

VETO MESSAGE ON HB 1410-S

June 16, 1995

To the Honorable Speaker and Members,

The House of Representatives of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval as to sections 126(13); 139(4); 146 (lines 11-21); 201(3); 205(5)(d); 205(5)(e); 206(2); 206(3); 207(1)(c); 207(2)(c)(i); 207(2)(c)(iii); 219(5); 219(6); 303(2); 303(10); 308; 309(3); 311 (beginning with the word "subject" on line 20, and ending with the word "section" on line 28); 914; 916; 917; and 925, Engrossed Substitute House Bill No. 1410 entitled:

"AN ACT Relating to fiscal matters; making appropriations and authorizing expenditures for the operations of state agencies for the fiscal biennium beginning July 1, 1995 and ending June 30, 1997;"

Engrossed Substitute House Bill No. 1410, the state operating budget, will fund public schools, colleges, universities and other important public services for the next two years. The legislature deserves great credit for working through their differences and coming to agreement on some very difficult issues. Nonetheless, I am very concerned with certain items included in this budget.

Section 126(13), page 16, Marketplace Program (Department of Community, Trade, and Economic Development)

This provision would require the Department of Community, Trade, and Economic Development to invest \$150,000 General Fund-State in the Marketplace program. While I believe this to be a worthwhile program, I am concerned that this level of expenditure would require reductions in other important trade activities conducted by the Department. I have asked the agency to report to me on the performance of the Marketplace program and recommend an expenditure plan for the 1995-97 Biennium.

Section 139(4), page 24, Study the Feasibility of Rewriting Titles 82 and 84 RCW (Department of Revenue)

This subsection directs the Department of Revenue to study the feasibility of rewriting Titles 82 and 84 RCW "for clarity and ease of understanding" and report its findings to the legislature in the 1996 session. The Department did not, however, receive "sufficient funds" to conduct this study, as stated in this provision. While both the Department and I think this is a very important project and goal, it is unreasonable to expect the Department to undertake this additional task along with the other increased responsibilities mandated by regulatory reform, without funding for this purpose.

Section 146, lines 11-21, page 27, Certified Public Accountants' Account (Board of Accountancy)

This section requires the Board of Accountancy to spend \$50,000 of the Certified Public Accountants' appropriation to study the financial and enrollment impact of a Board proposal to increase the educational requirements for CPA certification. The Board of Accountancy proposed the new requirements to keep Washington

accountants competitive and properly educated. While that proposal has merit, I share the legislature's concern that imposing additional educational requirements on students seeking to qualify for professional certification will cost students and the state additional money and potentially reduce access to higher education. The budget proviso prohibits the Board from implementing the proposed rule until a study is completed of its likely effect on public and private higher education institutions and presented to the higher education and fiscal committees of the legislature. The study is to be conducted in cooperation with the Higher Education Coordinating Board (HECB).

While I agree with the intent of this proviso, I am vetoing it because the required study will not cost \$50,000. The HECB estimates that the study can be done for about \$20,000. The amount not spent on the study can be used for giving CPA exams. Because I think the study is important, I will ask the Board of Accountancy to delay implementation of the increased educational requirements until the HECB and the Board of Accountancy complete a study of the financial and enrollment impact of the proposed changes to CPA certification requirements. The study should provide the legislature and Board of Accountancy with objective information regarding costs and enrollments associated with this important decision.

Section 201(3), page 30, Special Authorization for Prescription Drugs and Medications (Department of Social and Health Services)

This subsection prohibits the Department of Social and Health Services (DSHS) from requiring special authorization before prescription drugs and medications can be prescribed to Medicaid eligible recipients for non-medical reasons. This language would limit the state's ability to curb the growth of health care costs, while also causing serious problems for those charged with ensuring that medications with high risk of abuse and misuse are distributed appropriately. Retaining the ability to require authorization for certain drugs will help control costs and is an important tool in preventing drug abuse.

I believe the original intent of this proviso was to terminate the Washington State Supplemental Drug Discount (WSSDD) program. However, this goal is achieved in section 209(6) of this act, which I have approved. Therefore, as of July 1, 1995, the Supplemental Drug Discount Program is discontinued.

Section 205(5)(d), pages 37 and 38, Out of Home Services (Department of Social and Health Services, Developmental Disabilities)

This section requires DSHS to serve an additional 150 persons in out-of-home community residential care during the 1995-97 Biennium, with service priority given to those currently residing with elderly parents or relatives. The provision of expanded services at a reduced cost is a laudable goal; in fact, my budget included a similar expectation. However, the stipulation that these services must be "out-of-home" conflicts with parental choice and personal preferences. I am vetoing this section; however, I am directing the Department to provide either out-of-home or in-home

community residential services to at least 150 additional persons, with due consideration given to personal and family choices and priority given to those residing with elderly parents or relatives.

Section 205(5)(e), page 38, and Section 206(2), page 39, Medicaid Personal Care Services (Department of Social and Health Services: Developmental Disabilities, and Aging and Adult Services Administration)

These sections attempt to control growth in the Medicaid Personal Care program through adjustments to eligibility standards and service levels. While I agree that Personal Care growth must be managed, the Department must take a more flexible and coordinated approach than limiting expenditures within individual programs. The Department is unable to adjust eligibility criteria within one program without affecting clients and services in another program. Section 205(5)(f) of the operating budget bill requires DSHS to evaluate the feasibility of redesigning the Medicaid Personal Care program for the developmental disabilities community. This study should provide the Department and the legislature with enough information to generate viable options in addressing the future of the Personal Care program.

Sections 206(3), page 39, Community Options Program Entry System (Department of Social and Health Services, Aging and Adult Services Administration)

This section limits growth in the Community Options Program Entry System (COPES) through adjustments to eligibility standards and service levels or the terms of the federal waiver. This proviso would limit the Department's ability to implement the reforms of the Long Term Care system embodied in E2SHB 1908. Furthermore, adjusting the eligibility standards within COPES would similarly affect the rules for eligibility within nursing homes.

Section 207(1)(c), page 40, General Assistance for Pregnancy Program (Department of Social and Health Services, Economic Services)

This proviso limits the General Assistance for Pregnancy program (GA-S) to \$7.7 million as specified in RCW 74.04.005 as amended by Substitute House Bill No. 2083. This bill was not approved by the legislature and the proviso alone, without statutory change, offers neither sufficient specificity nor legal authority to limit program eligibility. Therefore, the Department of Social and Health Services will continue to provide assistance to all eligible pregnant women as specified in current statute.

Section 207(2)(c)(i) and (iii), page 41, Systematic Alien Verification for Entitlements System (SAVE) (Department of Social and Health Services, Economic Services Program)

These subsections require DSHS to reinstate the Systematic Alien Verification for Entitlements System (SAVE) program by September 30, 1995. There is also a requirement to post signs at every community service office letting applicants and recipients know that illegal aliens will be reported to the United States Immigration and Naturalization Services and that SAVE is in use in

the office. The Department's past experience with the SAVE program has established that it is an inefficient and costly method of identifying fraudulent applications for assistance. The federal government has also come to the conclusion that the SAVE program costs twice as much as is saved.

This administration in no way supports granting benefits to persons who are not eligible for assistance. The Department has effective mechanisms currently in place to ensure that benefits are delivered to those truly in need, and not to those who are intent on defrauding the state.

Section 219 (5), page 50, Claims Unit for State Employees (Department of Labor and Industries)

Section 219(5) directs the Department of Labor and Industries (L&I) to report to the appropriate policy and fiscal committees of the legislature with a plan for establishing within existing resources a designated claims unit to specialize in claims by state employees.

This proviso is in conflict with the agency's efforts to decentralize claims management. The agency has just started to implement the Long-Term Disability and Managed Care pilot projects as directed by the legislature. The results from these two pilot projects will be used to improve the Department's overall claims programs.

Additionally, creating a claims unit for state employees would foster a perception that a worker's compensation program managed by state government is planning to give special preference to government agencies at the expense of private industry ratepayers. I believe that any improvements made to the claims program should benefit all workers and employers, not just state employees.

Section 219(6), page 50, Regulatory Reform (Department of Labor and Industries)

Section 219(6) prohibits L&I from spending its appropriated funds to implement rules that do not comply with the Regulatory Fairness Act under RCW 19.85 or that have been determined by the Joint Administrative Rules Review Committee to be outside of legislative intent.

As with section 504 of ESHB 1010, which I just recently vetoed, this proviso is unconstitutional. It violates the state constitutional provisions requiring legislative acts to be passed by the entire legislature with presentment to the Governor for approval. By restricting funds for rule enforcement and ignoring the statutory judicial review process, this proviso violates the separation of power doctrine by unduly encroaching upon those constitutional powers reserved for the executive and judicial branches of government.

Section 303(2), page 59, Water Rights Claims Filing (Department of Ecology)

Section 303(2) provides funding for the implementation of SHB 1327, which was not passed by the legislature. I am directing the Department of Ecology to use these funds for the Water Resources program.

Section 303(10), page 61, Yakima Adjudication (Department of Ecology)

Section 303(10) provides an additional \$500,000 from the Water Right Permit Processing Account for additional staff and resources for the Yakima adjudication of water rights. Although I recognize the importance of the Yakima adjudication, there are currently \$1,854,000 in General Fund-State resources devoted to this effort. The Department was provided woefully inadequate resources to address critical water quantity issues throughout the state. Therefore, I am directing the Department of Ecology to use \$500,000 of the Water Right Permit Processing Account for the Water Resources program. The remaining \$1,854,000 of the General Fund-State appropriation shall be used to continue the Yakima Adjudication.

Section 308, page 63-64, Office of Marine Safety

I am vetoing this section because funding for the Office of Marine Safety (OMS) has been included in the transportation budget. The transportation budget, 2ESHB 2080, contains statutory language that would merge OMS into the Department of Ecology (DOE) on January 1, 1996. In accordance with that merger, the transportation budget provides funding for OMS from July 1, 1995 through December 31, 1995 and funding for the Department of Ecology to sustain the merged oil spill prevention program for the remainder of the biennium.

Although the OMS will be merged into DOE, I am committed to maintaining a strong and viable program aimed at preventing oil spills on our marine waters. I support maintaining a high level, visible and priority focus on these issues through a division of oil spill prevention and response at the Department of Ecology. Moreover, I am committed to ensuring that full funding be available for the program, pending legislative remedy, should any situation arise placing appropriations for this program in jeopardy.

Section 309(3), page 64, Flood Damage Reduction (Department of Fish and Wildlife)

This appropriation to the Department of Fish and Wildlife is for the implementation of E2SSB 5632 regarding flood damage reduction. Although I have signed this legislation, I have vetoed the sections for which this funding was intended. Since no additional funding was provided to the Department for this activity, I am vetoing this budget proviso.

Section 311, beginning with the word "subject" on line 20 and ending with the word "section" on line 28, page 69, Resource Management (Department of Natural Resources)

The limiting language in this section places a condition upon the Department of Natural Resources' (DNR) appropriation from the Resource Management Cost Account (RMCA) that prohibits the agency from expending any moneys, from any source, to implement a long-term management agreement with the federal government such as a Habitat Conservation Plan (HCP), without a specific appropriation for that purpose and a prior report to the legislative committees on natural resources. Although requiring a report is a proper

legislative prerogative, this language constrains the vast majority of the agency's RMCA appropriation, which supports the preponderance of agency activities upon state trust land. Expenditures from this account should not be dependent upon what the agency does or does not do with respect to just one of those activities, such as implementation of a long-term management agreement with the federal government. An HCP is an important tool that can be used to protect species while allowing predictable and stable timber harvest on state trust lands. This limiting condition presents an overly broad constraint upon an agency's operations.

Section 914, pages 138-140, Prohibition on the Use of Toxics Control Accounts for Public Participation Grants (Department of Ecology)

This section prohibits the expenditure of funds for public participation grants, except for those assisting in the implementation of ESHB 1810. I am vetoing this section because I believe it is important to maintain public financial support for non-governmental entities engaged in local environmental projects. This program has proven its value in sustaining citizen oversight activities at sites ranging from the Hanford and Commencement Bay cleanups to the Everett Smelter site. It also provides funding for industry associations to educate their members about pollution prevention and waste reduction practices. In restoring funds for public participation grants, I want to ensure that citizens continue to have a strong voice in this era of changing environmental challenges.

Section 916, page 141, Prohibition on Expenditures for the Northwest Marine Straits Sanctuary

In 1988, Congress directed the National Oceanographic and Atmospheric Agency (NOAA) to conduct a study on whether the Northwest Straits area of Washington should be considered for inclusion in the federal Marine Sanctuary program. The state has insisted that it be an equal partner with NOAA in any such study, in part to ensure that the interests of those in the study area are included in the process. This study is long overdue and the state and NOAA are now working closely in this study process. A study on feasibility and options is quite distinct from any decision to include the Northwest Straits in the Marine Sanctuary program. The study should be allowed to move forward. The state's role in participating in this process is essential and for this reason I am vetoing section 916.

Section 917, page 141, Rules for Spotted Owl Protection

This section prevents any state agency from spending any funds appropriated in this act to establish or publish rules that exceed federal requirements for habitat protection for northern spotted owls. This limitation would prevent the Forest Practices Board or the Board of Natural Resources from taking legitimate actions that they may deem appropriate for the protection of owls or other species. If the Legislature wishes to prohibit either the Forest Practices Board or the Board of Natural Resources from taking such

action, it should provide such instruction directly. Limiting action through the budget bill is not appropriate.

Section 925, page 145, Mandatory Diversity Training Prohibition

This section prohibits the use of appropriated funds for mandatory diversity training of state employees. This prohibition is inconsistent with the tenets of my Executive Order 93-07 in that it fails to recognize the reality of today's increasingly diverse workforce, clientele and population and the corresponding training needs and requirements. As an employer, Washington State is responsible for ensuring that our employees have the necessary training to do their jobs. This provision would present serious obstacles to agencies' ability to carry out essential human resource management obligations.

In addition to noting those provisions I have vetoed, I would like to comment on a troubling provision I have determined appropriate to approve. Section 209(16) of this bill authorizes the Department of Social and Health Services to provide no more than five chiropractic service visits per person per year for those eligible recipients with acute conditions. This language is troubling in that the legislature provided no additional funding to the Department for chiropractic services. Moreover, this proviso appears to be in conflict with federal statutes which do not permit states to impose such specific limits on services.

I have decided to not veto this language because I do not wish to definitely preclude DSHS from offering chiropractic services to eligible recipients. However, I feel there needs to be work done to clarify several issues. I am directing the Department of Social and Health Services to work with chiropractors and other medical providers to develop an approach which would provide cost-effective chiropractic services for medical assistance recipients. I would like the results of this study by December 1995 so, if necessary, additional funding could be provided by the 1996 Legislature.

For these reasons, I have vetoed sections 126(13); 139(4); 146 (lines 11-21); 201(3); 205(5)(d); 205(5)(e); 206(2); 206(3); 207(1)(c); 207(2)(c)(i); 207(2)(c)(iii); 219(5); 219(6); 303(2); 303(10); 308; 309(3); 311 (beginning with the word "subject" on line 20, and ending with the word "section" on line 28); 914; 916; 917; and 925 of Engrossed Substitute House Bill No. 1410.

With the exception of sections 126(13); 139(4); 146 (lines 11-21); 201(3); 205(5)(d); 205(5)(e); 206(2); 206(3); 207(1)(c); 207(2)(c)(i); 207(2)(c)(iii); 219(5); 219(6); 303(2); 303(10); 308; 309(3); 311 (beginning with the word "subject" on line 20, and ending with the word "section" on line 28); 914; 916; 917; and 925, Engrossed Substitute House Bill No. 1410 is approved.

Respectfully submitted,
Mike Lowry
Governor