18 return-to-work program. The program shall, at a minimum:

19 (a) Direct each agency to adopt a return-to-work policy. The  
20 program shall allow each agency program to take into consideration the  
21 special nature of employment in the agency;

22 (b) Provide for eligibility in the return-to-work program, for a  
23 minimum of two years from the date the temporary disability commenced,  
24 for any permanent employee who is receiving compensation under RCW  
25 51.32.090 and who is, by reason of his or her temporary disability,  
26 unable to return to his or her previous work, but who is physically  
27 capable of carrying out work of a lighter or modified nature;

28 (c) Allow opportunity for return-to-work statewide when appropriate  
29 job classifications are not available in the agency that is the  
30 appointing authority at the time of injury;

31 (d) Require each agency to name an agency representative  
32 responsible for coordinating the return-to-work program of the agency;

33 (e) Provide that applicants receiving appointments for classified  
34 service receive an explanation of the return-to-work policy;

35 (f) Require training of supervisors on implementation of the  
36 return-to-work policy, including but not limited to assessment of the  
37 appropriateness of the return-to-work job for the employee; and

1 (g) Coordinate participation of applicable employee assistance  
2 programs, as appropriate.

3 (2) The agency full-time equivalents necessary to implement the  
4 return-to-work program established under this section shall be used  
5 only for the purposes of the return-to-work program and the net  
6 increase in full-time equivalents shall be temporary.

7 **Sec. 224.** RCW 28B.12.060 and 1994 c 130 s 6 are each amended to  
8 read as follows:

9 The higher education coordinating board shall adopt rules as may be  
10 necessary or appropriate for effecting the provisions of this chapter,  
11 and not in conflict with this chapter, in accordance with the  
12 provisions of chapter 34.05 RCW, the state higher education  
13 administrative procedure act. Such rules shall include provisions  
14 designed to make employment under the work-study program reasonably  
15 available, to the extent of available funds, to all eligible students  
16 in eligible post-secondary institutions in need thereof. The rules  
17 shall include:

18 (1) Providing work under the state work-study program that will not  
19 result in the displacement of employed workers or impair existing  
20 contracts for services;

21 (2) Furnishing work only to a student who:

22 (a) Is capable, in the opinion of the eligible institution, of  
23 maintaining good standing in such course of study while employed under  
24 the program covered by the agreement; and

25 (b) Has been accepted for enrollment as at least a half-time  
26 student at the eligible institution or, in the case of a student  
27 already enrolled in and attending the eligible institution, is in good  
28 standing and in at least half-time attendance there either as an  
29 undergraduate, graduate or professional student; and

30 (c) Is not pursuing a degree in theology;

31 (3) Placing priority on providing:

32 (a) Work opportunities for students who are residents of the state  
33 of Washington as defined in RCW 28B.15.012 and 28B.15.013 except  
34 resident students defined in RCW 28B.15.012(2)((+e)) (f);

35 (b) Job placements in fields related to each student's academic or  
36 vocational pursuits, with an emphasis on off-campus job placements  
37 whenever appropriate; and

38 (c) Off-campus community service placements;

1 (4) Provisions to assure that in the state institutions of higher  
2 education, utilization of this work-study program:

3 (a) Shall only supplement and not supplant classified positions  
4 under jurisdiction of chapter 41.06 RCW;

5 (b) That all positions established which are comparable shall be  
6 identified to a job classification under the (~~Washington personnel~~  
7 ~~resources board's~~) director of personnel's classification plan and  
8 shall receive equal compensation;

9 (c) Shall not take place in any manner that would replace  
10 classified positions reduced due to lack of funds or work; and

11 (d) That work study positions shall only be established at entry  
12 level positions of the classified service unless the overall scope and  
13 responsibilities of the position indicate a higher level; and

14 (5) Provisions to encourage job placements in occupations that meet  
15 Washington's economic development goals, especially those in  
16 international trade and international relations. The board shall  
17 permit appropriate job placements in other states and other countries.

18 **Sec. 225.** RCW 34.05.030 and 1994 c 39 s 1 are each amended to read  
19 as follows:

20 (1) This chapter shall not apply to:

21 (a) The state militia, or

22 (b) The board of clemency and pardons, or

23 (c) The department of corrections or the indeterminate sentencing  
24 review board with respect to persons who are in their custody or are  
25 subject to the jurisdiction of those agencies.

26 (2) The provisions of RCW 34.05.410 through 34.05.598 shall not  
27 apply:

28 (a) To adjudicative proceedings of the board of industrial  
29 insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

30 (b) Except for actions pursuant to chapter 46.29 RCW, to the  
31 denial, suspension, or revocation of a driver's license by the  
32 department of licensing;

33 (c) To the department of labor and industries where another statute  
34 expressly provides for review of adjudicative proceedings of a  
35 department action, order, decision, or award before the board of  
36 industrial insurance appeals;

37 (d) To actions of the Washington personnel resources board(~~(7)~~) or  
38 the director of personnel(~~(7 or the personnel appeals board)~~); or

1 (e) To the extent they are inconsistent with any provisions of  
2 chapter 43.43 RCW.

3 (3) Unless a party makes an election for a formal hearing pursuant  
4 to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not  
5 apply to a review hearing conducted by the board of tax appeals.

6 (4) The rule-making provisions of this chapter do not apply to  
7 reimbursement unit values, fee schedules, arithmetic conversion  
8 factors, and similar arithmetic factors used to determine payment rates  
9 that apply to goods and services purchased under contract for clients  
10 eligible under chapter 74.09 RCW.

11 (5) All other agencies, whether or not formerly specifically  
12 excluded from the provisions of all or any part of the Administrative  
13 Procedure Act, shall be subject to the entire act.

14 **Sec. 226.** RCW 34.12.020 and 1995 c 331 s 1 are each amended to  
15 read as follows:

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

18 (1) "Office" means the office of administrative hearings.

19 (2) "Administrative law judge" means any person appointed by the  
20 chief administrative law judge to conduct or preside over hearings as  
21 provided in this chapter.

22 (3) "Hearing" means an adjudicative proceeding within the meaning  
23 of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413  
24 through 34.05.476.

25 (4) "State agency" means any state board, commission, department,  
26 or officer authorized by law to make rules or to conduct adjudicative  
27 proceedings, except those in the legislative or judicial branches, the  
28 growth management hearings boards, the utilities and transportation  
29 commission, the pollution control hearings board, the shorelines  
30 hearings board, the forest practices appeals board, the environmental  
31 hearings office, the board of industrial insurance appeals, the  
32 Washington personnel resources board, the public employment relations  
33 commission, (~~the personnel appeals board,~~) and the board of tax  
34 appeals.

35 **Sec. 227.** RCW 41.04.340 and 1998 c 254 s 1 and 1998 c 116 s 2 are  
36 each reenacted and amended to read as follows:

1 (1) An attendance incentive program is established for all eligible  
2 employees. As used in this section the term "eligible employee" means  
3 any employee of the state, other than eligible employees of the  
4 community and technical colleges and the state board for community and  
5 technical colleges identified in RCW 28B.50.553, and teaching and  
6 research faculty at the state and regional universities and The  
7 Evergreen State College, entitled to accumulate sick leave and for whom  
8 accurate sick leave records have been maintained. No employee may  
9 receive compensation under this section for any portion of sick leave  
10 accumulated at a rate in excess of one day per month. The state and  
11 regional universities and The Evergreen State College shall maintain  
12 complete and accurate sick leave records for all teaching and research  
13 faculty.

14 (2) In January of the year following any year in which a minimum of  
15 sixty days of sick leave is accrued, and each January thereafter, any  
16 eligible employee may receive remuneration for unused sick leave  
17 accumulated in the previous year at a rate equal to one day's monetary  
18 compensation of the employee for each four full days of accrued sick  
19 leave in excess of sixty days. Sick leave for which compensation has  
20 been received shall be deducted from accrued sick leave at the rate of  
21 four days for every one day's monetary compensation.

22 (3) At the time of separation from state service due to retirement  
23 or death, an eligible employee or the employee's estate may elect to  
24 receive remuneration at a rate equal to one day's current monetary  
25 compensation of the employee for each four full days of accrued sick  
26 leave.

27 (4) Remuneration or benefits received under this section shall not  
28 be included for the purpose of computing a retirement allowance under  
29 any public retirement system in this state.

30 (5) Except as provided in subsections (7) through (9) of this  
31 section for employees not covered by chapter 41.06 RCW, this section  
32 shall be administered, and rules shall be adopted to carry out its  
33 purposes, by the (~~Washington personnel resources board~~) director of  
34 personnel for persons subject to chapter 41.06 RCW: PROVIDED, That  
35 determination of classes of eligible employees shall be subject to  
36 approval by the office of financial management.

37 (6) Should the legislature revoke any remuneration or benefits  
38 granted under this section, no affected employee shall be entitled  
39 thereafter to receive such benefits as a matter of contractual right.

1 (7) In lieu of remuneration for unused sick leave at retirement as  
2 provided in subsection (3) of this section, an agency head or designee  
3 may with equivalent funds, provide eligible employees with a benefit  
4 plan that provides for reimbursement for medical expenses. This plan  
5 shall be implemented only after consultation with affected groups of  
6 employees. For eligible employees covered by chapter 41.06 RCW,  
7 procedures for the implementation of these plans shall be adopted by  
8 the (~~Washington personnel resources board~~) director of personnel.  
9 For eligible employees exempt from chapter 41.06 RCW, and classified  
10 employees who have opted out of coverage of chapter 41.06 RCW as  
11 provided in RCW 41.56.201, implementation procedures shall be adopted  
12 by an agency head having jurisdiction over the employees.

13 (8) Implementing procedures adopted by the (~~Washington personnel~~  
14 ~~resources board~~) director of personnel or agency heads shall require  
15 that each medical expense plan authorized by subsection (7) of this  
16 section apply to all eligible employees in any one of the following  
17 groups: (a) Employees in an agency; (b) employees in a major  
18 organizational subdivision of an agency; (c) employees at a major  
19 operating location of an agency; (d) exempt employees under the  
20 jurisdiction of an elected or appointed Washington state executive; (e)  
21 employees of the Washington state senate; (f) employees of the  
22 Washington state house of representatives; (g) classified employees in  
23 a bargaining unit established by the (~~Washington personnel resources~~  
24 ~~board~~) director of personnel; or (h) other group of employees defined  
25 by an agency head that is not designed to provide an individual-  
26 employee choice regarding participation in a medical expense plan.  
27 However, medical expense plans for eligible employees in any of the  
28 groups under (a) through (h) of this subsection who are covered by a  
29 collective bargaining agreement shall be implemented only by written  
30 agreement with the bargaining unit's exclusive representative and a  
31 separate medical expense plan may be provided for unrepresented  
32 employees.

33 (9) Medical expense plans authorized by subsection (7) of this  
34 section must require as a condition of participation in the plan that  
35 employees in the group affected by the plan sign an agreement with the  
36 employer. The agreement must include a provision to hold the employer  
37 harmless should the United States government find that the employer or  
38 the employee is in debt to the United States as a result of the  
39 employee not paying income taxes due on the equivalent funds placed

1 into the plan, or as a result of the employer not withholding or  
2 deducting a tax, assessment, or other payment on the funds as required  
3 by federal law. The agreement must also include a provision that  
4 requires an eligible employee to forfeit remuneration under subsection  
5 (3) of this section if the employee belongs to a group that has been  
6 designated to participate in the medical expense plan permitted under  
7 this section and the employee refuses to execute the required  
8 agreement.

9       **Sec. 228.** RCW 41.50.804 and 1993 c 281 s 40 are each amended to  
10 read as follows:

11       Nothing contained in this chapter shall be construed to alter any  
12 existing collective bargaining agreement until any such agreement has  
13 expired or until any such bargaining unit has been modified by action  
14 of the ((~~Washington personnel resources board~~)) public employment  
15 relations commission as provided by law.

16       **Sec. 229.** RCW 43.06.425 and 1993 c 281 s 48 are each amended to  
17 read as follows:

18       The ((~~Washington personnel resources board~~)) director of personnel  
19 shall adopt rules to provide that:

20       (1) Successful completion of an internship under RCW 43.06.420  
21 shall be considered as employment experience at the level at which the  
22 intern was placed;

23       (2) Persons leaving classified or exempt positions in state  
24 government in order to take an internship under RCW 43.06.420: (a)  
25 Have the right of reversion to the previous position at any time during  
26 the internship or upon completion of the internship; and (b) shall  
27 continue to receive all fringe benefits as if they had never left their  
28 classified or exempt positions;

29       (3) Participants in the undergraduate internship program who were  
30 not public employees prior to accepting a position in the program  
31 receive sick leave allowances commensurate with other state employees;

32       (4) Participants in the executive fellows program who were not  
33 public employees prior to accepting a position in the program receive  
34 sick and vacation leave allowances commensurate with other state  
35 employees.

1       **Sec. 230.** RCW 43.131.090 and 2000 c 189 s 7 are each amended to  
2 read as follows:

3       Unless the legislature specifies a shorter period of time, a  
4 terminated entity shall continue in existence until June 30th of the  
5 next succeeding year for the purpose of concluding its affairs:  
6 PROVIDED, That the powers and authority of the entity shall not be  
7 reduced or otherwise limited during this period. Unless otherwise  
8 provided:

9       (1) All employees of terminated entities classified under chapter  
10 41.06 RCW, the state civil service law, shall be transferred as  
11 appropriate or as otherwise provided in the procedures adopted by the  
12 (~~Washington personnel resources board~~) director of personnel pursuant  
13 to RCW 41.06.150;

14       (2) All documents and papers, equipment, or other tangible property  
15 in the possession of the terminated entity shall be delivered to the  
16 custody of the entity assuming the responsibilities of the terminated  
17 entity or if such responsibilities have been eliminated, documents and  
18 papers shall be delivered to the state archivist and equipment or other  
19 tangible property to the department of general administration;

20       (3) All funds held by, or other moneys due to, the terminated  
21 entity shall revert to the fund from which they were appropriated, or  
22 if that fund is abolished to the general fund;

23       (4) Notwithstanding the provisions of RCW 34.05.020, all rules made  
24 by a terminated entity shall be repealed, without further action by the  
25 entity, at the end of the period provided in this section, unless  
26 assumed and reaffirmed by the entity assuming the related legal  
27 responsibilities of the terminated entity;

28       (5) All contractual rights and duties of an entity shall be  
29 assigned or delegated to the entity assuming the responsibilities of  
30 the terminated entity, or if there is none to such entity as the  
31 governor shall direct.

32       **Sec. 231.** RCW 49.46.010 and 1997 c 203 s 3 are each amended to  
33 read as follows:

34       As used in this chapter:

35       (1) "Director" means the director of labor and industries;

36       (2) "Wage" means compensation due to an employee by reason of  
37 employment, payable in legal tender of the United States or checks on  
38 banks convertible into cash on demand at full face value, subject to

1 such deductions, charges, or allowances as may be permitted by rules of  
2 the director;

3 (3) "Employ" includes to permit to work;

4 (4) "Employer" includes any individual, partnership, association,  
5 corporation, business trust, or any person or group of persons acting  
6 directly or indirectly in the interest of an employer in relation to an  
7 employee;

8 (5) "Employee" includes any individual employed by an employer but  
9 shall not include:

10 (a) Any individual (i) employed as a hand harvest laborer and paid  
11 on a piece rate basis in an operation which has been, and is generally  
12 and customarily recognized as having been, paid on a piece rate basis  
13 in the region of employment; (ii) who commutes daily from his or her  
14 permanent residence to the farm on which he or she is employed; and  
15 (iii) who has been employed in agriculture less than thirteen weeks  
16 during the preceding calendar year;

17 (b) Any individual employed in casual labor in or about a private  
18 home, unless performed in the course of the employer's trade, business,  
19 or profession;

20 (c) Any individual employed in a bona fide executive,  
21 administrative, or professional capacity or in the capacity of outside  
22 salesman as those terms are defined and delimited by rules of the  
23 director. However, those terms shall be defined and delimited by the  
24 (~~Washington personnel resources board~~) director of personnel pursuant  
25 to chapter 41.06 RCW for employees employed under the director of  
26 personnel's jurisdiction;

27 (d) Any individual engaged in the activities of an educational,  
28 charitable, religious, state or local governmental body or agency, or  
29 nonprofit organization where the employer-employee relationship does  
30 not in fact exist or where the services are rendered to such  
31 organizations gratuitously. If the individual receives reimbursement  
32 in lieu of compensation for normally incurred out-of-pocket expenses or  
33 receives a nominal amount of compensation per unit of voluntary service  
34 rendered, an employer-employee relationship is deemed not to exist for  
35 the purpose of this section or for purposes of membership or  
36 qualification in any state, local government or publicly supported  
37 retirement system other than that provided under chapter 41.24 RCW;

38 (e) Any individual employed full time by any state or local  
39 governmental body or agency who provides voluntary services but only

1 with regard to the provision of the voluntary services. The voluntary  
2 services and any compensation therefor shall not affect or add to  
3 qualification, entitlement or benefit rights under any state, local  
4 government, or publicly supported retirement system other than that  
5 provided under chapter 41.24 RCW;

6 (f) Any newspaper vendor or carrier;

7 (g) Any carrier subject to regulation by Part 1 of the Interstate  
8 Commerce Act;

9 (h) Any individual engaged in forest protection and fire prevention  
10 activities;

11 (i) Any individual employed by any charitable institution charged  
12 with child care responsibilities engaged primarily in the development  
13 of character or citizenship or promoting health or physical fitness or  
14 providing or sponsoring recreational opportunities or facilities for  
15 young people or members of the armed forces of the United States ;

16 (j) Any individual whose duties require that he or she reside or  
17 sleep at the place of his or her employment or who otherwise spends a  
18 substantial portion of his or her work time subject to call, and not  
19 engaged in the performance of active duties;

20 (k) Any resident, inmate, or patient of a state, county, or  
21 municipal correctional, detention, treatment or rehabilitative  
22 institution;

23 (l) Any individual who holds a public elective or appointive office  
24 of the state, any county, city, town, municipal corporation or quasi  
25 municipal corporation, political subdivision, or any instrumentality  
26 thereof, or any employee of the state legislature;

27 (m) All vessel operating crews of the Washington state ferries  
28 operated by the department of transportation;

29 (n) Any individual employed as a seaman on a vessel other than an  
30 American vessel;

31 (6) "Occupation" means any occupation, service, trade, business,  
32 industry, or branch or group of industries or employment or class of  
33 employment in which employees are gainfully employed;

34 (7) "Retail or service establishment" means an establishment  
35 seventy-five percent of whose annual dollar volume of sales of goods or  
36 services, or both, is not for resale and is recognized as retail sales  
37 or services in the particular industry.

1        **Sec. 232.** RCW 41.06.340 and 1993 c 281 s 35 are each amended to  
2 read as follows:

3        (1) With respect to collective bargaining as authorized by sections  
4 301 through 314 of this act, the public employment relations commission  
5 created by chapter 41.58 RCW shall have authority to adopt rules, on  
6 and after the effective date of this section, relating to determination  
7 of appropriate bargaining units within any agency. In making such  
8 determination the commission shall consider the duties, skills, and  
9 working conditions of the employees, the history of collective  
10 bargaining by the employees and their bargaining representatives, the  
11 extent of organization among the employees, and the desires of the  
12 employees. The public employment relations commission created in  
13 chapter 41.58 RCW shall adopt rules and make determinations relating to  
14 the certification and decertification of exclusive bargaining  
15 representatives.

16        (2) Each and every provision of RCW 41.56.140 through ((41.56.190))  
17 41.56.160 shall be applicable to this chapter as it relates to state  
18 civil service employees ((and the Washington personnel resources board,  
19 or its designee, whose final decision shall be appealable to the  
20 Washington personnel resources board, which is granted all powers and  
21 authority granted to the department of labor and industries by RCW  
22 41.56.140 through 41.56.190)).

23        (3) A collective bargaining agreement entered into under RCW  
24 41.06.150 before July 1, 2004, covering employees subject to sections  
25 301 through 314 of this act that expires after July 1, 2004, shall  
26 remain in full force during its duration, or until superseded by a  
27 collective bargaining agreement entered into by the parties under  
28 sections 301 through 314 of this act. However, an agreement entered  
29 into before July 1, 2004, may not be renewed or extended beyond July 1,  
30 2005, or until superseded by a collective bargaining agreement entered  
31 into under sections 301 through 314 of this act, whichever is later.

32        **NEW SECTION. Sec. 233.** A new section is added to chapter 41.06  
33 RCW to read as follows:

34        (1) The personnel appeals board is hereby abolished and its powers,  
35 duties, and functions are hereby transferred to the Washington  
36 personnel resources board. All references to the executive secretary  
37 or the personnel appeals board in the Revised Code of Washington shall

1 be construed to mean the director of the department of personnel or the  
2 Washington personnel resources board.

3 (2) (a) All reports, documents, surveys, books, records, files,  
4 papers, or written material in the possession of the personnel appeals  
5 board shall be delivered to the custody of the department of personnel.  
6 All cabinets, furniture, office equipment, motor vehicles, and other  
7 tangible property employed by the personnel appeals board shall be made  
8 available to the department of personnel. All funds, credits, leases,  
9 or other assets held by the personnel appeals board shall be assigned  
10 to the department of personnel.

11 (b) Any appropriations made to the personnel appeals board shall,  
12 on the effective date of this section, be transferred and credited to  
13 the department of personnel.

14 (c) If any question arises as to the transfer of any personnel,  
15 funds, books, documents, records, papers, files, equipment, or other  
16 tangible property used or held in the exercise of the powers and the  
17 performance of the duties and functions transferred, the director of  
18 financial management shall make a determination as to the proper  
19 allocation and certify the same to the state agencies concerned.

20 (3) All employees of the personnel appeals board are transferred to  
21 the jurisdiction of the department of personnel. All employees  
22 classified under chapter 41.06 RCW, the state civil service law, are  
23 assigned to the department of personnel to perform their usual duties  
24 upon the same terms as formerly, without any loss of rights, subject to  
25 any action that may be appropriate thereafter in accordance with the  
26 laws and rules governing state civil service.

27 (4) All rules and all pending business before the personnel appeals  
28 board shall be continued and acted upon by the Washington personnel  
29 resources board. All existing contracts and obligations shall remain  
30 in full force and shall be performed by the department of personnel.

31 (5) The transfer of the powers, duties, functions, and personnel of  
32 the personnel appeals board shall not affect the validity of any act  
33 performed before the effective date of this section.

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

1       **Sec. 234.** RCW 13.40.320 and 2001 c 137 s 1 are each amended to  
2 read as follows:

3       (1) The department of social and health services shall establish a  
4 medium security juvenile offender basic training camp program. This  
5 program for juvenile offenders serving a term of confinement under the  
6 supervision of the department is exempt from the licensing requirements  
7 of chapter 74.15 RCW.

8       (2) The department may contract under this chapter with private  
9 companies, the national guard, or other federal, state, or local  
10 agencies to operate the juvenile offender basic training camp(~~(7~~  
11 ~~notwithstanding the provisions of RCW 41.06.380)~~).

12       (3) The juvenile offender basic training camp shall be a structured  
13 and regimented model emphasizing the building up of an offender's self-  
14 esteem, confidence, and discipline. The juvenile offender basic  
15 training camp program shall provide participants with basic education,  
16 prevocational training, work-based learning, work experience, work  
17 ethic skills, conflict resolution counseling, substance abuse  
18 intervention, anger management counseling, and structured intensive  
19 physical training. The juvenile offender basic training camp program  
20 shall have a curriculum training and work schedule that incorporates a  
21 balanced assignment of these or other rehabilitation and training  
22 components for no less than sixteen hours per day, six days a week.

23       The department shall develop standards for the safe and effective  
24 operation of the juvenile offender basic training camp program, for an  
25 offender's successful program completion, and for the continued after-  
26 care supervision of offenders who have successfully completed the  
27 program.

28       (4) Offenders eligible for the juvenile offender basic training  
29 camp option shall be those with a disposition of not more than sixty-  
30 five weeks. Violent and sex offenders shall not be eligible for the  
31 juvenile offender basic training camp program.

32       (5) If the court determines that the offender is eligible for the  
33 juvenile offender basic training camp option, the court may recommend  
34 that the department place the offender in the program. The department  
35 shall evaluate the offender and may place the offender in the program.  
36 The evaluation shall include, at a minimum, a risk assessment developed  
37 by the department and designed to determine the offender's suitability  
38 for the program. No juvenile who is assessed as a high risk offender  
39 or suffers from any mental or physical problems that could endanger his

1 or her health or drastically affect his or her performance in the  
2 program shall be admitted to or retained in the juvenile offender basic  
3 training camp program.

4 (6) All juvenile offenders eligible for the juvenile offender basic  
5 training camp sentencing option shall spend one hundred twenty days of  
6 their disposition in a juvenile offender basic training camp. This  
7 period may be extended for up to forty days by the secretary if a  
8 juvenile offender requires additional time to successfully complete the  
9 basic training camp program. If the juvenile offender's activities  
10 while in the juvenile offender basic training camp are so disruptive to  
11 the juvenile offender basic training camp program, as determined by the  
12 secretary according to standards developed by the department, as to  
13 result in the removal of the juvenile offender from the juvenile  
14 offender basic training camp program, or if the offender cannot  
15 complete the juvenile offender basic training camp program due to  
16 medical problems, the secretary shall require that the offender be  
17 committed to a juvenile institution to serve the entire remainder of  
18 his or her disposition, less the amount of time already served in the  
19 juvenile offender basic training camp program.

20 (7) All offenders who successfully graduate from the juvenile  
21 offender basic training camp program shall spend the remainder of their  
22 disposition on parole in a juvenile rehabilitation administration  
23 intensive aftercare program in the local community. Violation of the  
24 conditions of parole is subject to sanctions specified in RCW  
25 13.40.210(4). The program shall provide for the needs of the offender  
26 based on his or her progress in the aftercare program as indicated by  
27 ongoing assessment of those needs and progress. The intensive  
28 aftercare program shall monitor postprogram juvenile offenders and  
29 assist them to successfully reintegrate into the community. In  
30 addition, the program shall develop a process for closely monitoring  
31 and assessing public safety risks. The intensive aftercare program  
32 shall be designed and funded by the department of social and health  
33 services.

34 (8) The department shall also develop and maintain a data base to  
35 measure recidivism rates specific to this incarceration program. The  
36 data base shall maintain data on all juvenile offenders who complete  
37 the juvenile offender basic training camp program for a period of two  
38 years after they have completed the program. The data base shall also  
39 maintain data on the criminal activity, educational progress, and

1 employment activities of all juvenile offenders who participated in the  
2 program.

3 **Sec. 235.** RCW 39.29.006 and 1998 c 101 s 2 are each amended to  
4 read as follows:

5 As used in this chapter:

6 (1) "Agency" means any state office or activity of the executive  
7 and judicial branches of state government, including state agencies,  
8 departments, offices, divisions, boards, commissions, and educational,  
9 correctional, and other types of institutions.

10 (2) "Client services" means services provided directly to agency  
11 clients including, but not limited to, medical and dental services,  
12 employment and training programs, residential care, and subsidized  
13 housing.

14 (3) "Competitive solicitation" means a documented formal process  
15 providing an equal and open opportunity to qualified parties and  
16 culminating in a selection based on criteria which may include such  
17 factors as the consultant's fees or costs, ability, capacity,  
18 experience, reputation, responsiveness to time limitations,  
19 responsiveness to solicitation requirements, quality of previous  
20 performance, and compliance with statutes and rules relating to  
21 contracts or services.

22 (4) "Consultant" means an independent individual or firm  
23 contracting with an agency to perform a service or render an opinion or  
24 recommendation according to the consultant's methods and without being  
25 subject to the control of the agency except as to the result of the  
26 work. The agency monitors progress under the contract and authorizes  
27 payment.

28 (5) "Emergency" means a set of unforeseen circumstances beyond the  
29 control of the agency that either:

30 (a) Present a real, immediate threat to the proper performance of  
31 essential functions; or

32 (b) May result in material loss or damage to property, bodily  
33 injury, or loss of life if immediate action is not taken.

34 (6) "Evidence of competition" means documentation demonstrating  
35 that the agency has solicited responses from multiple firms in  
36 selecting a consultant.

37 (7) "Personal service" means professional or technical expertise  
38 provided by a consultant to accomplish a specific study, project, task,

1 or other work statement. This term does not include purchased services  
2 as defined under subsection (9) of this section. This term does  
3 include client services.

4 (8) "Personal service contract" means an agreement, or any  
5 amendment thereto, with a consultant for the rendering of personal  
6 services to the state which is consistent with ((RCW 41.06.380))  
7 section 208 of this act.

8 (9) "Purchased services" means services provided by a vendor to  
9 accomplish routine, continuing and necessary functions. This term  
10 includes, but is not limited to, services acquired under RCW 43.19.190  
11 or 43.105.041 for equipment maintenance and repair; operation of a  
12 physical plant; security; computer hardware and software maintenance;  
13 data entry; key punch services; and computer time-sharing, contract  
14 programming, and analysis.

15 (10) "Sole source" means a consultant providing professional or  
16 technical expertise of such a unique nature that the consultant is  
17 clearly and justifiably the only practicable source to provide the  
18 service. The justification shall be based on either the uniqueness of  
19 the service or sole availability at the location required.

20 **Sec. 236.** RCW 41.04.385 and 1993 c 194 s 5 are each amended to  
21 read as follows:

22 The legislature finds that (1) demographic, economic, and social  
23 trends underlie a critical and increasing demand for child care in the  
24 state of Washington; (2) working parents and their children benefit  
25 when the employees' child care needs have been resolved; (3) the state  
26 of Washington should serve as a model employer by creating a supportive  
27 atmosphere, to the extent feasible, in which its employees may meet  
28 their child care needs; and (4) the state of Washington should  
29 encourage the development of partnerships between state agencies, state  
30 employees, state employee labor organizations, and private employers to  
31 expand the availability of affordable quality child care. The  
32 legislature finds further that resolving employee child care concerns  
33 not only benefits the employees and their children, but may benefit the  
34 employer by reducing absenteeism, increasing employee productivity,  
35 improving morale, and enhancing the employer's position in recruiting  
36 and retaining employees. Therefore, the legislature declares that it  
37 is the policy of the state of Washington to assist state employees by  
38 creating a supportive atmosphere in which they may meet their child

1 care needs. Policies and procedures for state agencies to address  
2 employee child care needs will be the responsibility of the director of  
3 personnel in consultation with the child care coordinating committee,  
4 as provided in RCW 74.13.090, and state employee representatives ((as  
5 ~~provided under RCW 41.06.140~~)).

6 \*Sec. 237. RCW 47.46.040 and 2001 c 64 s 14 are each amended to  
7 read as follows:

8 (1) All projects designed, constructed, and operated under this  
9 authority must comply with all applicable rules and statutes in  
10 existence at the time the agreement is executed, including but not  
11 limited to the following provisions: Chapter 39.12 RCW, this title,  
12 ((~~RCW 41.06.380~~)) section 208 of this act, chapter 47.64 RCW, RCW  
13 49.60.180, and 49 C.F.R. Part 21.

14 (2) The secretary or a designee shall consult with legal,  
15 financial, and other experts within and outside state government in the  
16 negotiation and development of the agreements.

17 (3) Agreements shall provide for private ownership of the projects  
18 during the construction period. After completion and final acceptance  
19 of each project or discrete segment thereof, the agreement shall  
20 provide for state ownership of the transportation systems and  
21 facilities and lease to the private entity unless the state elects to  
22 provide for ownership of the facility by the private entity during the  
23 term of the agreement.

24 The state shall lease each of the demonstration projects, or  
25 applicable project segments, to the private entities for operating  
26 purposes for up to fifty years.

27 (4) The department may exercise any power possessed by it to  
28 facilitate the development, construction, financing operation, and  
29 maintenance of transportation projects under this chapter. Agreements  
30 for maintenance services entered into under this section shall provide  
31 for full reimbursement for services rendered by the department or other  
32 state agencies. Agreements for police services for projects, involving  
33 state highway routes, developed under agreements shall be entered into  
34 with the Washington state patrol. The agreement for police services  
35 shall provide that the state patrol will be reimbursed for costs on a  
36 comparable basis with the costs incurred for comparable service on  
37 other state highway routes. The department may provide services for  
38 which it is reimbursed, including but not limited to preliminary

1 planning, environmental certification, and preliminary design of the  
2 demonstration projects.

3 (5) The plans and specifications for each project constructed under  
4 this section shall comply with the department's standards for state  
5 projects. A facility constructed by and leased to a private entity is  
6 deemed to be a part of the state highway system for purposes of  
7 identification, maintenance, and enforcement of traffic laws and for  
8 the purposes of applicable sections of this title. Upon reversion of  
9 the facility to the state, the project must meet all applicable state  
10 standards. Agreements shall address responsibility for reconstruction  
11 or renovations that are required in order for a facility to meet all  
12 applicable state standards upon reversion of the facility to the state.

13 (6) For the purpose of facilitating these projects and to assist  
14 the private entity in the financing, development, construction, and  
15 operation of the transportation systems and facilities, the agreements  
16 may include provisions for the department to exercise its authority,  
17 including the lease of facilities, rights of way, and airspace,  
18 exercise of the power of eminent domain, granting of development rights  
19 and opportunities, granting of necessary easements and rights of  
20 access, issuance of permits and other authorizations, protection from  
21 competition, remedies in the event of default of either of the parties,  
22 granting of contractual and real property rights, liability during  
23 construction and the term of the lease, authority to negotiate  
24 acquisition of rights of way in excess of appraised value, and any  
25 other provision deemed necessary by the secretary.

26 (7) The agreements entered into under this section may include  
27 provisions authorizing the state to grant necessary easements and lease  
28 to a private entity existing rights of way or rights of way  
29 subsequently acquired with public or private financing. The agreements  
30 may also include provisions to lease to the entity airspace above or  
31 below the right of way associated or to be associated with the private  
32 entity's transportation facility. In consideration for the reversion  
33 rights in these privately constructed facilities, the department may  
34 negotiate a charge for the lease of airspace rights during the term of  
35 the agreement for a period not to exceed fifty years. If, after the  
36 expiration of this period, the department continues to lease these  
37 airspace rights to the private entity, it shall do so only at fair  
38 market value. The agreement may also provide the private entity the

1 right of first refusal to undertake projects utilizing airspace owned  
2 by the state in the vicinity of the public-private project.

3 (8) Agreements under this section may include any contractual  
4 provision that is necessary to protect the project revenues required to  
5 repay the costs incurred to study, plan, design, finance, acquire,  
6 build, install, operate, enforce laws, and maintain toll highways,  
7 bridges, and tunnels and which will not unreasonably inhibit or  
8 prohibit the development of additional public transportation systems  
9 and facilities. Agreements under this section must secure and maintain  
10 liability insurance coverage in amounts appropriate to protect the  
11 project's viability and may address state indemnification of the  
12 private entity for design and construction liability where the state  
13 has approved relevant design and construction plans.

14 (9) Agreements shall include a process that provides for public  
15 involvement in decision making with respect to the development of the  
16 projects.

17 (10) (a) In carrying out the public involvement process required in  
18 subsection (9) of this section, the private entity shall proactively  
19 seek public participation through a process appropriate to the  
20 characteristics of the project that assesses and demonstrates public  
21 support among: Users of the project, residents of communities in the  
22 vicinity of the project, and residents of communities impacted by the  
23 project.

24 (b) The private entity shall conduct a comprehensive public  
25 involvement process that provides, periodically throughout the  
26 development and implementation of the project, users and residents of  
27 communities in the affected project area an opportunity to comment upon  
28 key issues regarding the project including, but not limited to: (i)  
29 Alternative sizes and scopes; (ii) design; (iii) environmental  
30 assessment; (iv) right of way and access plans; (v) traffic impacts;  
31 (vi) tolling or user fee strategies and tolling or user fee ranges;  
32 (vii) project cost; (viii) construction impacts; (ix) facility  
33 operation; and (x) any other salient characteristics.

34 (c) If the affected project area has not been defined, the private  
35 entity shall define the affected project area by conducting, at a  
36 minimum: (i) A comparison of the estimated percentage of residents of  
37 communities in the vicinity of the project and in other communities  
38 impacted by the project who could be subject to tolls or user fees and  
39 the estimated percentage of other users and transient traffic that

1 could be subject to tolls or user fees; (ii) an analysis of the  
2 anticipated traffic diversion patterns; (iii) an analysis of the  
3 potential economic impact resulting from proposed toll rates or user  
4 fee rates imposed on residents, commercial traffic, and commercial  
5 entities in communities in the vicinity of and impacted by the project;  
6 (iv) an analysis of the economic impact of tolls or user fees on the  
7 price of goods and services generally; and (v) an analysis of the  
8 relationship of the project to state transportation needs and benefits.

9 The agreement may require an advisory vote by users of and  
10 residents in the affected project area.

11 (d) In seeking public participation, the private entity shall  
12 establish a local involvement committee or committees comprised of  
13 residents of the affected project area, individuals who represent  
14 cities and counties in the affected project area, organizations formed  
15 to support or oppose the project, if such organizations exist, and  
16 users of the project. The private entity shall, at a minimum,  
17 establish a committee as required under the specifications of RCW  
18 47.46.030(6)(b)(ii) and (iii) and appointments to such committee shall  
19 be made no later than thirty days after the project area is defined.

20 (e) Local involvement committees shall act in an advisory capacity  
21 to the department and the private entity on all issues related to the  
22 development and implementation of the public involvement process  
23 established under this section.

24 (f) The department and the private entity shall provide the  
25 legislative transportation committee and local involvement committees  
26 with progress reports on the status of the public involvement process  
27 including the results of an advisory vote, if any occurs.

28 (11) Nothing in this chapter limits the right of the secretary and  
29 his or her agents to render such advice and to make such  
30 recommendations as they deem to be in the best interests of the state  
31 and the public.

32 \*Sec. 237 was vetoed. See message at end of chapter.

33 **Sec. 238.** RCW 72.09.100 and 1995 1st sp.s. c 19 s 33 are each  
34 amended to read as follows:

35 It is the intent of the legislature to vest in the department the  
36 power to provide for a comprehensive inmate work program and to remove  
37 statutory and other restrictions which have limited work programs in  
38 the past. For purposes of establishing such a comprehensive program,

1 the legislature recommends that the department consider adopting any or  
2 all, or any variation of, the following classes of work programs :

3 (1) CLASS I: FREE VENTURE INDUSTRIES. The employer model  
4 industries in this class shall be operated and managed in total or in  
5 part by any profit or nonprofit organization pursuant to an agreement  
6 between the organization and the department. The organization shall  
7 produce goods or services for sale to both the public and private  
8 sector.

9 The customer model industries in this class shall be operated and  
10 managed by the department to provide Washington state manufacturers or  
11 businesses with products or services currently produced or provided by  
12 out-of-state or foreign suppliers. The correctional industries board  
13 of directors shall review these proposed industries before the  
14 department contracts to provide such products or services. The review  
15 shall include an analysis of the potential impact of the proposed  
16 products and services on the Washington state business community and  
17 labor market.

18 The department of corrections shall supply appropriate security and  
19 custody services without charge to the participating firms.

20 Inmates who work in free venture industries shall do so at their  
21 own choice. They shall be paid a wage comparable to the wage paid for  
22 work of a similar nature in the locality in which the industry is  
23 located, as determined by the director of correctional industries. If  
24 the director cannot reasonably determine the comparable wage, then the  
25 pay shall not be less than the federal minimum wage.

26 An inmate who is employed in the class I program of correctional  
27 industries shall not be eligible for unemployment compensation benefits  
28 pursuant to any of the provisions of Title 50 RCW until released on  
29 parole or discharged.

30 (2) CLASS II: TAX REDUCTION INDUSTRIES. Industries in this class  
31 shall be state-owned and operated enterprises designed to reduce the  
32 costs for goods and services for tax-supported agencies and for  
33 nonprofit organizations. The industries selected for development  
34 within this class shall, as much as possible, match the available pool  
35 of inmate work skills and aptitudes with the work opportunities in the  
36 free community. The industries shall be closely patterned after  
37 private sector industries but with the objective of reducing public  
38 support costs rather than making a profit. The products and services  
39 of this industry, including purchased products and services necessary

1 for a complete product line, may be sold to public agencies, to  
2 nonprofit organizations, and to private contractors when the goods  
3 purchased will be ultimately used by a public agency or a nonprofit  
4 organization. Clothing manufactured by an industry in this class may  
5 be donated to nonprofit organizations that provide clothing free of  
6 charge to low-income persons. Correctional industries products and  
7 services shall be reviewed by the correctional industries board of  
8 directors before offering such products and services for sale to  
9 private contractors. The board of directors shall conduct a yearly  
10 marketing review of the products and services offered under this  
11 subsection. Such review shall include an analysis of the potential  
12 impact of the proposed products and services on the Washington state  
13 business community. To avoid waste or spoilage and consequent loss to  
14 the state, when there is no public sector market for such goods,  
15 byproducts and surpluses of timber, agricultural, and animal husbandry  
16 enterprises may be sold to private persons, at private sale. Surplus  
17 byproducts and surpluses of timber, agricultural and animal husbandry  
18 enterprises that cannot be sold to public agencies or to private  
19 persons may be donated to nonprofit organizations. All sales of  
20 surplus products shall be carried out in accordance with rules  
21 prescribed by the secretary.

22 Security and custody services shall be provided without charge by  
23 the department of corrections.

24 Inmates working in this class of industries shall do so at their  
25 own choice and shall be paid for their work on a gratuity scale which  
26 shall not exceed the wage paid for work of a similar nature in the  
27 locality in which the industry is located and which is approved by the  
28 director of correctional industries.

29 Subject to approval of the correctional industries board,  
30 provisions of (~~RCW 41.06.380 prohibiting contracting out work~~  
31 ~~performed by classified employees~~) section 208 of this act shall not  
32 apply to contracts with Washington state businesses entered into by the  
33 department of corrections through class II industries.

34 (3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES. Industries in  
35 this class shall be operated by the department of corrections. They  
36 shall be designed and managed to accomplish the following objectives:

37 (a) Whenever possible, to provide basic work training and  
38 experience so that the inmate will be able to qualify for better work  
39 both within correctional industries and the free community. It is not

1 intended that an inmate's work within this class of industries should  
2 be his or her final and total work experience as an inmate.

3 (b) Whenever possible, to provide forty hours of work or work  
4 training per week.

5 (c) Whenever possible, to offset tax and other public support  
6 costs.

7 Supervising, management, and custody staff shall be employees of  
8 the department.

9 All able and eligible inmates who are assigned work and who are not  
10 working in other classes of industries shall work in this class.

11 Except for inmates who work in work training programs, inmates in  
12 this class shall be paid for their work in accordance with an inmate  
13 gratuity scale. The scale shall be adopted by the secretary of  
14 corrections.

15 (4) CLASS IV: COMMUNITY WORK INDUSTRIES. Industries in this class  
16 shall be operated by the department of corrections. They shall be  
17 designed and managed to provide services in the inmate's resident  
18 community at a reduced cost. The services shall be provided to public  
19 agencies, to persons who are poor or infirm, or to nonprofit  
20 organizations.

21 Inmates in this program shall reside in facilities owned by,  
22 contracted for, or licensed by the department of corrections. A unit  
23 of local government shall provide work supervision services without  
24 charge to the state and shall pay the inmate's wage.

25 The department of corrections shall reimburse participating units  
26 of local government for liability and workers compensation insurance  
27 costs.

28 Inmates who work in this class of industries shall do so at their  
29 own choice and shall receive a gratuity which shall not exceed the wage  
30 paid for work of a similar nature in the locality in which the industry  
31 is located.

32 (5) CLASS V: COMMUNITY SERVICE PROGRAMS. Programs in this class  
33 shall be subject to supervision by the department of corrections. The  
34 purpose of this class of industries is to enable an inmate, placed on  
35 community supervision, to work off all or part of a community service  
36 order as ordered by the sentencing court.

37 Employment shall be in a community service program operated by the  
38 state, local units of government, or a nonprofit agency.

1 To the extent that funds are specifically made available for such  
2 purposes, the department of corrections shall reimburse nonprofit  
3 agencies for workers compensation insurance costs.

4 **Sec. 239.** RCW 41.06.079 and 1993 c 281 s 23 are each amended to  
5 read as follows:

6 In addition to the exemptions set forth in RCW 41.06.070, the  
7 provisions of this chapter shall not apply in the department of  
8 transportation to the secretary, a deputy secretary, an administrative  
9 assistant to the secretary, if any, one assistant secretary for each  
10 division designated pursuant to RCW 47.01.081, one confidential  
11 secretary for each of the above-named officers, up to six  
12 transportation district administrators and one confidential secretary  
13 for each district administrator, up to six additional new  
14 administrators or confidential secretaries designated by the secretary  
15 of the department of transportation and approved by the Washington  
16 personnel resources board pursuant to the provisions of RCW  
17 41.06.070(~~((1)-(z))~~), the legislative liaison for the department, the  
18 state construction engineer, the state aid engineer, the personnel  
19 manager, the state project development engineer, the state maintenance  
20 and operations engineer, one confidential secretary for each of the  
21 last-named five positions, and a confidential secretary for the public  
22 affairs administrator. The individuals appointed under this section  
23 shall be exempt from the provisions of the state civil service law, and  
24 shall be paid salaries to be fixed by the governor in accordance with  
25 the procedure established by law for the fixing of salaries for  
26 individuals exempt from the operation of the state civil service law.

27 **Sec. 240.** RCW 41.06.152 and 1999 c 309 s 914 are each amended to  
28 read as follows:

29 (1) The board shall adopt only those job classification revisions,  
30 class studies, and salary adjustments under RCW 41.06.150(~~((15))~~) (12)  
31 that:

32 (a) Are due to documented recruitment and retention difficulties,  
33 salary compression or inversion, increased duties and responsibilities,  
34 or inequities. For these purposes, inequities are defined as similar  
35 work assigned to different job classes with a salary disparity greater  
36 than 7.5 percent; and

1 (b) Are such that the office of financial management has reviewed  
2 the agency's fiscal impact statement and has concurred that the agency  
3 can absorb the biennialized cost of the reclassification, class study,  
4 or salary adjustment within the agency's current authorized level of  
5 funding for the current fiscal biennium and subsequent fiscal biennia.

6 (2) In addition to reclassifications, class studies, and salary  
7 adjustments under subsection (1)(b) of this section, the board may  
8 approve other reclassifications, class studies, and salary adjustments  
9 that meet the requirements of subsection (1)(a) of this section and  
10 have been approved under the procedures established under this  
11 subsection.

12 Before the department of personnel's biennial budget request is due  
13 to the office of financial management, the board shall prioritize  
14 requests for reclassifications, class studies, and salary adjustments  
15 for the next fiscal biennium. The board shall prioritize according to  
16 such criteria as are developed by the board consistent with RCW  
17 41.06.150(~~(15)~~) (12)(a).

18 The board shall submit the prioritized list to the governor's  
19 office and the fiscal committees of the house of representatives and  
20 senate at the same time the department of personnel's biennial budget  
21 request is submitted. The office of financial management shall review  
22 the biennial cost of each proposed salary adjustment on the board's  
23 prioritized list.

24 In the biennial appropriations acts, the legislature may establish  
25 a level of funding, from the state general fund and other accounts, to  
26 be applied by the board to the prioritized list. Upon enactment of the  
27 appropriations act, the board may approve reclassifications, class  
28 studies, and salary adjustments only to the extent that the total cost  
29 does not exceed the level of funding established in the appropriations  
30 acts and the board's actions are consistent with the priorities  
31 established in the list. The legislature may also specify or otherwise  
32 limit in the appropriations act the implementation dates for actions  
33 approved by the board under this section.

34 (3) When the board develops its priority list in the 1999-2001  
35 biennium, for increases proposed for funding in the 2001-2003 biennium,  
36 the board shall give top priority to proposed increases to address  
37 documented recruitment and retention increases, and shall give lowest  
38 priority to proposed increases to recognize increased duties and  
39 responsibilities. When the board submits its prioritized list for the

1 2001-2003 biennium, the board shall also provide: A comparison of any  
2 differences between the salary increases recommended by the department  
3 of personnel staff and those adopted by the board; a review of any  
4 salary compression, inversion, or inequities that would result from  
5 implementing a recommended increase; and a complete description of the  
6 information relied upon by the board in adopting its proposals and  
7 priorities.

8 (4) This section does not apply to the higher education hospital  
9 special pay plan or to any adjustments to the classification plan under  
10 RCW 41.06.150(~~(15)~~) (12) that are due to emergent conditions.  
11 Emergent conditions are defined as emergency conditions requiring the  
12 establishment of positions necessary for the preservation of the public  
13 health, safety, or general welfare.

14 **Sec. 241.** RCW 41.06.152 and 2002 c . . . s 240 (section 240 of  
15 this act) are each amended to read as follows:

16 (1) The (~~board~~) director shall adopt only those job  
17 classification revisions, class studies, and salary adjustments under  
18 RCW 41.06.150(~~(12)~~) (4) that:

19 (a) Are due to documented recruitment and retention difficulties,  
20 salary compression or inversion, increased duties and responsibilities,  
21 or inequities. For these purposes, inequities are defined as similar  
22 work assigned to different job classes with a salary disparity greater  
23 than 7.5 percent; and

24 (b) Are such that the office of financial management has reviewed  
25 the agency's fiscal impact statement and has concurred that the agency  
26 can absorb the biennialized cost of the reclassification, class study,  
27 or salary adjustment within the agency's current authorized level of  
28 funding for the current fiscal biennium and subsequent fiscal biennia.

29 (2) In addition to reclassifications, class studies, and salary  
30 adjustments under subsection (1)(b) of this section, the board may  
31 approve other reclassifications, class studies, and salary adjustments  
32 that meet the requirements of subsection (1)(a) of this section and  
33 have been approved under the procedures established under this  
34 subsection.

35 Before the department of personnel's biennial budget request is due  
36 to the office of financial management, the board shall prioritize  
37 requests for reclassifications, class studies, and salary adjustments  
38 for the next fiscal biennium. The board shall prioritize according to

1 such criteria as are developed by the board consistent with RCW  
2 41.06.150(~~(+12+)~~) (4)(a).

3 The board shall submit the prioritized list to the governor's  
4 office and the fiscal committees of the house of representatives and  
5 senate at the same time the department of personnel's biennial budget  
6 request is submitted. The office of financial management shall review  
7 the biennial cost of each proposed salary adjustment on the board's  
8 prioritized list.

9 In the biennial appropriations acts, the legislature may establish  
10 a level of funding, from the state general fund and other accounts, to  
11 be applied by the board to the prioritized list. Upon enactment of the  
12 appropriations act, the board may approve reclassifications, class  
13 studies, and salary adjustments only to the extent that the total cost  
14 does not exceed the level of funding established in the appropriations  
15 acts and the board's actions are consistent with the priorities  
16 established in the list. The legislature may also specify or otherwise  
17 limit in the appropriations act the implementation dates for actions  
18 approved by the board under this section.

19 (3) When the board develops its priority list in the 1999-2001  
20 biennium, for increases proposed for funding in the 2001-2003 biennium,  
21 the board shall give top priority to proposed increases to address  
22 documented recruitment and retention increases, and shall give lowest  
23 priority to proposed increases to recognize increased duties and  
24 responsibilities. When the board submits its prioritized list for the  
25 2001-2003 biennium, the board shall also provide: A comparison of any  
26 differences between the salary increases recommended by the department  
27 of personnel staff and those adopted by the board; a review of any  
28 salary compression, inversion, or inequities that would result from  
29 implementing a recommended increase; and a complete description of the  
30 information relied upon by the board in adopting its proposals and  
31 priorities.

32 (4) This section does not apply to the higher education hospital  
33 special pay plan or to any adjustments to the classification plan under  
34 RCW 41.06.150(~~(+12+)~~) (4) that are due to emergent conditions.  
35 Emergent conditions are defined as emergency conditions requiring the  
36 establishment of positions necessary for the preservation of the public  
37 health, safety, or general welfare.

1       **Sec. 242.** RCW 41.06.500 and 1996 c 319 s 4 are each amended to  
2 read as follows:

3       (1) Except as provided in RCW 41.06.070, notwithstanding any other  
4 provisions of this chapter, the director is authorized to adopt, after  
5 consultation with state agencies and employee organizations, rules for  
6 managers as defined in RCW 41.06.022. These rules shall not apply to  
7 managers employed by institutions of higher education or related boards  
8 or whose positions are exempt. The rules shall govern recruitment,  
9 appointment, classification and allocation of positions, examination,  
10 training and career development, hours of work, probation,  
11 certification, compensation, transfer, affirmative action, promotion,  
12 layoff, reemployment, performance appraisals, discipline, and any and  
13 all other personnel practices for managers. These rules shall be  
14 separate from rules adopted by the board for other employees, and to  
15 the extent that the rules adopted apply only to managers shall take  
16 precedence over rules adopted by the board, and are not subject to  
17 review by the board.

18       (2) In establishing rules for managers, the director shall adhere  
19 to the following goals:

20       (a) Development of a simplified classification system that  
21 facilitates movement of managers between agencies and promotes upward  
22 mobility;

23       (b) Creation of a compensation system consistent with the policy  
24 set forth in RCW 41.06.150(~~((+17))~~) (14). The system shall provide  
25 flexibility in setting and changing salaries, and shall require review  
26 and approval by the director in the case of any salary changes greater  
27 than five percent proposed for any group of employees;

28       (c) Establishment of a performance appraisal system that emphasizes  
29 individual accountability for program results and efficient management  
30 of resources; effective planning, organization, and communication  
31 skills; valuing and managing workplace diversity; development of  
32 leadership and interpersonal abilities; and employee development;

33       (d) Strengthening management training and career development  
34 programs that build critical management knowledge, skills, and  
35 abilities; focusing on managing and valuing workplace diversity;  
36 empowering employees by enabling them to share in workplace decision  
37 making and to be innovative, willing to take risks, and able to accept  
38 and deal with change; promoting a workplace where the overall focus is  
39 on the recipient of the government services and how these services can

1 be improved; and enhancing mobility and career advancement  
2 opportunities;

3 (e) Permitting flexible recruitment and hiring procedures that  
4 enable agencies to compete effectively with other employers, both  
5 public and private, for managers with appropriate skills and training;  
6 allowing consideration of all qualified candidates for positions as  
7 managers; and achieving affirmative action goals and diversity in the  
8 workplace;

9 (f) Providing that managers may only be reduced, dismissed,  
10 suspended, or demoted for cause; and

11 (g) Facilitating decentralized and regional administration.

12 **Sec. 243.** RCW 41.06.500 and 2002 c . . . s 242 (section 242 of  
13 this act) are each amended to read as follows:

14 (1) Except as provided in RCW 41.06.070, notwithstanding any other  
15 provisions of this chapter, the director is authorized to adopt, after  
16 consultation with state agencies and employee organizations, rules for  
17 managers as defined in RCW 41.06.022. These rules shall not apply to  
18 managers employed by institutions of higher education or related boards  
19 or whose positions are exempt. The rules shall govern recruitment,  
20 appointment, classification and allocation of positions, examination,  
21 training and career development, hours of work, probation,  
22 certification, compensation, transfer, affirmative action, promotion,  
23 layoff, reemployment, performance appraisals, discipline, and any and  
24 all other personnel practices for managers. These rules shall be  
25 separate from rules adopted (~~by the board~~) for other employees, and  
26 to the extent that the rules adopted under this section apply only to  
27 managers shall take precedence over rules adopted (~~by the board~~) for  
28 other employees, and are not subject to review by the board.

29 (2) In establishing rules for managers, the director shall adhere  
30 to the following goals:

31 (a) Development of a simplified classification system that  
32 facilitates movement of managers between agencies and promotes upward  
33 mobility;

34 (b) Creation of a compensation system (~~consistent with the policy~~  
35 ~~set forth in RCW 41.06.150(14). The system shall provide~~) that  
36 provides flexibility in setting and changing salaries, and shall  
37 require review and approval by the director in the case of any salary  
38 changes greater than five percent proposed for any group of employees;

1 (c) Establishment of a performance appraisal system that emphasizes  
2 individual accountability for program results and efficient management  
3 of resources; effective planning, organization, and communication  
4 skills; valuing and managing workplace diversity; development of  
5 leadership and interpersonal abilities; and employee development;

6 (d) Strengthening management training and career development  
7 programs that build critical management knowledge, skills, and  
8 abilities; focusing on managing and valuing workplace diversity;  
9 empowering employees by enabling them to share in workplace decision  
10 making and to be innovative, willing to take risks, and able to accept  
11 and deal with change; promoting a workplace where the overall focus is  
12 on the recipient of the government services and how these services can  
13 be improved; and enhancing mobility and career advancement  
14 opportunities;

15 (e) Permitting flexible recruitment and hiring procedures that  
16 enable agencies to compete effectively with other employers, both  
17 public and private, for managers with appropriate skills and training;  
18 allowing consideration of all qualified candidates for positions as  
19 managers; and achieving affirmative action goals and diversity in the  
20 workplace;

21 (f) Providing that managers may only be reduced, dismissed,  
22 suspended, or demoted for cause; and

23 (g) Facilitating decentralized and regional administration.

24 **Sec. 244.** RCW 43.23.010 and 1990 c 37 s 1 are each amended to read  
25 as follows:

26 In order to obtain maximum efficiency and effectiveness within the  
27 department of agriculture, the director may create such administrative  
28 divisions within the department as he or she deems necessary. The  
29 director shall appoint a deputy director as well as such assistant  
30 directors as shall be needed to administer the several divisions within  
31 the department. The director shall appoint no more than eight  
32 assistant directors. The officers appointed under this section are  
33 exempt from the provisions of the state civil service law as provided  
34 in RCW 41.06.070(~~(+7)~~) (1)(g), and shall be paid salaries to be fixed  
35 by the governor in accordance with the procedure established by law for  
36 the fixing of salaries for officers exempt from the operation of the  
37 state civil service law. The director shall also appoint and deputize

1 a state veterinarian who shall be an experienced veterinarian properly  
2 licensed to practice veterinary medicine in this state.

3 The director of agriculture shall have charge and general  
4 supervision of the department and may assign supervisory and  
5 administrative duties other than those specified in RCW 43.23.070 to  
6 the division which in his or her judgment can most efficiently carry on  
7 those functions.

8 **Sec. 245.** RCW 49.74.030 and 1993 c 281 s 58 are each amended to  
9 read as follows:

10 The commission in conjunction with the department of personnel or  
11 the state patrol, whichever is appropriate, shall attempt to resolve  
12 the noncompliance through conciliation. If an agreement is reached for  
13 the elimination of noncompliance, the agreement shall be reduced to  
14 writing and an order shall be issued by the commission setting forth  
15 the terms of the agreement. The noncomplying state agency, institution  
16 of higher education, or state patrol shall make a good faith effort to  
17 conciliate and make a full commitment to correct the noncompliance with  
18 any action that may be necessary to achieve compliance, provided such  
19 action is not inconsistent with the rules adopted under RCW  
20 41.06.150(~~((21))~~) (19) and 43.43.340(5), whichever is appropriate.

21 **Sec. 246.** RCW 49.74.030 and 2002 c . . . s 245 (section 245 of  
22 this act) are each amended to read as follows:

23 The commission in conjunction with the department of personnel or  
24 the state patrol, whichever is appropriate, shall attempt to resolve  
25 the noncompliance through conciliation. If an agreement is reached for  
26 the elimination of noncompliance, the agreement shall be reduced to  
27 writing and an order shall be issued by the commission setting forth  
28 the terms of the agreement. The noncomplying state agency, institution  
29 of higher education, or state patrol shall make a good faith effort to  
30 conciliate and make a full commitment to correct the noncompliance with  
31 any action that may be necessary to achieve compliance, provided such  
32 action is not inconsistent with the rules adopted under RCW  
33 41.06.150(~~((19))~~) (6) and 43.43.340(5), whichever is appropriate.

34 **Sec. 247.** RCW 49.74.040 and 1985 c 365 s 11 are each amended to  
35 read as follows:

1 If no agreement can be reached under RCW 49.74.030, the commission  
2 may refer the matter to the administrative law judge for hearing  
3 pursuant to RCW 49.60.250. If the administrative law judge finds that  
4 the state agency, institution of higher education, or state patrol has  
5 not made a good faith effort to correct the noncompliance, the  
6 administrative law judge shall order the state agency, institution of  
7 higher education, or state patrol to comply with this chapter. The  
8 administrative law judge may order any action that may be necessary to  
9 achieve compliance, provided such action is not inconsistent with the  
10 rules adopted under RCW ((28B.16.100(20),)) 41.06.150((+21),) (19) and  
11 43.43.340(5), whichever is appropriate.

12 An order by the administrative law judge may be appealed to  
13 superior court.

14 **Sec. 248.** RCW 49.74.040 and 2002 c . . . s 247 (section 247 of  
15 this act) are each amended to read as follows:

16 If no agreement can be reached under RCW 49.74.030, the commission  
17 may refer the matter to the administrative law judge for hearing  
18 pursuant to RCW 49.60.250. If the administrative law judge finds that  
19 the state agency, institution of higher education, or state patrol has  
20 not made a good faith effort to correct the noncompliance, the  
21 administrative law judge shall order the state agency, institution of  
22 higher education, or state patrol to comply with this chapter. The  
23 administrative law judge may order any action that may be necessary to  
24 achieve compliance, provided such action is not inconsistent with the  
25 rules adopted under RCW 41.06.150((+19)) (6) and 43.43.340(5),  
26 whichever is appropriate.

27 An order by the administrative law judge may be appealed to  
28 superior court.

29 **Sec. 249.** RCW 41.56.201 and 2000 c 19 s 2 are each amended to read  
30 as follows:

31 (1) At any time after July 1, 1993, and prior to July 1, 2003, an  
32 institution of higher education and the exclusive bargaining  
33 representative of a bargaining unit of employees classified under  
34 chapter ((28B.16-01)) 41.06 RCW as appropriate may exercise their  
35 option to have their relationship and corresponding obligations  
36 governed entirely by the provisions of this chapter by complying with  
37 the following:

1 (a) The parties will file notice of the parties' intent to be so  
2 governed, subject to the mutual adoption of a collective bargaining  
3 agreement permitted by this section recognizing the notice of intent.  
4 The parties shall provide the notice to the Washington personnel  
5 resources board or its successor and the commission;

6 (b) During the negotiation of an initial contract between the  
7 parties under this chapter, the parties' scope of bargaining shall be  
8 governed by this chapter and any disputes arising out of the collective  
9 bargaining rights and obligations under this subsection shall be  
10 determined by the commission. If the commission finds that the parties  
11 are at impasse, the notice filed under (a) of this subsection shall be  
12 void and have no effect; and

13 (c) On the first day of the month following the month during which  
14 the institution of higher education and the exclusive bargaining  
15 representative provide notice to the Washington personnel resources  
16 board or its successor and the commission that they have executed an  
17 initial collective bargaining agreement recognizing the notice of  
18 intent filed under (a) of this subsection, chapter ((28B-16 or)) 41.06  
19 RCW as appropriate shall cease to apply to all employees in the  
20 bargaining unit covered by the agreement.

21 (2) All collective bargaining rights and obligations concerning  
22 relations between an institution of higher education and the exclusive  
23 bargaining representative of its employees who have agreed to exercise  
24 the option permitted by this section shall be determined under this  
25 chapter, subject to the following:

26 (a) The commission shall recognize, in its current form, the  
27 bargaining unit as certified by the Washington personnel resources  
28 board or its successor. For purposes of determining bargaining unit  
29 status, positions meeting the criteria established under RCW 41.06.070  
30 or its successor shall be excluded from coverage under this chapter.  
31 An employer may exclude such positions from a bargaining unit at any  
32 time the position meets the criteria established under RCW 41.06.070 or  
33 its successor. The limitations on collective bargaining contained in  
34 RCW 41.56.100 shall not apply to that bargaining unit.

35 (b) If, on the date of filing the notice under subsection (1) (a) of  
36 this section, there is a union shop authorized for the bargaining unit  
37 under rules adopted by the Washington personnel resources board or its  
38 successor, the union shop requirement shall continue in effect for the

1 bargaining unit and shall be deemed incorporated into the collective  
2 bargaining agreement applicable to the bargaining unit.

3 (c) Salary increases negotiated for the employees in the bargaining  
4 unit shall be subject to the following:

5 (i) Salary increases shall continue to be appropriated by the  
6 legislature. The exclusive bargaining representative shall meet before  
7 a legislative session with the governor or governor's designee and the  
8 representative of the institution of higher education concerning the  
9 total dollar amount for salary increases and health care contributions  
10 that will be contained in the appropriations proposed by the governor  
11 under RCW 43.88.060;

12 (ii) The collective bargaining agreements may provide for salary  
13 increases from local efficiency savings that are different from or that  
14 exceed the amount or percentage for salary increases provided by the  
15 legislature in the omnibus appropriations act for the institution of  
16 higher education or allocated to the board of trustees by the state  
17 board for community and technical colleges, but the base for salary  
18 increases provided by the legislature under (c)(i) of this subsection  
19 shall include only those amounts appropriated by the legislature, and  
20 the base shall not include any additional salary increases provided  
21 under this subsection (2)(c)(ii);

22 (iii) Any provisions of the collective bargaining agreements  
23 pertaining to salary increases provided under (c)(i) of this subsection  
24 shall be subject to modification by the legislature. If any provision  
25 of a salary increase provided under (c)(i) of this subsection is  
26 changed by subsequent modification of the appropriations act by the  
27 legislature, both parties shall immediately enter into collective  
28 bargaining for the sole purpose of arriving at a mutually agreed upon  
29 replacement for the modified provision.

30 (3) Nothing in this section may be construed to permit an  
31 institution of higher education to bargain collectively with an  
32 exclusive bargaining representative concerning any matter covered by:

33 (a) Chapter 41.05 RCW, except for the related cost or dollar  
34 contributions or additional or supplemental benefits as permitted by  
35 chapter 492, Laws of 1993; or (b) chapter 41.32 or 41.40 RCW.

36 (4) Any collective bargaining agreement entered into under this  
37 section before July 1, 2004, that expires after July 1, 2004, shall,  
38 unless a superseding agreement complying with sections 301 through 314  
39 of this act is negotiated by the parties, remain in full force and

1 effect during its duration, but the agreement may not be renewed or  
2 extended beyond July 1, 2005, or until superseded by a collective  
3 bargaining agreement entered into under sections 301 through 314 of  
4 this act, whichever is later.

5 **PART III**

6 **COLLECTIVE BARGAINING REFORM**

7 NEW SECTION. **Sec. 301.** APPLICATION OF CHAPTER. Collective  
8 bargaining negotiations under this chapter shall commence no later than  
9 July 1, 2004. A collective bargaining agreement entered into under  
10 this chapter shall not be effective prior to July 1, 2005. However,  
11 any collective bargaining agreement entered into before July 1, 2004,  
12 covering employees affected by sections 301 through 314 of this act,  
13 that expires after July 1, 2004, shall, unless a superseding agreement  
14 complying with sections 301 through 314 of this act is negotiated by  
15 the parties, remain in full force during its duration, but the  
16 agreement may not be renewed or extended beyond July 1, 2005, or until  
17 superseded by a collective bargaining agreement entered into under  
18 sections 301 through 314 of this act, whichever is later. The duration  
19 of any collective bargaining agreement under this chapter shall not  
20 exceed one fiscal biennium.

21 NEW SECTION. **Sec. 302.** NEGOTIATION AND RATIFICATION OF COLLECTIVE  
22 BARGAINING AGREEMENTS. (1) For the purpose of negotiating collective  
23 bargaining agreements under this chapter, the employer shall be  
24 represented by the governor or governor's designee, except as provided  
25 for institutions of higher education in subsection (4) of this section.

26 (2)(a) If an exclusive bargaining representative represents more  
27 than one bargaining unit, the exclusive bargaining representative shall  
28 negotiate with each employer representative as designated in subsection  
29 (1) of this section one master collective bargaining agreement on  
30 behalf of all the employees in bargaining units that the exclusive  
31 bargaining representative represents. For those exclusive bargaining  
32 representatives who represent fewer than a total of five hundred  
33 employees each, negotiation shall be by a coalition of all those  
34 exclusive bargaining representatives. The coalition shall bargain for  
35 a master collective bargaining agreement covering all of the employees  
36 represented by the coalition. The governor's designee and the exclusive

1 bargaining representative or representatives are authorized to enter  
2 into supplemental bargaining of agency-specific issues for inclusion in  
3 or as an addendum to the master collective bargaining agreement,  
4 subject to the parties' agreement regarding the issues and procedures  
5 for supplemental bargaining. This section does not prohibit  
6 cooperation and coordination of bargaining between two or more  
7 exclusive bargaining representatives.

8 (b) This subsection (2) does not apply to exclusive bargaining  
9 representatives who represent employees of institutions of higher  
10 education, except when the institution of higher education has elected  
11 to exercise its option under subsection (4) of this section to have its  
12 negotiations conducted by the governor or governor's designee under the  
13 procedures provided for general government agencies in subsections (1)  
14 through (3) of this section.

15 (c) If five hundred or more employees of an independent state  
16 elected official listed in RCW 43.01.010 are organized in a bargaining  
17 unit or bargaining units under section 308 of this act, the official  
18 shall be consulted by the governor or the governor's designee before  
19 any agreement is reached under (a) of this subsection concerning  
20 supplemental bargaining of agency specific issues affecting the  
21 employees in such bargaining unit.

22 (3) The governor shall submit a request for funds necessary to  
23 implement the compensation and fringe benefit provisions in the master  
24 collective bargaining agreement or for legislation necessary to  
25 implement the agreement. Requests for funds necessary to implement the  
26 provisions of bargaining agreements shall not be submitted to the  
27 legislature by the governor unless such requests:

28 (a) Have been submitted to the director of the office of financial  
29 management by October 1 prior to the legislative session at which the  
30 requests are to be considered; and

31 (b) Have been certified by the director of the office of financial  
32 management as being feasible financially for the state.

33 The legislature shall approve or reject the submission of the  
34 request for funds as a whole. The legislature shall not consider a  
35 request for funds to implement a collective bargaining agreement unless  
36 the request is transmitted to the legislature as part of the governor's  
37 budget document submitted under RCW 43.88.030 and 43.88.060. If the  
38 legislature rejects or fails to act on the submission, either party may  
39 reopen all or part of the agreement or the exclusive bargaining

1 representative may seek to implement the procedures provided for in  
2 section 310 of this act.

3 (4) For the purpose of negotiating agreements for institutions of  
4 higher education, the employer shall be the respective governing board  
5 of each of the universities, colleges, or community and technical  
6 colleges or a designee chosen by the board to negotiate on its behalf.  
7 A governing board may elect to have its negotiations conducted by the  
8 governor or governor's designee under the procedures provided for  
9 general government agencies in subsections (1), (2), and (3) of this  
10 section. Prior to entering into negotiations under this chapter, the  
11 institutions of higher education or their designees shall consult with  
12 the director of the office of financial management regarding financial  
13 and budgetary issues that are likely to arise in the impending  
14 negotiations. If appropriations are necessary to implement the  
15 compensation and fringe benefit provisions of the bargaining agreements  
16 reached between institutions of higher education and exclusive  
17 bargaining representatives agreed to under the provisions of this  
18 chapter, the governor shall submit a request for such funds to the  
19 legislature according to the provisions of subsection (3) of this  
20 section.

21 (5) There is hereby created a joint committee on employment  
22 relations, which consists of two members with leadership positions in  
23 the house of representatives, representing each of the two largest  
24 caucuses; the chair and ranking minority member of the house  
25 appropriations committee, or its successor, representing each of the  
26 two largest caucuses; two members with leadership positions in the  
27 senate, representing each of the two largest caucuses; and the chair  
28 and ranking minority member of the senate ways and means committee, or  
29 its successor, representing each of the two largest caucuses. The  
30 governor shall periodically consult with the committee regarding  
31 appropriations necessary to implement the compensation and fringe  
32 benefit provisions in the master collective bargaining agreements, and  
33 upon completion of negotiations, advise the committee on the elements  
34 of the agreements and on any legislation necessary to implement the  
35 agreements.

36 (6) If, after the compensation and fringe benefit provisions of an  
37 agreement are approved by the legislature, a significant revenue  
38 shortfall occurs resulting in reduced appropriations, as declared by  
39 proclamation of the governor or by resolution of the legislature, both

1 parties shall immediately enter into collective bargaining for a  
2 mutually agreed upon modification of the agreement.

3 (7) After the expiration date of a collective bargaining agreement  
4 negotiated under this chapter, all of the terms and conditions  
5 specified in the collective bargaining agreement remain in effect until  
6 the effective date of a subsequently negotiated agreement, not to  
7 exceed one year from the expiration date stated in the agreement.  
8 Thereafter, the employer may unilaterally implement according to law.

9 NEW SECTION. **Sec. 303.** SCOPE OF BARGAINING. (1) Except as  
10 otherwise provided in this chapter, the matters subject to bargaining  
11 include wages, hours, and other terms and conditions of employment, and  
12 the negotiation of any question arising under a collective bargaining  
13 agreement.

14 (2) The employer is not required to bargain over matters pertaining  
15 to:

16 (a) Health care benefits or other employee insurance benefits,  
17 except as required in subsection (3) of this section;

18 (b) Any retirement system or retirement benefit; or

19 (c) Rules of the director of personnel or the Washington personnel  
20 resources board adopted under section 203, chapter . . ., Laws of 2002  
21 (section 203 of this act).

22 (3) Matters subject to bargaining include the number of names to be  
23 certified for vacancies, promotional preferences, and the dollar amount  
24 expended on behalf of each employee for health care benefits. However,  
25 except as provided otherwise in this subsection for institutions of  
26 higher education, negotiations regarding the number of names to be  
27 certified for vacancies, promotional preferences, and the dollar amount  
28 expended on behalf of each employee for health care benefits shall be  
29 conducted between the employer and one coalition of all the exclusive  
30 bargaining representatives subject to this chapter. Any such provision  
31 agreed to by the employer and the coalition shall be included in all  
32 master collective bargaining agreements negotiated by the parties. For  
33 institutions of higher education, promotional preferences and the  
34 number of names to be certified for vacancies shall be bargained under  
35 the provisions of section 302(4) of this act.

36 (4) The employer and the exclusive bargaining representative shall  
37 not agree to any proposal that would prevent the implementation of  
38 approved affirmative action plans or that would be inconsistent with

1 the comparable worth agreement that provided the basis for the salary  
2 changes implemented beginning with the 1983-1985 biennium to achieve  
3 comparable worth.

4 (5) The employer and the exclusive bargaining representative shall  
5 not bargain over matters pertaining to management rights established in  
6 section 305 of this act.

7 (6) Except as otherwise provided in this chapter, if a conflict  
8 exists between an executive order, administrative rule, or agency  
9 policy relating to wages, hours, and terms and conditions of employment  
10 and a collective bargaining agreement negotiated under this chapter,  
11 the collective bargaining agreement shall prevail. A provision of a  
12 collective bargaining agreement that conflicts with the terms of a  
13 statute is invalid and unenforceable.

14 (7) This section does not prohibit bargaining that affects  
15 contracts authorized by section 208 of this act.

16 NEW SECTION. **Sec. 304.** CONTENTS OF COLLECTIVE BARGAINING  
17 AGREEMENTS. (1) The parties to a collective bargaining agreement shall  
18 reduce the agreement to writing and both shall execute it.

19 (2) A collective bargaining agreement shall contain provisions  
20 that:

21 (a) Provide for a grievance procedure that culminates with final  
22 and binding arbitration of all disputes arising over the interpretation  
23 or application of the collective bargaining agreement and that is valid  
24 and enforceable under its terms when entered into in accordance with  
25 this chapter; and

26 (b) Require processing of disciplinary actions or terminations of  
27 employment of employees covered by the collective bargaining agreement  
28 entirely under the procedures of the collective bargaining agreement.  
29 Any employee, when fully reinstated, shall be guaranteed all employee  
30 rights and benefits, including back pay, sick leave, vacation accrual,  
31 and retirement and federal old age, survivors, and disability insurance  
32 act credits, but without back pay for any period of suspension.

33 (3)(a) If a collective bargaining agreement between an employer  
34 and an exclusive bargaining representative is concluded after the  
35 termination date of the previous collective bargaining agreement  
36 between the employer and an employee organization representing the same  
37 bargaining units, the effective date of the collective bargaining  
38 agreement may be the day after the termination of the previous

1 collective bargaining agreement, and all benefits included in the new  
2 collective bargaining agreement, including wage or salary increases,  
3 may accrue beginning with that effective date.

4 (b) If a collective bargaining agreement between an employer and an  
5 exclusive bargaining representative is concluded after the termination  
6 date of the previous collective bargaining agreement between the  
7 employer and the exclusive bargaining representative representing  
8 different bargaining units, the effective date of the collective  
9 bargaining agreement may be the day after the termination date of  
10 whichever previous collective bargaining agreement covering one or more  
11 of the units terminated first, and all benefits included in the new  
12 collective bargaining agreement, including wage or salary increases,  
13 may accrue beginning with that effective date.

14 NEW SECTION. **Sec. 305.** MANAGEMENT RIGHTS. The employer shall not  
15 bargain over rights of management which, in addition to all powers,  
16 duties, and rights established by constitutional provision or statute,  
17 shall include but not be limited to the following:

18 (1) The functions and programs of the employer, the use of  
19 technology, and the structure of the organization;

20 (2) The employer's budget and the size of the agency work force,  
21 including determining the financial basis for layoffs;

22 (3) The right to direct and supervise employees;

23 (4) The right to take whatever actions are deemed necessary to  
24 carry out the mission of the state and its agencies during emergencies;  
25 and

26 (5) Retirement plans and retirement benefits.

27 NEW SECTION. **Sec. 306.** RIGHTS OF EMPLOYEES. Except as may be  
28 specifically limited by this chapter, employees shall have the right to  
29 self-organization, to form, join, or assist employee organizations, and  
30 to bargain collectively through representatives of their own choosing  
31 for the purpose of collective bargaining free from interference,  
32 restraint, or coercion. Employees shall also have the right to refrain  
33 from any or all such activities except to the extent that they may be  
34 required to pay a fee to an exclusive bargaining representative under  
35 a union security provision authorized by this chapter.

1        NEW SECTION.    **Sec. 307.**    RIGHT TO STRIKE NOT GRANTED.    Nothing  
2 contained in chapter . . . , Laws of 2002 (this act) permits or grants  
3 to any employee the right to strike or refuse to perform his or her  
4 official duties.

5        NEW SECTION.    **Sec. 308.**    BARGAINING UNITS.    (1) A bargaining unit  
6 of employees covered by this chapter existing on the effective date of  
7 this section shall be considered an appropriate unit, unless the unit  
8 does not meet the requirements of (a) and (b) of this subsection.    The  
9 commission, after hearing upon reasonable notice to all interested  
10 parties, shall decide, in each application for certification as an  
11 exclusive bargaining representative, the unit appropriate for  
12 certification.    In determining the new units or modifications of  
13 existing units, the commission shall consider: The duties, skills, and  
14 working conditions of the employees; the history of collective  
15 bargaining; the extent of organization among the employees; the desires  
16 of the employees; and the avoidance of excessive fragmentation.  
17 However, a unit is not appropriate if it includes:

18        (a) Both supervisors and nonsupervisory employees.    A unit that  
19 includes only supervisors may be considered appropriate if a majority  
20 of the supervisory employees indicates by vote that they desire to be  
21 included in such a unit; or

22        (b) More than one institution of higher education.    For the  
23 purposes of this section, any branch or regional campus of an  
24 institution of higher education is part of that institution of higher  
25 education.

26        (2) The exclusive bargaining representatives certified to represent  
27 the bargaining units existing on the effective date of this section  
28 shall continue as the exclusive bargaining representative without the  
29 necessity of an election.

30        (3) If a single employee organization is the exclusive bargaining  
31 representative for two or more units, upon petition by the employee  
32 organization, the units may be consolidated into a single larger unit  
33 if the commission considers the larger unit to be appropriate.    If  
34 consolidation is appropriate, the commission shall certify the employee  
35 organization as the exclusive bargaining representative of the new  
36 unit.

1        NEW SECTION.    **Sec. 309.** REPRESENTATION. (1) The commission shall  
2 determine all questions pertaining to representation and shall  
3 administer all elections and be responsible for the processing and  
4 adjudication of all disputes that arise as a consequence of elections.  
5 The commission shall adopt rules that provide for at least the  
6 following:

7        (a) Secret balloting;

8        (b) Consulting with employee organizations;

9        (c) Access to lists of employees, job classification, work  
10 locations, and home mailing addresses;

11       (d) Absentee voting;

12       (e) Procedures for the greatest possible participation in voting;

13       (f) Campaigning on the employer's property during working hours;

14 and

15       (g) Election observers.

16       (2)(a) If an employee organization has been certified as the  
17 exclusive bargaining representative of the employees of a bargaining  
18 unit, the employee organization may act for and negotiate master  
19 collective bargaining agreements that will include within the coverage  
20 of the agreement all employees in the bargaining unit as provided in  
21 section 302(2)(a) of this act. However, if a master collective  
22 bargaining agreement is in effect for the exclusive bargaining  
23 representative, it shall apply to the bargaining unit for which the  
24 certification has been issued. Nothing in this section requires the  
25 parties to engage in new negotiations during the term of that  
26 agreement.

27       (b) This subsection (2) does not apply to exclusive bargaining  
28 representatives who represent employees of institutions of higher  
29 education.

30       (3) The certified exclusive bargaining representative shall be  
31 responsible for representing the interests of all the employees in the  
32 bargaining unit. This section shall not be construed to limit an  
33 exclusive representative's right to exercise its discretion to refuse  
34 to process grievances of employees that are unmeritorious.

35       (4) No question concerning representation may be raised if:

36       (a) Fewer than twelve months have elapsed since the last  
37 certification or election; or

38       (b) A valid collective bargaining agreement exists covering the  
39 unit, except for that period of no more than one hundred twenty

1 calendar days nor less than ninety calendar days before the expiration  
2 of the contract.

3 NEW SECTION. **Sec. 310.** IMPASSE. Should the parties fail to reach  
4 agreement in negotiating a collective bargaining agreement, either  
5 party may request of the commission the assistance of an impartial  
6 third party to mediate the negotiations.

7 If a collective bargaining agreement previously negotiated under  
8 this chapter should expire while negotiations are underway, the terms  
9 and conditions specified in the collective bargaining agreement shall  
10 remain in effect for a period not to exceed one year from the  
11 expiration date stated in the agreement. Thereafter, the employer may  
12 unilaterally implement according to law.

13 If resolution is not reached through mediation by one hundred days  
14 beyond the expiration date of a contract previously negotiated under  
15 this chapter, or one hundred days from the initiation of mediated  
16 negotiations if no such contract exists, an independent fact-finder  
17 shall be appointed by the commission.

18 The fact-finder shall meet with the parties or their  
19 representatives, or both, and make inquiries and investigations, hold  
20 hearings, and take such other steps as may be appropriate. If the  
21 dispute is not settled, the fact-finder shall make findings of fact and  
22 recommend terms of settlement within thirty days.

23 Such recommendations, together with the findings of fact, shall be  
24 submitted in writing to the parties and the commission privately before  
25 they are made public. The commission, the fact-finder, the employer,  
26 or the exclusive bargaining representative may make such findings and  
27 recommendations public if the dispute is not settled within ten working  
28 days after their receipt from the fact-finder.

29 Nothing in this section shall be construed to prohibit an employer  
30 and an exclusive bargaining representative from agreeing to substitute,  
31 at their own expense, their own procedure for resolving impasses in  
32 collective bargaining for that provided in this section or from  
33 agreeing to utilize for the purposes of this section any other  
34 governmental or other agency or person in lieu of the commission.

35 Costs for mediator services shall be borne by the commission, and  
36 costs for fact-finding shall be borne equally by the negotiating  
37 parties.

1        NEW SECTION.        **Sec. 311.**        UNION SECURITY.        (1) A collective  
2 bargaining agreement may contain a union security provision requiring  
3 as a condition of employment the payment, no later than the thirtieth  
4 day following the beginning of employment or the effective date of this  
5 section, whichever is later, of an agency shop fee to the employee  
6 organization that is the exclusive bargaining representative for the  
7 bargaining unit in which the employee is employed. The amount of the  
8 fee shall be equal to the amount required to become a member in good  
9 standing of the employee organization. Each employee organization  
10 shall establish a procedure by which any employee so requesting may pay  
11 a representation fee no greater than the part of the membership fee  
12 that represents a pro rata share of expenditures for purposes germane  
13 to the collective bargaining process, to contract administration, or to  
14 pursuing matters affecting wages, hours, and other conditions of  
15 employment.

16        (2) An employee who is covered by a union security provision and  
17 who asserts a right of nonassociation based on bona fide religious  
18 tenets, or teachings of a church or religious body of which the  
19 employee is a member, shall, as a condition of employment, make  
20 payments to the employee organization, for purposes within the program  
21 of the employee organization as designated by the employee that would  
22 be in harmony with his or her individual conscience. The amount of the  
23 payments shall be equal to the periodic dues and fees uniformly  
24 required as a condition of acquiring or retaining membership in the  
25 employee organization minus any included monthly premiums for insurance  
26 programs sponsored by the employee organization. The employee shall  
27 not be a member of the employee organization but is entitled to all the  
28 representation rights of a member of the employee organization.

29        (3) Upon filing with the employer the written authorization of a  
30 bargaining unit employee under this chapter, the employee organization  
31 that is the exclusive bargaining representative of the bargaining unit  
32 shall have the exclusive right to have deducted from the salary of the  
33 employee an amount equal to the fees and dues uniformly required as a  
34 condition of acquiring or retaining membership in the employee  
35 organization. The fees and dues shall be deducted each pay period from  
36 the pay of all employees who have given authorization for the deduction  
37 and shall be transmitted by the employer as provided for by agreement  
38 between the employer and the employee organization.

1 (4) Employee organizations that before the effective date of this  
2 section were entitled to the benefits of this section shall continue to  
3 be entitled to these benefits.

4 NEW SECTION. **Sec. 312.** UNFAIR LABOR PRACTICES ENUMERATED. (1) It  
5 is an unfair labor practice for an employer:

6 (a) To interfere with, restrain, or coerce employees in the  
7 exercise of the rights guaranteed by this chapter;

8 (b) To dominate or interfere with the formation or administration  
9 of any employee organization or contribute financial or other support  
10 to it: PROVIDED, That subject to rules adopted by the commission, an  
11 employer shall not be prohibited from permitting employees to confer  
12 with it or its representatives or agents during working hours without  
13 loss of time or pay;

14 (c) To encourage or discourage membership in any employee  
15 organization by discrimination in regard to hire, tenure of employment,  
16 or any term or condition of employment;

17 (d) To discharge or discriminate otherwise against an employee  
18 because that employee has filed charges or given testimony under this  
19 chapter;

20 (e) To refuse to bargain collectively with the representatives of  
21 its employees.

22 (2) It is an unfair labor practice for an employee organization:

23 (a) To restrain or coerce an employee in the exercise of the rights  
24 guaranteed by this chapter: PROVIDED, That this subsection shall not  
25 impair the right of an employee organization to prescribe its own rules  
26 with respect to the acquisition or retention of membership in the  
27 employee organization or to an employer in the selection of its  
28 representatives for the purpose of bargaining or the adjustment of  
29 grievances;

30 (b) To cause or attempt to cause an employer to discriminate  
31 against an employee in violation of subsection (1)(c) of this section;

32 (c) To discriminate against an employee because that employee has  
33 filed charges or given testimony under this chapter;

34 (d) To refuse to bargain collectively with an employer.

35 (3) The expressing of any views, arguments, or opinion, or the  
36 dissemination thereof to the public, whether in written, printed,  
37 graphic, or visual form, shall not constitute or be evidence of an

1 unfair labor practice under this chapter, if such expression contains  
2 no threat of reprisal or force or promise of benefit.

3 NEW SECTION. **Sec. 313.** UNFAIR LABOR PRACTICE PROCEDURES. (1)

4 The commission is empowered and directed to prevent any unfair labor  
5 practice and to issue appropriate remedial orders: PROVIDED, That a  
6 complaint shall not be processed for any unfair labor practice  
7 occurring more than six months before the filing of the complaint with  
8 the commission. This power shall not be affected or impaired by any  
9 means of adjustment, mediation, or conciliation in labor disputes that  
10 have been or may hereafter be established by law.

11 (2) If the commission determines that any person has engaged in or  
12 is engaging in an unfair labor practice, the commission shall issue and  
13 cause to be served upon the person an order requiring the person to  
14 cease and desist from such unfair labor practice, and to take such  
15 affirmative action as will effectuate the purposes and policy of this  
16 chapter, such as the payment of damages and the reinstatement of  
17 employees.

18 (3) The commission may petition the superior court for the county  
19 in which the main office of the employer is located or in which the  
20 person who has engaged or is engaging in such unfair labor practice  
21 resides or transacts business, for the enforcement of its order and for  
22 appropriate temporary relief.

23 NEW SECTION. **Sec. 314.** ENFORCEMENT OF COLLECTIVE BARGAINING

24 AGREEMENTS. (1) For the purposes of implementing final and binding  
25 arbitration under grievance procedures required by section 304 of this  
26 act, the parties to a collective bargaining agreement may agree on one  
27 or more permanent umpires to serve as arbitrator, or may agree on any  
28 impartial person to serve as arbitrator, or may agree to select  
29 arbitrators from any source available to them, including federal and  
30 private agencies, in addition to the staff and list of arbitrators  
31 maintained by the commission. If the parties cannot agree to the  
32 selection of an arbitrator, the commission shall supply a list of names  
33 in accordance with the procedures established by the commission.

34 (2) An arbitrator may require any person to attend as a witness and  
35 to bring with him or her any book, record, document, or other evidence.  
36 The fees for such attendance shall be paid by the party requesting  
37 issuance of the subpoena and shall be the same as the fees of witnesses

1 in the superior court. Arbitrators may administer oaths. Subpoenas  
2 shall issue and be signed by the arbitrator and shall be served in the  
3 same manner as subpoenas to testify before a court of record in this  
4 state. If any person so summoned to testify refuses or neglects to  
5 obey such subpoena, upon petition authorized by the arbitrator, the  
6 superior court may compel the attendance of the person before the  
7 arbitrator or punish the person for contempt in the same manner  
8 provided for the attendance of witnesses or the punishment of them in  
9 the courts of this state.

10 (3) The arbitrator shall appoint a time and place for the hearing  
11 and notify the parties thereof, and may adjourn the hearing from time  
12 to time as may be necessary, and, on application of either party and  
13 for good cause, may postpone the hearing to a time not extending beyond  
14 the date fixed by the collective bargaining agreement for making the  
15 award. The arbitration award shall be in writing and signed by the  
16 arbitrator. The arbitrator shall, promptly upon its rendition, serve  
17 a true copy of the award on each of the parties or their attorneys of  
18 record.

19 (4) If a party to a collective bargaining agreement negotiated  
20 under this chapter refuses to submit a grievance for arbitration, the  
21 other party to the collective bargaining agreement may invoke the  
22 jurisdiction of the superior court of Thurston county or of any county  
23 in which the labor dispute exists and such court shall have  
24 jurisdiction to issue an order compelling arbitration. Disputes  
25 concerning compliance with grievance procedures shall be reserved for  
26 determination by the arbitrator. Arbitration shall be ordered if the  
27 grievance states a claim that on its face is covered by the collective  
28 bargaining agreement. Doubts as to the coverage of the arbitration  
29 clause shall be resolved in favor of arbitration.

30 (5) If a party to a collective bargaining agreement negotiated  
31 under this chapter refuses to comply with the award of an arbitrator  
32 determining a grievance arising under the collective bargaining  
33 agreement, the other party to the collective bargaining agreement may  
34 invoke the jurisdiction of the superior court of Thurston county or of  
35 any county in which the labor dispute exists and such court shall have  
36 jurisdiction to issue an order enforcing the arbitration award.

37 NEW SECTION. **Sec. 315.** All powers, duties, and functions of the  
38 department of personnel pertaining to collective bargaining are

1 transferred to the public employment relations commission except  
2 mediation of grievances and contracts, arbitration of grievances and  
3 contracts, and unfair labor practices, filed under a collective  
4 bargaining agreement existing before the effective date of this  
5 section. Any mediation, arbitration, or unfair labor practice issue  
6 filed between July 1, 2004, and July 1, 2005, under a collective  
7 bargaining agreement existing before the effective date of this  
8 section, shall be resolved by the Washington personnel resources board  
9 in accordance with the authorities, rules, and procedures that were  
10 established under RCW 41.06.150(11) as it existed before the effective  
11 date of this section.

12 NEW SECTION. **Sec. 316.** All reports, documents, surveys, books,  
13 records, files, papers, or written material in the possession of the  
14 department of personnel pertaining to the powers, functions, and duties  
15 transferred in section 315 of this act shall be delivered to the  
16 custody of the public employment relations commission. All cabinets,  
17 furniture, office equipment, motor vehicles, and other tangible  
18 property employed by the department of personnel in carrying out the  
19 powers, functions, and duties transferred in section 315 of this act  
20 shall be made available to the public employment relations commission.  
21 All funds, credits, leases, and other assets held in connection with  
22 the powers, functions, and duties transferred in section 315 of this  
23 act shall be assigned to the public employment relations commission.

24 Any appropriations made to the department of personnel for carrying  
25 out the powers, functions, and duties transferred in section 315 of  
26 this act shall be deleted at the time that such powers, functions, and  
27 duties are transferred to the public employment relations commission.  
28 All funding required to perform these transferred powers, functions,  
29 and duties is to be provided by the public employment relations  
30 commission once the transfers occur.

31 Whenever any question arises as to the transfer of any personnel,  
32 funds, books, documents, records, papers, files, equipment, or other  
33 tangible property used or held in the exercise of the powers and the  
34 performance of the duties and functions transferred, the director of  
35 financial management shall make a determination as to the proper  
36 allocation and certify the same to the state agencies concerned.

1        NEW SECTION.    **Sec. 317.** After the effective date of this section,  
2 the director of personnel and the executive director of the public  
3 employment relations commission shall meet and agree upon a schedule  
4 for the transfer of department of personnel labor relation employees  
5 and property to the commission. Whenever a question arises as to the  
6 transfer of any personnel, funds, books, documents, records, papers,  
7 files, equipment, or other tangible property used or held in the  
8 exercise of the powers and the performance of the duties and functions  
9 transferred, the director of financial management shall make a  
10 determination as to the proper allocation and certify the same to the  
11 state agencies concerned.

12        NEW SECTION.    **Sec. 318.** All business pending before the department  
13 of personnel pertaining to the powers, functions, and duties  
14 transferred in section 315 of this act shall be continued and acted  
15 upon by the public employment relations commission. All existing  
16 contracts and obligations of the department of personnel, pertaining to  
17 collective bargaining, shall remain in full force and shall be  
18 performed by the public employment relations commission.

19        NEW SECTION.    **Sec. 319.** The transfer of the powers, duties,  
20 functions, and personnel of the department of personnel shall not  
21 affect the validity of any act performed before the effective date of  
22 this section.

23        NEW SECTION.    **Sec. 320.** If apportionments of budgeted funds are  
24 required because of the transfers directed by sections 316 through 319  
25 of this act, the director of financial management shall certify the  
26 apportionments to the agencies affected, the state auditor, and the  
27 state treasurer. Each of these shall make the appropriate transfer and  
28 adjustments in funds and appropriation accounts and equipment records  
29 in accordance with the certification.

30        NEW SECTION.    **Sec. 321.** DEFINITIONS. Unless the context clearly  
31 requires otherwise, the definitions in this section apply throughout  
32 this chapter.

33        (1) "Agency" means any agency as defined in RCW 41.06.020 and  
34 covered by chapter 41.06 RCW.

1 (2) "Collective bargaining" means the performance of the mutual  
2 obligation of the representatives of the employer and the exclusive  
3 bargaining representative to meet at reasonable times and to bargain in  
4 good faith in an effort to reach agreement with respect to the subjects  
5 of bargaining specified under section 303 of this act. The obligation  
6 to bargain does not compel either party to agree to a proposal or to  
7 make a concession, except as otherwise provided in this chapter.

8 (3) "Commission" means the public employment relations commission.

9 (4) "Confidential employee" means an employee who, in the regular  
10 course of his or her duties, assists in a confidential capacity persons  
11 who formulate, determine, and effectuate management policies with  
12 regard to labor relations or who, in the regular course of his or her  
13 duties, has authorized access to information relating to the  
14 effectuation or review of the employer's collective bargaining  
15 policies, or who assists or aids a manager. "Confidential employee"  
16 also includes employees who assist assistant attorneys general who  
17 advise and represent managers or confidential employees in personnel or  
18 labor relations matters, or who advise or represent the state in tort  
19 actions.

20 (5) "Director" means the director of the public employment  
21 relations commission.

22 (6) "Employee" means any employee, including employees whose work  
23 has ceased in connection with the pursuit of lawful activities  
24 protected by this chapter, covered by chapter 41.06 RCW, except:

25 (a) Employees covered for collective bargaining by chapter 41.56  
26 RCW;

27 (b) Confidential employees;

28 (c) Members of the Washington management service;

29 (d) Internal auditors in any agency; or

30 (e) Any employee of the commission, the office of financial  
31 management, or the department of personnel.

32 (7) "Employee organization" means any organization, union, or  
33 association in which employees participate and that exists for the  
34 purpose, in whole or in part, of collective bargaining with employers.

35 (8) "Employer" means the state of Washington.

36 (9) "Exclusive bargaining representative" means any employee  
37 organization that has been certified under this chapter as the  
38 representative of the employees in an appropriate bargaining unit.

1 (10) "Institutions of higher education" means the University of  
2 Washington, Washington State University, Central Washington University,  
3 Eastern Washington University, Western Washington University, The  
4 Evergreen State College, and the various state community colleges.

5 (11) "Labor dispute" means any controversy concerning terms,  
6 tenure, or conditions of employment, or concerning the association or  
7 representation of persons in negotiating, fixing, maintaining,  
8 changing, or seeking to arrange terms or conditions of employment with  
9 respect to the subjects of bargaining provided in this chapter,  
10 regardless of whether the disputants stand in the proximate relation of  
11 employer and employee.

12 (12) "Manager" means "manager" as defined in RCW 41.06.022.

13 (13) "Supervisor" means an employee who has authority, in the  
14 interest of the employer, to hire, transfer, suspend, lay off, recall,  
15 promote, discharge, direct, reward, or discipline employees, or to  
16 adjust employee grievances, or effectively to recommend such action, if  
17 the exercise of the authority is not of a merely routine nature but  
18 requires the consistent exercise of individual judgment. However, no  
19 employee who is a member of the Washington management service may be  
20 included in a collective bargaining unit established under this  
21 section.

22 (14) "Unfair labor practice" means any unfair labor practice listed  
23 in section 312 of this act.

24 NEW SECTION. **Sec. 322.** OFFICE OF FINANCIAL MANAGEMENT'S LABOR  
25 RELATIONS SERVICE ACCOUNT. (1) The office of financial management's  
26 labor relations service account is created in the custody of the state  
27 treasurer to be used as a revolving fund for the payment of labor  
28 relations services required for the negotiation of the collective  
29 bargaining agreements entered into under this chapter. An amount not  
30 to exceed one-tenth of one percent of the approved allotments of  
31 salaries and wages for all bargaining unit positions in the classified  
32 service in each of the agencies subject to this chapter, except the  
33 institutions of higher education, shall be charged to the operations  
34 appropriations of each agency and credited to the office of financial  
35 management's labor relations service account as the allotments are  
36 approved pursuant to chapter 43.88 RCW. Subject to the above  
37 limitations, the amount shall be charged against the allotments pro  
38 rata, at a rate to be fixed by the director of financial management

1 from time to time. Payment for services rendered under this chapter  
2 shall be made on a quarterly basis to the state treasurer and deposited  
3 into the office of financial management's labor relations service  
4 account.

5 (2) Moneys from the office of financial management's labor  
6 relations service account shall be disbursed by the state treasurer by  
7 warrants on vouchers authorized by the director of financial management  
8 or the director's designee. An appropriation is not required.

9 **PART IV**  
10 **MISCELLANEOUS**

11 NEW SECTION. **Sec. 401.** The following acts or parts of acts are  
12 each repealed:

13 (1) RCW 41.06.163 (Comprehensive salary and fringe benefit survey  
14 plan required--Contents) and 1993 c 281 s 30, 1987 c 185 s 9, 1986 c  
15 158 s 6, 1979 c 151 s 59, & 1977 ex.s. c 152 s 3; and

16 (2) RCW 41.06.165 (Salary surveys--Criteria) and 1977 ex.s. c 152  
17 s 4.

18 NEW SECTION. **Sec. 402.** The following acts or parts of acts, as  
19 now existing or hereafter amended, are each repealed:

20 (1) RCW 41.06.140 (Employee participation in policy and rule  
21 making, administration, etc.--Publication of board rules) and 1961 c 1  
22 s 14;

23 (2) RCW 41.50.804 (Existing collective bargaining agreements not  
24 affected) and 2002 c . . . s 228 (section 228 of this act), 1993 c 281  
25 s 40, & 1975-'76 2nd ex.s. c 105 s 17; and

26 (3) RCW 41.06.520 (Administration, management of institutions of  
27 higher education--Rules--Audit and review by board) and 1993 c 281 s  
28 11.

29 NEW SECTION. **Sec. 403.** The following acts or parts of acts, as  
30 now existing or hereafter amended, are each repealed:

31 (1) RCW 41.06.380 (Purchasing services by contract not prohibited--  
32 Limitations) and 1979 ex.s. c 46 s 2;

33 (2) RCW 41.06.382 (Purchasing services by contract not prohibited--  
34 Limitations) and 1979 ex.s. c 46 s 1;

1 (3) RCW 41.56.023 (Application of chapter to employees of  
2 institutions of higher education) and 1993 c 379 s 301;

3 (4) RCW 41.56.201 (Employees of institutions of higher education--  
4 Option to have relationship and obligations governed by chapter) and  
5 2000 c 19 s 2 & 1993 c 379 s 304; and

6 (5) RCW 28B.16.015 (Option to have relationship and obligations  
7 governed by chapter 41.56 RCW) and 1993 c 379 s 310.

8 NEW SECTION. **Sec. 404.** The following acts or parts of acts, as  
9 now existing or hereafter amended, are each repealed:

10 (1) RCW 41.64.010 (Personnel appeals board--Created--Membership--  
11 Definitions) and 1981 c 311 s 1;

12 (2) RCW 41.64.020 (Removal of members--Hearing) and 1981 c 311 s 3;

13 (3) RCW 41.64.030 (Compensation of members--Travel expenses--  
14 Disclosure of financial affairs) and 1984 c 287 s 73, 1984 c 34 s 4, &  
15 1981 c 311 s 4;

16 (4) RCW 41.64.040 (Election of chairperson--Biennial meetings) and  
17 1981 c 311 s 5;

18 (5) RCW 41.64.050 (Executive secretary--Appointment of assistants)  
19 and 1981 c 311 s 6;

20 (6) RCW 41.64.060 (Location of principal office--Hearings--  
21 Procedure) and 1981 c 311 s 7;

22 (7) RCW 41.64.070 (Journal of official actions) and 1981 c 311 s 8;

23 (8) RCW 41.64.080 (Employee appeals--Hearings examiners) and 1981  
24 c 311 s 9;

25 (9) RCW 41.64.090 (Employee appeals--Jurisdiction) and 1993 c 281  
26 s 41 & 1981 c 311 s 10;

27 (10) RCW 41.64.100 (Employee appeals--Hearing--Decision to be  
28 rendered within ninety days, exceptions) and 1997 c 386 s 43 & 1981 c  
29 311 s 11;

30 (11) RCW 41.64.110 (Employee appeals--Hearing--Procedure--Official  
31 record) and 1985 c 461 s 7 & 1981 c 311 s 12;

32 (12) RCW 41.64.120 (Employee appeals--Findings of fact, conclusions  
33 of law, order--Notice to employee and employing agency) and 1981 c 311  
34 s 13;

35 (13) RCW 41.64.130 (Employee appeals--Review by superior court--  
36 Grounds--Notice, service--Certified transcript) and 1981 c 311 s 14;

37 (14) RCW 41.64.140 (Employee appeals--Review by superior court--  
38 Procedure--Appellate review) and 1988 c 202 s 42 & 1981 c 311 s 15; and

1 (15) RCW 41.64.910 (Severability--1981 c 311) and 1981 c 311 s 24.

2 NEW SECTION. **Sec. 405.** SECTION CAPTIONS. Part headings and  
3 section captions used in this act do not constitute part of the law.

4 NEW SECTION. **Sec. 406.** Sections 301 through 322 of this act  
5 constitute a new chapter in Title 41 RCW.

6 NEW SECTION. **Sec. 407.** The governor shall take such action as is  
7 necessary to ensure that sections 301 through 314 of this act are  
8 implemented on their effective dates.

9 NEW SECTION. **Sec. 408.** Until July 1, 2004, the public employment  
10 relations commission is authorized to contract with the department of  
11 personnel for labor relations staffing necessary to carry out its  
12 functions.

13 NEW SECTION. **Sec. 409.** (1) Notwithstanding the provisions of  
14 section 301 of this act, the parties to collective bargaining to be  
15 conducted under sections 301 through 314 of this act shall meet by  
16 September 1, 2003, to identify those payroll-related bargaining issues  
17 that affect the capacity of the central state payroll system, as  
18 determined by the department of personnel. The parties shall agree on  
19 which bargaining issues will be bargained in a coalition of employee  
20 representatives and will be agreed to uniformly in each collective  
21 bargaining agreement. This agreement is effective only for collective  
22 bargaining agreements entered into for implementation during the 2005-  
23 2007 biennium. The purpose of the agreement is to minimize the risk to  
24 the payroll system resulting from agreements reached in the first round  
25 of collective bargaining under this act.

26 (2) This section expires June 30, 2007.

27 NEW SECTION. **Sec. 410.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 411.**    (1) Sections 203, 204, 213 through 223,  
2 227, 229 through 231, 241, 243, 246, 248, 301 through 307, 309 through  
3 316, 318, 319, and 402 of this act take effect July 1, 2004.

4        (2) Section 224 of this act takes effect March 15, 2005.

5        (3) Sections 208, 234 through 238, and 403 of this act take effect  
6 July 1, 2005.

7        (4) Sections 225, 226, 233, and 404 of this act take effect July 1,  
8 2006.

9        NEW SECTION.    **Sec. 412.**    Section 230 of this act expires June 30,  
10 2015.

      Passed the House March 11, 2002.

      Passed the Senate March 8, 2002.

      Approved by the Governor April 3, 2002, with the exception of  
          certain items that were vetoed.

      Filed in Office of Secretary of State April 3, 2002.

1        Note: Governor's explanation of partial veto is as follows:

2        "I am returning herewith, without my approval as to section 237,  
3 Substitute House Bill No. 1268 entitled:

4        "AN ACT Relating to personnel;"

5        Substitute House Bill No. 1268 is an historic civil service reform  
6 act. I strongly support this act, and herald its passage into law.

7        Section 237 of this bill would have amended RCW 47.46.040 by  
8 changing an internal reference in subsection 1 of that statute.  
9 However, section 16 of Engrossed House Bill No. 2723, which I signed  
10 into law on March 22, 2002, repeals RCW 47.46.040(1) in its entirety.  
11 If section 237 of this bill were to become law, it would create a  
12 confusing double amendment that could not be corrected by the Code  
13 Reviser.

14        For these reasons, I have vetoed section 237 of Substitute House  
15 Bill No. 1268.

16        With the exception of section 237, Substitute House Bill No. 1268  
17 is approved."