

VETO MESSAGE ON 2ESHB 1087

June 15, 2011

The Honorable Speaker and Members,
The House of Representatives of the State of Washington

Ladies and Gentlemen:

I am returning, without my approval as to Sections 123(4); 125, page 14, line 28; 127(11); 129(4); 129(5); 129(6); 129(8); 129(9); 129(10); 134(4); 139(3); 139(4); 144(1); 144(2); 201(5); 202(8); 202(11); 205(1)(j); 205(2)(c); 205(2)(d); 206(16); 206(17); 207(9); 209(1); 213, page 68, line 12; 213(16); 213(17); 213(34); 213(38); 213(47); 213(48); 217(3); 218(2)(a); 219(11); 219(14); 219(17); 220(1)(b); 220(2)(a); 220(3)(a); 221, page 96, lines 8-14; 301, page 98, lines 8-11; 302(9); 302(10); 303(4); 307(12); 308(10); 310, page 110, lines 25-28; 312; 401(3); 401(4); 501(1)(a)(iv); 501(1)(i); 601(6)(c); 605(3); 610(3); 610(9); 613(2)(b); 613(4); 617(7); 617(11); 716; 721(2); 724; 805, page 192, lines 35-37, and page 193, line 1-18; 925; 934; 935; 978, Second Engrossed Substitute House Bill 1087 entitled:

"AN ACT Relating to fiscal matters."

I have vetoed the following appropriation items because of concerns with policy or technical issues relating to the legislative provisions:

Section 123(4), page 14, State Auditor's Office, Fraud Ombudsman

The State Auditor is provided funding for the work of the fraud ombudsman, whose office was to be created through passage of Engrossed Substitute Senate Bill 5921 (relating to social services). Because I have vetoed the creation of the fraud ombudsman's office within the State Auditor's Office, I have also vetoed Section 123(4).

Section 125, page 14, line 28, Attorney General's Office, Medicaid Fraud Penalty Account

Section 213, page 68, line 12, Health Care Authority, Medicaid Fraud Penalty Account

These appropriations, which were to be used to fund the Attorney General's Fraud Investigation Unit, are from a non-existent account. The budget assumed passage of Engrossed Substitute Senate Bill 5960 (relating to Medicaid fraud), which did not pass. As a result, the Attorney General's Office and Health Care Authority will need to use other sources of funding until an appropriate fund source can be identified in the 2012 supplemental budget. Because this account does not

exist, I have vetoed Section 125, page 14, line 28, and Section 213, page 68, line 12.

Section 127(11), page 19, Department of Commerce, Public Works Assistance Account Savings

The administrative savings attributed to the Public Works Assistance Account is from the implementation of Substitute Senate Bill 5844 (local government infrastructure), which did not pass. The Department should be afforded flexibility in how it achieves its budget reductions. For this reason, I have vetoed Section 127(11).

Section 129(4), page 23, Office of Financial Management, Collective Bargaining for Health Insurance

The requirement to propose employee contributions to health insurance on a sliding scale is incompatible with Washington's collective bargaining statutes, which limit bargaining on health insurance to the amount of the employer contribution. It is also problematic to consider single elements of collective bargaining in isolation. The existing statute recognizes this by having the Governor negotiate the agreements in their totality, with input from the Joint Committee on Employment Relations. Further, sliding scale contributions would present implementation challenges. For these reasons, I have vetoed Section 129(4).

Section 129(5), page 23, Office of Financial Management, Direct Deposit Feasibility Study

This proviso requires the Office of Financial Management (OFM) to conduct a feasibility study on the implications of mandating direct payroll deposit for state employees, and to report to the legislative fiscal committees by December 1, 2011. OFM has already researched the feasibility of mandating direct deposit for all state employees. As a part of this research, stakeholders were contacted and concerns were raised regarding the impact of such a mandate. Since the majority of state employees voluntarily use direct deposit, the amount of effort required to make this change would outweigh the possible savings. For this reason, I have vetoed Section 129(5).

Section 129(6), page 24, Office of Financial Management, Study to Use Digital Signatures for Employment Actions

This proviso requires OFM to conduct a feasibility study on the potential impacts of a system that would allow digital signatures for the purpose of employment activities. OFM is responsible for coordinating an unprecedented level of organizational and governmental service changes in the 2011-13 biennium. It does not have the capacity to perform this study with existing resources. For this reason, I have vetoed Section 129(6).

Section 129(8), page 24, Office of Financial Management, Washington State Quality Award Training
Section 129(9), page 24, Office of Financial Management, Washington State Quality Award Assessment
Section 129(10), page 24, Office of Financial Management, Priorities of Government Program Information
Section 925, page 204, Office of Financial Management, Employee Performance Management Training Tracking and Performance Management

Section 129(8) provides \$100,000 State General Fund for OFM to contract with the Washington State Quality Award for training, outreach, and assessments for public agencies and public agency vendors. Section 129(9) directs the Government Management and Accountability Performance (GMAP) program to develop, in coordination with the Washington State Quality Award, a plan for all state agencies to complete a Washington State Quality Award or Baldrige full assessment by June 30, 2013. Section 129(10) requires the Priorities of Government program to include in its report the Washington State Quality Award assessment score for agencies. Section 925 adds requirements related to the Washington State Quality Award and Baldrige assessments and the tracking of employee performance management training. Given the unprecedented level of 2011-13 budget reductions, I believe our existing GMAP process is more cost-effective. For these reasons, I have vetoed Section 129(8), Section 129(9), Section 129(10), and Section 925.

Section 139(3) and (4), pages 27-28, Consolidated Technology Services Agency, Consolidated State Data Center

These provisos set forth a number of conditions that must be met prior to equipping and operating the new state data center. These restrictions will significantly impede the ability of state agencies to use this asset. We are in the process of implementing all of these conditions (appointing a new Chief Information Officer, adopting technical standards for shared services, developing competitive rates for data center services, and developing a detailed implementation plan). However, work to design and equip the data center network and infrastructure must proceed to maintain the current schedule to migrate state agency data centers to the new consolidated data center. For this reason, I have vetoed Section 139(3) and Section 139(4).

Section 201(5), page 35, Department of Social and Health Services, Food Procurement Cost Information
Section 219(14), pages 91-92, Department of Health, Food Procurement Cost Information
Section 220(1)(b), page 93, Department of Corrections, Food Procurement Cost Information
Section 221, page 96, lines 8-14, Department of Services for the Blind, Food Procurement Cost Information

These provisos direct these agencies to compile and submit food procurement costs to the Department of Health. No funding was provided to collect or analyze this data. Given the amount of administrative reductions to be incurred by these departments, additional unfunded requirements cannot be completed. For this reason, I have vetoed Section 201(5), Section 219(14), Section 220(1)(b), and Section 221, page 96, lines 8-14.

Section 202(8), pages 38-39, Department of Social and Health Services -- Children and Family Services, Foster Care Reduction Workgroup

In 2010, the Office of Financial Management, Department of Social and Health Services (DSHS), and Washington State Caseload Forecast Council developed a plan to reinvest resources from foster care savings and presented it to the Governor and the Legislature.

Section 202(8) instructs DSHS to establish a workgroup to duplicate the work that has already been performed. In addition, no resources were provided to complete this task. For these reasons, I have vetoed Section 202(8).

Section 202(11), page 39, Department of Social and Health Services -- Children and Family Services, Administrative Reductions

Section 205(2)(c), page 54, Department of Social and Health Services -- Developmental Disabilities, Administrative Reductions

Section 207(9), page 64, Department of Social and Health Services -- Economic Services, Administrative Reductions

Whenever possible, state agencies reduce administrative expenses before reducing services. The Department has made significant progress in finding ways to improve services to Washington residents while reducing costs. However, given the significant reductions in administrative activities made in the past few years, additional reductions cannot be limited to administrative reductions and will likely impact services. For this reason, I have vetoed Section 202(11), Section 205(2)(c), and Section 207(9).

Section 205(1)(j), page 53, Department of Social and Health Services -- Developmental Disabilities, Community First Choice Option

This proviso requires the Department to determine whether it would be cost-efficient for the state to exercise a 1915(k) Medicaid waiver and submit a plan to the Legislature during the next legislative session. I am directing the Department to conduct this review and move forward with implementing the waiver if the finding demonstrates that it is cost-efficient, instead of waiting for the subsequent legislative session. For this reason, I have vetoed Section 205(1)(j).

Section 205(2)(d), page 54, Department of Social and Health Services -- Developmental Disabilities, Frances Haddon Morgan Center and Yakima Valley School

This proviso directs that no resident shall be moved from these residential habilitation centers unless and until the Department has the "appropriate and suitable" community option and services available as specified in the client's individual habilitation plan. The terms "appropriate and suitable" are subjective and would be difficult to implement. I am directing the Department to keep the wellbeing of the residents at the forefront as these moves take place. For this reason, I have vetoed Section 205(2)(d).

Section 206(17), page 61, Department of Social and Health Services -- Aging and Adult Services, Community First Choice Option

The Department must determine whether it would be cost-efficient for the state to exercise a 1915(k) Medicaid waiver, and submit a plan to the Legislature in the next legislative session. I am directing the Department to conduct this review and move forward with implementing the waiver if the finding demonstrates that it is cost-efficient, instead of waiting for the subsequent legislative session. For this reason, I have vetoed Section 206(17).

Section 209(1), page 66, Department of Social and Health Services -- Vocational Rehabilitation, Serving Lifeline Clients

This proviso, which applies to the entire 2011-13 biennium, directs the Department to serve Lifeline clients; however, the Lifeline program terminates on October 31, 2011. I am, however, directing the Department to make every effort to continue to serve clients receiving public assistance, within the requirements of the federal Rehabilitation Act of 1973. For this reason, I have vetoed Section 209(1).

Section 213(16), pages 74-75, Health Care Authority, Disability Lifeline Managed Care

The reference to Disability Lifeline is no longer valid because the Disability Lifeline program no longer exists effective November 2011. I am directing the Health Care Authority to contract managed care services in a way that maximizes patient outcomes in the most cost effective manner. For this reason, I have vetoed Section 213(16).

Section 213(17), page 75, Health Care Authority, Impact Evaluation for Disability Lifeline

The Health Care Authority is directed to evaluate the impact of a managed care delivery system on state costs and outcomes for Lifeline medical clients. No funding was provided for this evaluation. For this reason, I have vetoed Section 213(17).

Section 213(34), page 79, Health Care Authority, Power Wheelchairs

The state must meet the medical necessity test as a condition of operating a Medicaid program. This proviso creates a confusing situation by prohibiting the current limitation of power wheelchairs to clients in school or work. As a cost savings step, reducing power wheelchairs is preferable to many other service reduction options. The state should be allowed to establish a benefit design that meets federal standards without overly prescriptive budget provisos. For these reasons, I have vetoed Section 213(34).

Section 213(38), page 80, Health Care Authority, Federally Qualified Health Clinics

This proviso directs payments to federally qualified health centers and rural health clinics. On lines 22-23, the proviso references the incorrect years, which would result in deeper reductions than is intended. I am, however, directing the Health Care Authority to implement the reductions in accordance with the appropriation amounts. For this reason, I have vetoed Section 213(38).

Section 213(47), page 82, Health Care Authority, State Pharmacists Contract

The agency is directed to contract with an organization that will use state pharmacists to provide medication therapy management services to lower costs and improve patient compliance. No other state Medicaid program in the country has implemented this program and achieved savings. For this reason, I have vetoed Section 213(47).

Section 213(48), page 82, Health Care Authority, Report on Not-For-Profit Disproportionate Share Hospitals

This proviso requires the agency to evaluate community benefit information provided by disproportionate share hospitals and report to the Legislature with an assessment of improved measures for charity care efforts. No resources were provided to conduct this evaluation. For this reason, I have vetoed Section 213(48).

Section 218(2)(a), page 87, Department of Veterans Affairs, Identify and Assist General Assistance Unemployable Clients

The General Assistance Unemployable program no longer exists. I am directing the Department of Social and Health Services and the Department of Veterans Affairs to continue working collaboratively to help public assistance clients access veterans' benefits for which they qualify. For this reason, I have vetoed Section 218(2)(a).

Section 220(2)(a), page 93, Department of Corrections -- Priority of Personnel Reductions

Section 220(3)(a), page 94, Department of Corrections -- Priority of Personnel Reductions

The Department continues to look for administrative and other reductions that minimize impact on custody staff and correctional industries. However, given the significant expenditure reductions made in the past few years, it is critical that the Department has flexibility in how it achieves its budget reductions. For this reason, I have vetoed Section 220(2)(a) and Section 220(3)(a).

Natural Resource Agency Consolidation

Several appropriations in Second Engrossed Substitute House Bill 1087 assume the passage of Engrossed Second Substitute Senate Bill 5669 (Consolidating natural resources agencies and programs); however, this bill did not pass. Appropriation bill language signals a legislative intent to shift Fiscal Year 2013 funding among agencies to reflect the new organizational structure created in Engrossed Second Substitute Senate Bill 5669. These discrepancies will need to be reconciled during the 2012 legislative session. Initial steps can be taken now through some vetoes of unneeded consolidation-related provisos that contain duplicative information or technical errors. For these reasons, I have vetoed the following sections:

Section 301, page 98, lines 8-11, Columbia River Gorge Commission

Section 302(9), page 101, Department of Ecology

Section 302(10), page 101, Department of Ecology

Section 310, page 110, lines 25-28, Washington Pollution Liability Insurance Program

Section 303(4), page 102, State Parks and Recreation Commission, Land Purchase

The Commission is prohibited from expending state monies to purchase or acquire lands other than those called for in Senate Bill 5467 (capital budget) or House Bill 1497 (capital budget). A technical problem is created by the fact that the House bill cited is only one of the two capital budget bills that passed the Legislature. For this reason, I have vetoed Section 303(4).

Section 307(12), page 107, Department of Fish and Wildlife, Purchase of Lands

This proviso restricts the Department from expending state monies to purchase or acquire additional lands other than those called for in Senate Bill 5467 (capital budget) or House Bill 1497 (capital budget). The House bill cited is only one of the two capital budget bills that passed the Legislature. For this reason, I have vetoed Section 307(12).

Section 308(10), pages 109-110, Department of Natural Resources, Marine Rents Committee

This proviso directs the Department to convene a marine rents review committee in order to explore ways to refine and improve the method for calculating rents for marinas occupying state-owned aquatic lands. A report and recommendations are due to the Legislature by December 1, 2011. Since no funding was provided to complete this report, I have vetoed Section 308(10). I am however, asking the Commissioner of Public Lands to review past studies on this subject, discuss the issue with all affected stakeholders and prepare legislation for next session.

Section 312, pages 111-112, Department of Agriculture, Department of Ecology, and State Conservation Commission - Livestock Operations Review

Three agencies are required to conduct a process to review the impact of livestock operations on water quality, and to make recommendations by December 31, 2011. In March, these agencies committed to conducting a review process similar to this one; however, this proviso expands that process without an increase in funding. For this reason, I have vetoed Section 312. I am directing these agencies to continue the process they committed to during the legislative session.

Section 401(4), pages 113-114, Department of Licensing, House Bill 2017 - Master License Service (MLS) Transfer

This proviso prohibits the Department of Revenue from reimbursing the Department of Licensing for costs related to transferring the Master License Service program after July 1, 2011. This restriction limits the agencies' ability to facilitate a seamless transfer of the program, as required by Substitute House Bill 2017. For this reason, I have vetoed Section 401(4). However, I am directing the Department of Licensing to expedite the transfer in order to minimize the work and costs that will be incurred in the next biennium.

Section 501(1)(a)(iv), page 117, Superintendent of Public Instruction, Electronic Certification System

The Office of the Superintendent of Public Instruction and the Office of Financial Management are required "to work to allocate sufficient funding from the federal grant funds for the state's P-20 longitudinal data system, to the extent allowable, for the purpose of developing and implementing a new electronic certification system." The P-20 grant links student education data across time and databases, from early childhood to career, by funding data technology projects at ten state agencies. As drafted, this proviso places construction of the electronic certification system ahead in the funding priority line, in front of all other projects. Additionally, the electronic certification system can be built with fees authorized in Engrossed Substitute House Bill 1449, a funding source not available for the other projects. For this reason, I have vetoed Section 501(1)(a)(iv). However, I

am directing OFM to explore the use of grant funds for the system's construction, if funds are available and consistent with the administration of other projects in the P-20 program.

Section 601(6)(c), page 155, Higher Education, Salary Increases from Other Sources

This proviso authorizes salary increases from sources other than the State General Fund for instructional and research faculty at the state's universities and The Evergreen State College. This authority conflicts with Engrossed Substitute Senate Bill 5860, which freezes state government salaries unless agencies or institutions demonstrate difficulty in retaining qualified employees. For this reason, I have vetoed Section 601(6)(c).

Section 605(3), page 160, State Board for Community and Technical Colleges, Administrative Efficiencies

The State Board for Community and Technical Colleges is directed to achieve \$7 million in savings through efficiencies, including consolidation of college districts and administrative and governance functions. The State Board will achieve the required savings, but the proviso is overly prescriptive. For this reason, I have vetoed Section 605(3).

Section 610(9), page 167, The Evergreen State College, Controlled Substances Study

This proviso directs the Washington State Institute for Public Policy to study the costs and benefits to state and local governments and the citizens of Washington from implementation of the state's policies on "controlled substances, excluding alcohol, tobacco and pharmaceuticals." The reality is that these are controlled substances under federal law. It is unwise to spend taxpayer dollars on a study that cannot address the fundamental issues in this policy area. Therefore, I have vetoed Section 610(9).

Section 613(2)(b), page 168, Higher Education Coordinating Board -- Financial Aid and Grant Programs, State Need Grant Scholarships for Private College Students

This proviso limits State Need Grant award in Fiscal Year 2012 for private college students to the level of students attending public regional universities. This would reduce Need Grant awards to levels below current practice. This proviso was included in the bill as a result of a technical drafting error. Appropriations in the budget are not based on this unintended restriction. For this reason, I have vetoed Section 613(2)(b).

Section 613(4), page 169, Higher Education Coordinating Board, Financial Aid and Grant Programs -- Gaining Early Awareness and Readiness for Undergraduate Programs Project

This proviso would restrict the use of funding in an appropriation from the Education Legacy Trust Account. This

apparently is a technical bill drafting error, because no such appropriation exists in this section. Therefore, I have vetoed Section 613(4).

Section 617(7), page 173, Department of Early Learning, Eligibility for Working Connections Child Care

This proviso prohibits the Department of Early Learning from making rules that reduce the income eligibility criteria of the Working Connections Child Care program to below the current level of 175 percent of the federal poverty level. Such a limitation infringes on my authority to manage the WorkFirst program, which includes the Working Connections Child Care program. For this reason, I have vetoed Section 617(7).

Section 617(11), page 173, Department of Early Learning, Child Care Copayment Structure

This proviso directs the Department of Early Learning to implement a child care copayment structure that gradually increases the copayments of parents in the Working Connection Child Care program based on income and other factors. Additionally, the proviso includes multiple directives about how the copayment structure should be developed. The Department of Early Learning is already beginning work on potential child care copayment structures that smooth out the tiers in the current model. The parameters of this proviso unnecessarily limit the agency's options. For this reason, I have vetoed Section 617(11).

Section 716, pages 182-184, Office of Financial Management, Agency Reallocation and Realignment Commission

Section 716 creates the Agency Reallocation and Realignment Commission with responsibilities for examining current state operations and organization, and making proposals to reduce expenditures and eliminate duplication and overlapping services. The sum of \$100,000 in State General Fund dollars is provided for this purpose. During the Priorities of Government activity conducted during the summer of 2010, I appointed an external stakeholder team that performed similar responsibilities envisioned for this commission. Several of the public's suggestions, including the merger of central service functions, were proposed in my budget and enacted by the Legislature. Since we already have mechanisms to perform many of the same responsibilities without additional expense, this commission is not needed. For these reasons, I have vetoed Section 716.

Section 805, page 192, lines 35-37, and page 193, lines 1-18, State Treasurer, Conditions on Life Sciences Discovery Fund

These provisos place seven conditions on the Life Sciences Discovery Fund (LSDF). With the exception of subsection 1 these conditions decrease its autonomy and overall efficacy.

For this reason, I have vetoed Section 805, page 192, lines 35-37; and page 193, lines 1-18.

Section 934, page 212, Amending the State Civil Service Law, RCW 41.06.022

Section 935, pages 212-218, Amending the State Civil Service Law, RCW 41.06.070

Section 934 makes two changes to the current civil service law for the duration of the 2011-13 biennium: (1) Any manager whose position is eliminated and who transfers to a different position shall be compensated at a level no higher than commensurate with the new position, and (2) No manager whose position is eliminated shall have reversion rights to classified position unless the employee was employed in the position, or a substantially equivalent one, within three years prior to the effective date of this act. Section 935 requires that any exempt employee whose position is eliminated and who transfers to a different position shall be compensated at a level no higher than commensurate with the new position. It is inappropriate to unilaterally and retroactively change the terms of employment for employees who have served with sufficient excellence to be promoted to leadership positions. Revoking guarantees made when these employees accepted offers to serve in management positions is simply unwarranted. In addition, the language is written in such a way that it would be applied unevenly to employees in equivalent situations, based on the presumed specific budget reduction that might apply in a given case. This approach would also make it distinctly more difficult for state agencies to promote from within the ranks of their employees. For these reasons, I have vetoed Sections 934 and 935.

Section 978, page 271, Reports on Ensuing Biennium Impact of Budget Proposals

While I am supportive of the intent to provide ensuing biennium impact statements on legislative and executive budget proposals, this language originated as separate legislation and is more appropriately implemented as a change to statute, not as part of an appropriations bill that expires in two years. Furthermore, the information required for both the State General Fund and other funds is far more detailed than necessary for a statewide budget outlook. For these reasons, I have vetoed Section 978.

A number of appropriations in Second Engrossed Substitute House Bill 1087 are contingent upon passage of separate legislation, with legislative direction that the appropriations will lapse if the bills are not enacted. The following vetoes relate to bills that did not pass:

Section 134(4), page 26, Department of Retirement Systems, Substitute Senate Bill 5846 (Retired public employees)

Section 144(1), page 29, Liquor Control Board, House Bill 2043 or Senate Bill 5916 (Liquor related products)

Section 144(2), page 29, Liquor Control Board, House Bill 2043 or Senate Bill 5917 (Co-located contract stores)

Section 206(16), page 61, Department of Social and Health Services, Engrossed Second Substitute House Bill 1901 (Reshaping the delivery of the long-term care system)

Section 217(3), page 86, Department of Labor and Industries, Engrossed Second Substitute House Bill 1701 (Contractor misclassification)

Section 219(11), page 91, Department of Health, Substitute House Bill 1468 (Public water system permits)

Section 219(17), page 92, Department of Health, Substitute Senate Bill 5542 (Cigar lounge and tobacconist shop special license)

Section 401(3), page 113, Department of Licensing, Substitute House Bill 1205 (Court reporter licensing)

Section 501(1)(i), pages 118-119, Office of the Superintendent of Public Instruction, House Bill 2111 (Implementing Quality Education Council recommendations)

Section 610(3), page 165, The Evergreen State College, Engrossed Second Substitute House Bill 1443 (Continuing education reforms)

Section 721(2), page 186, Transportation agencies, Senate Bill 5920 (Limiting annual increase amounts)

Section 724, page 187, Substitute Senate Bill 5846 (Health benefit subsidies)

For these reasons, I have vetoed Sections 134(4); 144(1); 144(2); 206(16); 217(3); 219(11); 219(17); 401(3); 501(1)(i); 610(3); 721(2); and 724.

With the exception of Sections 123(4); 125, page 14, line 28; 127(11); 129(4); 129(5); 129(6); 129(8); 129(9); 129(10); 134(4); 139(3); 139(4); 144(1); 144(2); 201(5); 202(8);

202(11); 205(1)(j); 205(2)(c); 205(2)(d); 206(16); 206(17);
207(9); 209(1); 213, page 68, line 12; 213(16); 213(17);
213(34); 213(38); 213(47); 213(48); 217(3); 218(2)(a);
219(11); 219(14); 219(17); 220(1)(b); 220(2)(a); 220(3)(a);
221, page 96, lines 8-14; 301, page 98, lines 8-11; 302(9);
302(10); 303(4); 307(12); 308(10); 310, page 110, lines 25-28;
312; 401(3); 401(4); 501(1)(a)(iv); 501(1)(i); 601(6)(c);
605(3); 610(3); 610(9); 613(2)(b); 613(4); 617(7); 617(11);
716; 721(2); 724; 805, page 192, lines 35-37, and page 193,
line 1-18; 925; 934; 935; 978, Second Engrossed Substitute
House Bill 1087 is approved.

Respectfully submitted,
Christine Gregoire
Governor