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**SIXTY-FIRST LEGISLATURE - REGULAR SESSION**

**NINETY SECOND DAY**

House Chamber, Olympia, Monday, April 13, 2009

The House was called to order at 10:00 a.m. by the Speaker (Representative Morris presiding). The Clerk called the roll and a quorum was present.

The flags were escorted to the rostrum by a Sergeant at Arms Color Guard, Pages Elizabeth Thrasher and Roya Hegdahl. The Speaker (Representative Morris presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Imam Irshad Malhi, Regional Missionary of the Northwest Region, Ahmadiyya, Muslim Community of the United States of America.

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

**RESOLUTION**

HOUSE RESOLUTION NO. 2009-4634, by Representatives Quall, Sullivan, Priest, Anderson, Maxwell, Dammeier, and Kenney

WHEREAS, The Washington Constitution states that making ample provision for the education of all children residing in the state of Washington is the paramount duty of the state; and

WHEREAS, The Washington Constitution states that the legislature shall provide for a general and uniform system of public schools; and

WHEREAS, In order to provide children a quality education, there must be an excellent teacher in the classroom; and

WHEREAS, Teachers deserve recognition for the education they provide students; and

WHEREAS, There are over sixty thousand dedicated teachers in Washington State; and

WHEREAS, Students are our future; and

WHEREAS, Teachers are being asked to meet higher state and federal standards; and

WHEREAS, Washington state students have had their education significantly enhanced by excellent teachers; and

WHEREAS, One teacher is recognized each year for his or her excellence from the nine Educational Service Districts; and

WHEREAS, Each year the nine Educational Service Districts select one teacher to be Washington's Teacher of the Year;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State House of Representatives honor Susan Johnson, Language Arts Teacher at Cle Elum-Roslyn High School as the 2009 Washington State Teacher of the Year; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Chief Clerk of the House of Representatives to Susan Johnson.

Representative Sullivan moved adoption of House Resolution No. 4634.

Representatives Sullivan and Hinkle spoke in favor of the adoption of the resolution.

HOUSE RESOLUTION NO. 4634 was adopted.

**MESSAGES FROM THE SENATE**

April 10, 2009

Mr. Speaker:

The Senate has passed:

HOUSE BILL NO. 1058,  
ENGROSSED HOUSE BILL NO. 1059,  
SUBSTITUTE HOUSE BILL NO. 1067,  
HOUSE BILL NO. 1068,  
HOUSE BILL NO. 1156,  
HOUSE BILL NO. 1195,  
HOUSE BILL NO. 1270,  
HOUSE BILL NO. 1339,  
HOUSE BILL NO. 1437,  
ENGROSSED HOUSE BILL NO. 1513,  
HOUSE BILL NO. 1515,  
HOUSE BILL NO. 1548,  
HOUSE BILL NO. 1551,  
HOUSE BILL NO. 1844,  
HOUSE BILL NO. 1852,  
SUBSTITUTE HOUSE BILL NO. 1953,  
HOUSE BILL NO. 2206,

and the same are herewith transmitted.

Thomas Hoemann, Secretary

April 10, 2009

Mr. Speaker:

The President has signed the following:

SUBSTITUTE HOUSE BILL NO. 1010,  
ENGROSSED HOUSE BILL NO. 1053,  
HOUSE BILL NO. 1257,  
SUBSTITUTE HOUSE BILL NO. 1271,  
HOUSE BILL NO. 1273,  
HOUSE BILL NO. 1281,  
SUBSTITUTE HOUSE BILL NO. 1303,  
ENGROSSED HOUSE BILL NO. 1311,  
SUBSTITUTE HOUSE BILL NO. 1323,  
HOUSE BILL NO. 1324,  
HOUSE BILL NO. 1375,  
HOUSE BILL NO. 1380,  
SUBSTITUTE HOUSE BILL NO. 1435,  
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1441,  
HOUSE BILL NO. 1474,  
HOUSE BILL NO. 1478,  
HOUSE BILL NO. 1492,  
HOUSE BILL NO. 1506,  
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1512,  
SUBSTITUTE HOUSE BILL NO. 1518,  
SUBSTITUTE HOUSE BILL NO. 1565,

HOUSE BILL NO. 1567,  
 ENGROSSED HOUSE BILL NO. 1568,  
 HOUSE BILL NO. 1596,  
 SUBSTITUTE HOUSE BILL NO. 1621,  
 SUBSTITUTE HOUSE BILL NO. 1663,  
 SUBSTITUTE HOUSE BILL NO. 1692,  
 SUBSTITUTE HOUSE BILL NO. 1808,  
 SUBSTITUTE HOUSE BILL NO. 1825,  
 HOUSE BILL NO. 1826,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1939,  
 SUBSTITUTE HOUSE BILL NO. 2013,  
 SUBSTITUTE HOUSE BILL NO. 2095,  
 SUBSTITUTE HOUSE BILL NO. 2214,

and the same are herewith transmitted.

Thomas Hoemann, Secretary

### INTRODUCTION AND FIRST READING

HB 2340 by Representatives Anderson, Rodne, McCune, Pearson, Dammeier, Priest, Roach and Kelley

AN ACT Relating to creating the child predatory drug act; reenacting and amending RCW 9.94A.533; adding a new section to chapter 9.94A RCW; creating new sections; and prescribing penalties.

Referred to Committee on Public Safety & Emergency Preparedness.

HB 2341 by Representatives Cody and Kelley

AN ACT Relating to changes in the basic health plan program necessary to implement the 2009-2011 operating budget; amending RCW 70.47.010, 70.47.020, 70.47.060, 70.47.100, and 70.47.170; and repealing RCW 70.47.170.

Referred to Committee on Ways & Means.

HB 2342 by Representatives Cody, Williams and Kelley

AN ACT Relating to creating the universal vaccine purchase account; and adding a new section to chapter 43.70 RCW.

Referred to Committee on Ways & Means.

HB 2343 by Representative Haigh

AN ACT Relating to achieving savings in education programs by revising provisions relating to diagnostic assessments, classified staff training, conditional scholarships, certain professional development programs, coordination for career and technical student organizations, and national board certification bonuses; amending RCW 28A.655.200, 28A.415.315, 28A.660.050, 28A.415.350, 28A.300.380, 28A.415.250, and 28A.405.415; providing an effective date; and declaring an emergency.

Referred to Committee on Ways & Means.

HB 2344 by Representative Haigh

AN ACT Relating to resident undergraduate tuition; and amending RCW 28B.15.068.

Referred to Committee on Ways & Means.

HB 2345 by Representative Pettigrew

AN ACT Relating to eliminating the juvenile offender basic training camp program; and repealing RCW 13.40.320.

Referred to Committee on Ways & Means.

HB 2346 by Representative Kagi

AN ACT Relating to crisis residential centers; and amending RCW 74.13.032.

Referred to Committee on Ways & Means.

HB 2347 by Representative Kagi

AN ACT Relating to the review of support payments; and amending RCW 74.13.118.

Referred to Committee on Ways & Means.

HB 2348 by Representatives Moeller and Ormsby

AN ACT Relating to surcharges on fee-based activities related to public health; amending RCW 43.70.110; reenacting and amending RCW 70.58.107; and adding a new section to chapter 70.05 RCW.

Referred to Committee on Ways & Means.

HB 2349 by Representative Cody

AN ACT Relating to disproportionate share hospital adjustments; and amending RCW 74.09.730.

Referred to Committee on Ways & Means.

There being no objection, the bills listed on the day's introduction sheet under the fourth order of business were referred to the committees so designated.

### REPORTS OF STANDING COMMITTEES

April 9, 2009

HB 2318 Prime Sponsor, Representative Sells: Creating the Washington institute of aerospace technology and manufacturing studies. Reported by Committee on Higher Education

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Wallace, Chair; Sells, Vice Chair; Anderson, Ranking Minority Member; Carlyle; Driscoll; Grant-Herriot; Haler; Hasegawa and White.

MINORITY recommendation: Without recommendation. Signed by Representatives Schmick, Assistant Ranking Minority Member and Angel.

Referred to Committee on Ways & Means.

There being no objection, the bill listed on the day's committee reports under the fifth order of business was referred to the committee so designated.

## SECOND READING

**ENGROSSED SUBSTITUTE SENATE BILL NO. 5583, by Senate Committee on Environment, Water & Energy (originally sponsored by Senators Marr, Honeyford, Rockefeller, Morton, Fraser, Sheldon and Shin)**

**Improving the effectiveness of water bank and exchange provisions.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Agriculture & Natural Resources was before the House for purpose of amendment. (For committee amendment, see Journal, Day 74, March 26, 2009.)

Representative Grant-Herriot moved the adoption of amendment (504) to the committee amendment:

On page 2, line 22 of the amendment, after "provide" insert "electronic"

On page 2, line 23 of the amendment, after "and" insert "affected"

On page 2, line 24 of the amendment, after "prior to" strike "utilizing" and insert "initiating use of"

On page 2, line 25 of the amendment, after "each" strike "watershed" and insert "water resource inventory area"

On page 3, line 5 of the amendment, after "district," insert "irrigation district, public port,"

On page 4, line 22 of the amendment, after "(4)" insert "(a)"

On page 4, line 25 of the amendment, after "impaired." insert the following:

"(b)"

On page 4, line 27 of the amendment, after "impairment." insert the following:

"(c)"

On page 4, line 30 of the amendment, after "program," insert the following:

"(d)"

On page 4, line 35 of the amendment, after "(5)" insert "(a)"

On page 5, line 2 of the amendment, after "weeks." insert the following:

"(b)"

On page 5, after line 5 of the amendment, insert the following:

"(c) For a trust water right donation described in RCW 90.42.080(1)(b), or for a trust water right lease described in RCW 90.42.080(8) that does not exceed five years, the department may post equivalent information on its web site to meet the notice requirements in (a) of this subsection and may send pertinent information by e-mail to meet the notice requirements in (b) of this subsection."

On page 5, beginning on line 12 of the amendment, after "(8)" strike all material through "(9))" on line 19 and insert "Subsection((s)) (4) (~~and (5))~~ (a) of this section (~~do~~) does not apply to a trust water right resulting from a donation for instream

flows described in RCW 90.42.080(1)(b) or to a trust water right leased under RCW 90.42.080(8) if the period of the lease does not exceed five years. (~~However, the department shall provide the notice described in subsection (5) of this section the first time the trust water right resulting from the donation is exercised.~~) (9)"

Representatives Grant-Herriot and Chandler spoke in favor of the adoption of the amendment to the committee amendment.

The amendment to the committee amendment was adopted.

The committee amendment as amended was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Blake and Chandler spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 5583, as amended by the House.

## MOTIONS

On motion of Representative Santos, Representatives Haigh, Quall, Upthegrove and Van De Wege were excused. On motion of Representative Hinkle, Representative Rodne was excused.

## ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 5583, as amended by the House, and the bill passed the House by the following vote: Yeas, 93; Nays, 0; Absent, 0; Excused, 5.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representatives Haigh, Quall, Rodne, Upthegrove and Van De Wege.

ENGROSSED SUBSTITUTE SENATE BILL NO. 5583, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5509, by Senate Committee on Transportation (originally sponsored by Senators Marr, Kauffman and Shin)**

**Clarifying rental car company charges, surcharges, and fees to be included in rental car agreements.**

The bill was read the second time.

Representative Hudgins moved the adoption of amendment (541):

On page 1, line 14, after "fees," insert "child restraint system rental fees,"

On page 2, beginning on line 18, strike all of subsection (5), and insert the following:

"(5) The following definitions apply to this section unless the context clearly requires otherwise:

(a) "Vehicle license cost recovery fee" means a charge that may be separately stated and charged on the rental contract in a car rental transaction originating in Washington state to recover costs incurred in the state of Washington by a rental car company to license, title, register, plate, and inspect rental cars; and

(b) "Child restraint system rental fee" means a charge that may be separately stated and charged on the rental contract in a car rental transaction originating in Washington state to recover the costs associated with providing child restraint systems."

On page 2, after line 24, insert the following:

"(6)(a) If a rental car company includes a child restraint system rental fee as a separately stated charge in a rental transaction, the amount of the fee must represent no more than the rental car company's good faith estimate of the rental car company's costs to provide a child restraint system.

(b) If a rental car customer pays a child restraint system rental fee and the child restraint system is not available in a timely manner, as determined by the rental car customer, but in no case less than one hour after the arrival of the customer at the location where the customer receives the vehicle or vehicles, (a) the customer may cancel any reservation or other agreement for the rental of the vehicle or vehicles, (b) any costs or penalties associated with the cancellation are void, and (c) the customer is entitled to a full refund of any costs associated with the rental of the vehicle or vehicles."

Representatives Hudgins and Roach spoke in favor of the adoption of the amendment.

Amendment (541) was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Clibborn and Roach spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5509, as amended by the House.

**ROLL CALL**

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5509 as amended by the House, and the bill passed the House by the following vote: Yeas, 95; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representatives Haigh, Quall and Upthegrove.

SUBSTITUTE SENATE BILL NO. 5509, having received the necessary constitutional majority, was declared passed.

**SENATE BILL NO. 5038, by Senators Kohl-Welles, King, Keiser, Franklin and Pridemore**

**Making technical corrections to gender-based terms.**

The bill was read the second time.

Representative Pedersen moved the adoption of amendment (486):

Beginning on page 219, line 25, strike all of section 5007 and insert the following:

"**Sec. 5007.** RCW 43.03.030 and 2009 c 5 s 4 are each amended to read as follows:

(1) Wherever the compensation of any appointive state officer or employee is fixed by statute, it may be hereafter increased or decreased in the manner provided by law for the fixing of compensation of other appointive state officers or employees; but this subsection shall not apply to the heads of state departments.

(2) Wherever the compensation of any state officer appointed by the governor, or of any employee in any office or department under the control of any such officer, is fixed by statute, such compensation may hereafter, from time to time, be changed by the governor, and he or she shall have power to fix such compensation at any amount not to exceed the amount fixed by statute.

(3) For the twelve months following February 18, 2009, a salary or wage increase shall not be granted to any position under this section."

Representatives Pedersen and Rodne spoke in favor of the adoption of the amendment.

Amendment (486) was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Goodman and Rodne spoke in favor of the passage of the bill.

Representative Shea spoke against the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Senate Bill No. 5038, as amended by the House.

### ROLL CALL

The Clerk called the roll on the final passage of Senate Bill No. 5038, as amended by the House, and the bill passed the House by the following vote: Yeas, 77; Nays, 20; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Bailey, Blake, Campbell, Carlyle, Chase, Clibborn, Cody, Conway, Dammeier, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Hasegawa, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kelley, Kenney, Kessler, Kirby, Liias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Armstrong, Chandler, Condotta, Cox, Crouse, DeBolt, Haler, Herrera, Hinkle, Johnson, Klippert, Kretz, Kristiansen, McCune, Pearson, Ross, Schmick, Shea, Short and Walsh.

Excused: Representative Quall.

SENATE BILL NO. 5038, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5042, by Senate Committee on Economic Development, Trade & Innovation (originally sponsored by Senators Kilmer, Holmquist, Berkey, Schoesler, Kauffman, Marr, Rockefeller, Haugen, Eide, Kastama, Hatfield, Swecker, Tom, McAuliffe, Benton, Parlette and Roach)**

**Providing a waiver of penalties for first-time paperwork violations by small businesses.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Ways & Means was adopted. (For committee amendment, see Journal, Day 83, April 4, 2009.)

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Hunt and Armstrong spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5042, as amended by the House.

### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5042, as amended by the House, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Quall.

SUBSTITUTE SENATE BILL NO. 5042, as amended by the House, having received the necessary constitutional majority, was declared passed.

**ENGROSSED SUBSTITUTE SENATE BILL NO. 5262, by Senate Committee on Judiciary (originally sponsored by Senators Kline, Brandland and Shin)**

**Allowing law enforcement access to driver's license photographs for the purposes of identity verification. Revised for 1st Substitute: Allowing law enforcement access to driver's license photographs for the purposes of identity verification. (REVISED FOR ENGROSSED: Allowing law enforcement and court access to driver's license photographs for the purposes of identity verification.)**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on General Government Appropriations was adopted. (For committee amendment, see Journal, Day 82, April 3, 2009.)

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Pearson and Hurst spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 5262, as amended by the House.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 5262, as amended by the House, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby,

Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Quall.

ENGROSSED SUBSTITUTE SENATE BILL NO. 5262, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5276, by Senate Committee on Higher Education & Workforce Development (originally sponsored by Senators Schoesler, Jarrett, Oemig, Shin and Holmquist)**

**Eliminating the exclusive authority of the University of Washington and Washington State University to offer certain engineering courses. Revised for 1st Substitute: Increasing the availability of engineering programs in public universities.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Sells and Schmick spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5276.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5276, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Quall.

SUBSTITUTE SENATE BILL NO. 5276, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5286, by Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Hargrove and Kohl-Welles)**

**Regarding exemptions from the WorkFirst program.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Health & Human Services Appropriations was adopted. (For committee amendment, see Journal, Day 82, April 3, 2009.)

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Roberts and Alexander spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5286, as amended by the House.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5286, as amended by the House, and the bill passed the House by the following vote: Yeas, 57; Nays, 40; Absent, 0; Excused, 1.

Voting yea: Representatives Appleton, Blake, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, Ormsby, Orwall, Pedersen, Pettigrew, Probst, Roberts, Rolfes, Santos, Seaquist, Sells, Simpson, Springer, Sullivan, Takko, Upthegrove, Van De Wege, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Campbell, Chandler, Condotta, Cox, Crouse, Dammeier, DeBolt, Ericksen, Grant-Herriot, Haler, Herrera, Hinkle, Hope, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, O'Brien, Orcutt, Parker, Pearson, Priest, Roach, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Wallace, Walsh and Warnick.

Excused: Representative Quall.

SUBSTITUTE SENATE BILL NO. 5286, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SENATE BILL NO. 5298, by Senators Regala and Kline**

**Removing the penalty language from natural resource civil infractions.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Pearson and Hurst spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Senate Bill No. 5298.

### ROLL CALL

The Clerk called the roll on the final passage of Senate Bill No. 5298 and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Quall.

SENATE BILL NO. 5298, having received the necessary constitutional majority, was declared passed.

### SENATE BILL NO. 5303, by Senators Hobbs, Schoesler, Holmquist, Kilmer, Fraser and Roach

#### Transferring public employees' retirement system plan 2 members to the school employees' retirement system plan 2.

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Conway and Bailey spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Senate Bill No. 5303.

### ROLL CALL

The Clerk called the roll on the final passage of Senate Bill No. 5303 and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy,

McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Quall.

SENATE BILL NO. 5303, having received the necessary constitutional majority, was declared passed.

### SUBSTITUTE SENATE BILL NO. 5326, by Senate Committee on Human Services & Corrections (originally sponsored by Senator Regala)

#### Modifying juvenile sex and kidnapping offender registration provisions. Revised for 1st Substitute: Concerning notice to individuals convicted of a sex offense as a juvenile of their ability to terminate registration requirements.

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Dickerson and Dammeier spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5326.

### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5326 and the bill passed the House by the following vote: Yeas, 89; Nays, 8; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Dammeier, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Santos, Schmick, Seaquist, Sells, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Crouse, DeBolt, Ericksen, Herrera, Orcutt, Ross, Shea and Short.

Excused: Representative Quall.

SUBSTITUTE SENATE BILL NO. 5326, having received the necessary constitutional majority, was declared passed.

### STATEMENT FOR THE JOURNAL

I intended to vote NAY on SENATE BILL NO. 5326.

BRAD KLIPPERT, 8th District

**SECOND READING**

**SUBSTITUTE SENATE BILL NO. 5340, by Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Prentice, Regala, Pflug, Shin and Parlette)**

**Concerning internet and mail order sales of tobacco products.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on General Government Appropriations was adopted. (For committee amendment, see Journal, Day 82, April 3, 2009.)

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Cody and Ericksen spoke in favor of the passage of the bill.

Representative Armstrong spoke against the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5340, as amended by the House.

**ROLL CALL**

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5340, as amended by the House, and the bill passed the House by the following vote: Yeas, 90; Nays, 7; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Appleton, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Seaquist, Sells, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Anderson, Angel, Armstrong, Condotta, Cox, Schmick and Shea.

Excused: Representative Quall.

SUBSTITUTE SENATE BILL NO. 5340, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SECOND SUBSTITUTE SENATE BILL NO. 5346, by Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Franklin, Marr, Parlette, Murray and Kohl-Welles)**

**Concerning administrative procedures for payors and providers of health care services.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Health Care & Wellness was adopted. (For committee amendment, see Journal, Day 74, March 26, 2009.)

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Driscoll and Dammeier spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Second Substitute Senate Bill No. 5346, as amended by the House.

**ROLL CALL**

The Clerk called the roll on the final passage of Second Substitute Senate Bill No. 5346, as amended by the House, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Quall.

SUBSTITUTE SENATE BILL NO. 5346, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5391, by Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kastama, Haugen, Fairley, Roach and Pflug)**

**Regulating tattooing and body piercing. Revised for 1st Substitute: Regulating body art, body piercing, and tattooing practitioners, shops, and businesses.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Ways & Means was adopted. (For committee amendment, see Journal, Day 83, April 4, 2009.)



There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Appleton and Hinkle spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5391, as amended by the House.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5391, as amended by the House, and the bill passed the House by the following vote: Yeas, 95; Nays, 2; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Anderson and Taylor.

Excused: Representative Quall.

SUBSTITUTE SENATE BILL NO. 5391, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5401, by Senate Committee on Natural Resources, Ocean & Recreation (originally sponsored by Senators Morton, Jacobsen, Stevens, Ranker, Hatfield, Roach and Kline)**

**Expanding the riparian open space program to include lands that contain habitat of species that are federally listed as threatened or endangered. Revised for 1st Substitute: Expanding the riparian open space program to include lands that contain critical habitat of threatened or endangered species.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Agriculture & Natural Resources was adopted. (For committee amendment, see Journal, Day 74, March 26, 2009.)

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Blake and Chandler spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5401, as amended by the House.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5401, as amended by the House, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Quall.

SUBSTITUTE SENATE BILL NO. 5401, as amended by the House, having received the necessary constitutional majority, was declared passed.

#### RECONSIDERATION

There being no objection, the House immediately reconsidered the vote by which SUBSTITUTE SENATE BILL NO. 5286, as amended by the House, passed the House.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5286, as amended by the House, on reconsideration.

#### ROLL CALL

The Clerk called the roll on final passage of Substitute Senate Bill No. 5286, as amended by the House, on reconsideration, and the bill passed the House by the following vote: Yeas, 57; Nays, 40; Absent, 0; Excused, 1.

Voting yea: Representatives Appleton, Blake, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kenney, Kessler, Kirby, Liias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, Ormsby, Orwall, Pedersen, Pettigrew, Probst, Roberts, Rolfes, Santos, Seaquist, Sells, Simpson, Springer, Sullivan, Takko, Upthegrove, Van De Wege, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Campbell, Chandler, Condotta, Cox, Crouse, Dammeier, DeBolt, Ericksen, Grant-Herriot, Haler, Herrera, Hinkle, Hope, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, O'Brien, Orcutt, Parker, Pearson, Priest, Roach, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Wallace, Walsh and Warnick.

Excused: Representative Quall.

SUBSTITUTE SENATE BILL NO. 5286, as amended by the House, on reconsideration, having received the necessary constitutional majority, was declared passed.

**MESSAGES FROM THE SENATE**

April 13, 2009

Mr. Speaker:

The President has signed the following:

HOUSE BILL NO. 1000,  
HOUSE BILL NO. 1042,  
HOUSE BILL NO. 1058,  
ENGROSSED HOUSE BILL NO. 1059,  
SUBSTITUTE HOUSE BILL NO. 1067,  
HOUSE BILL NO. 1068,  
SUBSTITUTE HOUSE BILL NO. 1110,  
HOUSE BILL NO. 1156,  
HOUSE BILL NO. 1195,  
HOUSE BILL NO. 1270,  
HOUSE BILL NO. 1288,  
SUBSTITUTE HOUSE BILL NO. 1319,  
HOUSE BILL NO. 1339,  
SUBSTITUTE HOUSE BILL NO. 1415,  
HOUSE BILL NO. 1437,  
ENGROSSED HOUSE BILL NO. 1513,  
HOUSE BILL NO. 1515,  
HOUSE BILL NO. 1548,  
HOUSE BILL NO. 1551,  
HOUSE BILL NO. 1675,  
HOUSE BILL NO. 1844,  
HOUSE BILL NO. 1852,  
SUBSTITUTE HOUSE BILL NO. 1953,  
HOUSE BILL NO. 2206,

and the same are herewith transmitted.

Thomas Hoemann, Secretary

April 13, 2009

Mr. Speaker:

The Senate has passed:

SUBSTITUTE HOUSE BILL NO. 1022,  
HOUSE BILL NO. 1426,  
ENGROSSED HOUSE BILL NO. 1461,  
SUBSTITUTE HOUSE BILL NO. 1532,  
HOUSE BILL NO. 1578,  
SUBSTITUTE HOUSE BILL NO. 1733,  
SUBSTITUTE HOUSE BILL NO. 1984,

and the same are herewith transmitted.

Thomas Hoemann, Secretary

**SECOND READING**

**SUBSTITUTE SENATE BILL NO. 5795, by Senate Committee on Transportation (originally sponsored by Senators Kilmer and Franklin)**

Modifying the use of funds from the Tacoma Narrows toll bridge account.

The bill was read the second time.

Representative Seaquist moved the adoption of amendment (449):

On page 2, after line 29, insert the following:

"**Sec. 2.** RCW 47.46.060 and 2002 c 114 s 18 are each amended to read as follows:

(1) Any person, including the department of transportation and any private entity or entities, may apply for deferral of taxes on the site preparation for, the construction of, the acquisition of any related machinery and equipment which will become a part of, and the rental of equipment for use in the state route number 16 corridor improvements project under this chapter. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the project.

(3) The department of transportation or a private entity granted a tax deferral under this section shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax. The project is operationally complete under this section when the collection of tolls is commenced for the state route number 16 improvements covered by the deferral.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the department of transportation or a private entity granted a deferral under this section.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the private entity. Transfer of ownership does not terminate the deferral.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section.

(7) Taxes due under chapters 82.08 and 82.12 RCW on the site preparation for, the construction of, the acquisition of any related machinery and equipment that will become a part of, and the rental of equipment for use in the state route number 16 corridor improvements project for which a deferral has been granted need not be repaid."

Correct the title.

Representative Seaquist spoke in favor of the adoption of the amendment.

Amendment (449) was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Clibborn and Roach spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5795, as amended by the House.

### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5795, as amended by the House, and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

SUBSTITUTE SENATE BILL NO. 5795, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5480, by Senate Committee on Health & Long-Term Care (originally sponsored by Senators Delvin, Franklin, Fairley, Keiser and Shin)**

**Creating the Washington health care discount plan organization act.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Cody and Driscoll spoke in favor of the passage of the bill.

Representative Ericksen spoke against the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5480.

### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5480 and the bill passed the House by the following vote: Yeas, 69; Nays, 29; Absent, 0; Excused, 0.

Voting yea: Representatives Appleton, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kelley, Kenney, Kessler, Kirby, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Priest, Probst,

Quall, Roberts, Rolfes, Santos, Seaquist, Sells, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Condotta, Cox, Crouse, Dammeier, DeBolt, Ericksen, Haler, Herrera, Hinkle, Hope, Johnson, Klippert, Kretz, Kristiansen, Morrell, Orcutt, Parker, Pearson, Roach, Rodne, Ross, Schmick, Shea, Short and Warnick.

SUBSTITUTE SENATE BILL NO. 5480, having received the necessary constitutional majority, was declared passed.

**SENATE BILL NO. 5587, by Senator Pridemore**

**Authorizing existing city and county real estate excise taxes to be expended on municipally owned heavy rail short lines.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Wallace and Orcutt spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Senate Bill No. 5587.

### ROLL CALL

The Clerk called the roll on the final passage of Senate Bill No. 5587 and the bill passed the House by the following vote: Yeas, 93; Nays, 5; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Kretz, Parker, Roach, Shea and Short.

SENATE BILL NO. 5587, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5719, by Senate Committee on Transportation (originally sponsored by Senators Swecker and Brown)**

**Modifying title and registration requirements for kit vehicles.**

The bill was read the second time.

Representative Rodne moved the adoption of amendment (592):

On page 1, beginning on line 12, strike all of subsection (2) and insert the following:

"(2) The department shall use the model year of a manufactured new vehicle kit and manufactured body kit ((~~is~~)) as the year reflected on the manufacturer's certificate of origin."

On page 4, after line 1, insert the following:

"**NEW SECTION. Sec. 3.** A new section is added to chapter 46.37 RCW to read as follows:

(1) For the purposes of this section:

(a) "Kit vehicle" means a passenger car or light truck assembled from a manufactured kit, and is either (i) a kit consisting of a prefabricated body and chassis used to construct a complete vehicle, or (ii) a kit consisting of a prefabricated body to be mounted on an existing vehicle chassis and drive train, commonly referred to as a donor vehicle. "Kit vehicle" does not include a vehicle that has been assembled by a manufacturer.

(b) "Major component part" includes at least each of the following vehicle parts: (i) Engines and short blocks; (ii) frame; (iii) transmission or transfer case; (iv) cab; (v) door; (vi) front or rear differential; (vii) front or rear clip; (viii) quarter panel; (ix) truck bed or box; (x) seat; (xi) hood; (xii) bumper; (xiii) fender; and (xiv) airbag.

(2) A kit vehicle must, prior to inspection, contain the following components:

(a) Brakes on all wheels. The service brakes, upon application, must be capable of stopping the vehicle within a twelve-foot lane and (i) developing an average tire to road retardation force of not less than 52.8 percent of the gross vehicle weight, (ii) decelerating the vehicle at a rate of not less than seventeen feet per second, or (iii) stopping the vehicle within a distance of twenty-five feet from a speed of twenty miles per hour. Tests must be made on a level, dry, concrete or asphalt surface free from loose material;

(b) Brake hoses that comply with 49 C.F.R. Sec. 571.106;

(c) Brake fluids that comply with 49 C.F.R. Sec. 571.119;

(d) A parking brake that must operate on at least two wheels on the same axle, and when applied, must be capable of holding the vehicle on any grade on which the vehicle is operated. The parking brake must be separately actuated so that failure of any part of the service brake actuation system will not diminish the vehicle's parking brake holding capability;

(e) Lighting equipment that complies with 49 C.F.R. Sec. 571.108;

(f) Pneumatic tires that comply with 49 C.F.R. Sec. 571.109;

(g) Glazing material that complies with 49 C.F.R. Sec. 571.205.

The driver must be provided with a windshield and side windows or opening that allows an outward horizontal vision capability, ninety degrees each side of a vertical plane passing through the fore and aft centerline of the vehicle. This range of vision must not be interrupted by window framing not exceeding four inches in width at each side location;

(h) Seat belt assemblies that comply with 49 C.F.R. Sec. 571.209;

(i) Defroster and defogging devices capable of defogging and defrosting the windshield area, except vehicles or exact replicas of vehicles manufactured prior to January 1938 are exempt from this requirement;

(j) Door latches that firmly and automatically secure the door when pushed closed and that allow each door to be opened both from the inside and outside, if the vehicle is enclosed with side doors

leading directly into a compartment that contains one or more seating accommodations;

(k) A floor plan that is capable of supporting the weight of the number of occupants that the vehicle is designed to carry;

(l) If an enclosed kit vehicle powered by an internal combustion engine, a passenger compartment that must be constructed to prevent the entry of exhaust fumes into the passenger compartment;

(m) Fenders that must be installed on all wheels and cover the entire tread width that comes in contact with the road surface. Coverage of the tire tread circumference must be from at least fifteen degrees in front and to at least seventy-five degrees to the rear of the vertical centerline at each wheel measured from the center of the wheel rotation. The tire must not come in contact with the body, fender, chassis, or suspension of the vehicle. Kit vehicles that are more than forty years old and are owned and operated primarily as collector's vehicles are exempt from this fender requirement if the vehicle is used and driven during fair weather on well-maintained, hard-surfaced roads;

(n) A speedometer that is calibrated to indicate miles per hour, and may also indicate kilometers per hour;

(o) Mirrors as outlined in RCW 46.37.400. Mirror mountings must provide for mirror adjustment by tilting both horizontally and vertically;

(p) An accelerator control system that, in accordance with 49 C.F.R. Sec. 571.124, contains a double spring that returns engine throttle to an idle position when the driver removes the actuating force from the accelerator control. The geometry of the throttle linkage must be designed so that the throttle will not lock in an open position. A vehicle equipped with cruise control is exempt when the cruise control is actuated;

(q) A fuel system that, in accordance with 49 C.F.R. Secs. 571.301 and 571.302, is securely fastened to the vehicle so as not to interfere with the vehicle's operation. The components, such as tank, tubing, hoses, and pump, must be of leak proof design and be securely attached with fasteners designed for that purpose. All fuel system vent lines must extend outside of the passenger compartment and be positioned as not to be in contact with the high temperature surfaces or moving components. If the vehicle is fueled using alternative measures, it must be installed in accordance with any applicable standards set by the United States department of transportation;

(r) A steering wheel as outlined in RCW 46.37.375 and WAC 204-10-034;

(s) A suspension as outlined in WAC 204-10-036;

(t) An exhaust system as outlined in WAC 204-10-038; and

(u) A horn that is capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet. The horn or another warning device must not emit an unreasonably loud or harsh sound or whistle. A bell or siren must not be used as a warning device. The device used to actuate the horn must be easily accessible to the driver when operating the vehicle.

(3) A kit vehicle may also be equipped with hoods and bumpers. If this equipment is present, it must meet the following requirements:

(a) Hood latches must be equipped with a primary and secondary latching system to hold the hood in a closed position if the hood is a front opening hood; and

(b) Bumpers must be 4.5 inches in vertical height, centered on the vehicle's centerline, and extend no less than the width of the respective wheel track distances. Bumpers must be horizontal load veering and attach to the frame to effectively transfer energy when impacted. The bumper must be installed in accordance with the bumper heights outlined in WAC 204-10-022."

Correct the title.

Representatives Rodne and Clibborn spoke in favor of the adoption of the amendment.

Amendment (592) was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Driscoll and Roach spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5719, as amended by the House.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5719, as amended by the House, and the bill passed the House by the following vote: Yeas, 97; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representative Klippert.

SUBSTITUTE SENATE BILL NO. 5719, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5752, by Senate Committee on Health & Long-Term Care (originally sponsored by Senators Marr, Pflug, Hobbs and Keiser)**

**Regarding cost recovery in disciplinary proceedings involving dentists.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Cody and Herrera spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5752.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5752 and the bill passed the House by the following vote: Yeas, 96; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Haigh, Haler, Hasegawa, Herrera, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Green and Hinkle.

SUBSTITUTE SENATE BILL NO. 5752, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5765, by Senate Committee on Agriculture & Rural Economic Development (originally sponsored by Senator Schoesler)**

**Regarding the fruit and vegetable district fund.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Blake and Chandler spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5765.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5765 and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

SUBSTITUTE SENATE BILL NO. 5765, having received the necessary constitutional majority, was declared passed.

**ENGROSSED SUBSTITUTE SENATE BILL NO. 5811, by Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Shin and Roach)**

**Concerning the placement of foster children. Revised for 1st Substitute: Concerning foster child placements.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Early Learning & Children's Services was before the House for purpose of amendment. (For committee amendment, see Journal, Day 75, March 27, 2009.)

Representative Goodman moved the adoption of amendment (552) to the committee amendment:

On page 23, after line 33 of the amendment, insert the following:

"**Sec. 3.** RCW 74.13.109 and 1990 c 285 s 7 are each amended to read as follows:

(1) The secretary shall issue rules and regulations to assist in the administration of the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145.

(2) Disbursements from the appropriations available from the general fund shall be made pursuant to such rules and regulations and pursuant to agreements conforming thereto to be made by the secretary with parents for the purpose of supporting the adoption of children in, or likely to be placed in, foster homes or child caring institutions who are found by the secretary to be difficult to place in adoption because of physical or other reasons; including, but not limited to, physical or mental handicap, emotional disturbance, ethnic background, language, race, color, age, or sibling grouping.

(3) Such agreements shall meet the following criteria:

((+)) (a) The child whose adoption is to be supported pursuant to such agreement shall be or have been a child hard to place in adoption.

((+)) (b) Such agreement must relate to a child who was or is residing in a foster home or child-caring institution or a child who, in the judgment of the secretary, is both eligible for, and likely to be placed in, either a foster home or a child-caring institution.

((+)) (c) Such agreement shall provide that adoption support shall not continue beyond the time that the adopted child reaches eighteen years of age, becomes emancipated, dies, or otherwise ceases to need support, provided that if the secretary shall find that continuing dependency of such child after such child reaches eighteen years of age warrants the continuation of support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may do so, subject to all the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, including annual review of the amount of such support.

((+)) (d) Any prospective parent who is to be a party to such agreement shall be a person who has the character, judgment, sense of responsibility, and disposition which make him or her suitable as an adoptive parent of such child.

(4) At least six months before an adoption is finalized under chapter 26.33 RCW and RCW 74.13.100 through 74.13.145, the department must provide to a prospective adoptive parent written information describing the limits of the adoption support program, including the following information:

(a) The limits on monthly cash payments to adoptive families;

(b) The limits on the availability of children's mental health services and the funds with which to pay for these services;

(c) The process for accessing mental health services for children receiving adoption support services;

(d) The limits on the one-time cash payments to adoptive families for expenses related to their adopted children; and

(e) That payment for residential or group care is not available under the adoption support program."

Representative Goodman spoke in favor of the adoption of the amendment to the committee amendment.

Amendment (552) to the committee amendment was adopted.

There being no objection, the committee amendment as amended was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Goodman and Walsh spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 5811, as amended by the House.

#### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 5811, as amended by the House, and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, VanDeWege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

ENGROSSED SUBSTITUTE SENATE BILL NO. 5811, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5882, by Senate Committee on Human Services & Corrections (originally sponsored by Senators Kauffman, McAuliffe, Regala, Shin and Kline)**

**Ordering an evaluation of recommendations made by the racial disproportionality advisory committee. Revised for 1st**

**Substitute: Remediating racial disproportionality in child welfare practices.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Pettigrew and Seaquist spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5882.

**ROLL CALL**

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5882 and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

SUBSTITUTE SENATE BILL NO. 5882, having received the necessary constitutional majority, was declared passed.

**SECOND SUBSTITUTE SENATE BILL NO. 5973, by Senate Committee on Ways & Means (originally sponsored by Senators Kauffman, McAuliffe, Oemig, Shin, Hobbs, Kohl-Welles and Kline)****Closing the achievement gap in order to provide all students an excellent and equitable education. Revised for 2nd Substitute: Closing the achievement gap in K-12 schools.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Education was before the House for purpose of amendment. (For committee amendment, see Journal, Day 86, April 6, 2009.)

With the consent of the House, amendment (539) to the committee amendment was withdrawn.

Representative Santos moved the adoption of amendment (580) to the committee amendment:

On page 3, beginning on line 27 of the striking amendment, after "instruction;" strike all material through "(5)" on line 35 and insert the following:

"(e) A representative of federally recognized Indian tribes whose traditional lands and territories lie within the borders of Washington state, designated by the federally recognized tribes; and

(f) Four members appointed by the governor in consultation with the state ethnic commissions, who represent the following populations: African Americans, Hispanic Americans, Asian Americans, and Pacific Islander Americans.

(5) The governor and the tribes are encouraged to designate members who have experience working in and with schools.

(6)"

Renumber the remaining subsection consecutively and correct internal references accordingly.

Representatives Santos and Priest spoke in favor of the adoption of the amendment to the committee amendment.

Amendment (580) to the committee amendment was adopted.

The committee amendment as amended was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Santos, Priest and Kenney spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Second Substitute Senate Bill No. 5973, as amended by the House.

**ROLL CALL**

The Clerk called the roll on the final passage of Second Substitute Senate Bill No. 5973, as amended by the House, and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

SECOND SUBSTITUTE SENATE BILL NO. 5973, having received the necessary constitutional majority, was declared passed.

**ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6015, by Senate Committee on Ways & Means (originally sponsored by Senators Murray, Delvin and Marr)**

**Establishing the director of commercialization and innovation within the office of the governor. Revised for 2nd Substitute: Creating the position of the director of commercialization and innovation within the office of the governor. (REVISED FOR ENGROSSED: Directing the department of community, trade, and economic development to review commercialization and innovation in the life sciences and technology sectors. )**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on General Government Appropriations was adopted. (For committee amendment, see Journal, Day 86, April 6, 2009.)

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Kenney and Smith spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Second Substitute Senate Bill No. 6015, as amended by the House.

#### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 6015, as amended by the House, and the bill passed the House by the following vote: Yeas, 92; Nays, 6; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Erickson, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Anderson, Carlyle, Hinkle, Orcutt, Roach and Taylor.

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6015, as amended by the House, having received the necessary constitutional majority, was declared passed.

#### HOUSE BILL NO. 2328, by Representatives Linville and Ericks

##### Reducing the administrative cost of state government.

The bill was read the second time.

Representative Bailey moved the adoption of amendment (588):

On page 6, beginning on line 6, strike all of section 9

Correct the title.

Representative Bailey spoke in favor of the adoption of the amendment.

Representative Linville spoke against the adoption of the amendment.

Amendment (588) was not adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Linville and Alexander spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 2328.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 2328 and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Erickson, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

HOUSE BILL NO. 2328, having received the necessary constitutional majority, was declared passed.

#### SUBSTITUTE SENATE BILL NO. 5044, by Senate Committee on Higher Education & Workforce Development (originally sponsored by Senators Kilmer, Berkey, Kastama, Schoesler, Marr, Shin, Rockefeller, Eide, Jarrett, Keiser, Tom and Kohl-Welles)

##### Changing work-study provisions.

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Sells and Anderson spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5044.



**ROLL CALL**

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5044 and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

SUBSTITUTE SENATE BILL NO. 5044, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5117, by Senate Committee on Health & Long-Term Care (originally sponsored by Senators Hargrove, Kauffman, Stevens, Kline and Marr)**

**Establishing intensive behavior support services.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Dickerson and Dammeier spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5117.

**ROLL CALL**

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5117 and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

SUBSTITUTE SENATE BILL NO. 5117, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5229, by Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators McAuliffe, Hobbs, Franklin, Tom, King, Pridemore, Kohl-Welles, Jacobsen, Kilmer and Shin)**

**Regarding the legislative youth advisory council.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Education Appropriations was before the House for purpose of amendment. (For committee amendment, see Journal, Day 86, April 6, 2009.)

Representative Bailey moved the adoption of amendment (587) to the committee amendment:

On page 3, beginning on line 19 of the amendment, strike all of section 2

Representative Bailey spoke in favor of the adoption of the amendment to the committee amendment.

Representative Hunt spoke against the adoption of the amendment to the committee amendment.

Amendment (587) to the committee amendment was not adopted.

The committee amendment was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Liias and Priest spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5229, as amended by the House.

**ROLL CALL**

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5229, as amended by the House, and the bill passed the House by the following vote: Yeas, 92; Nays, 6; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kristiansen, Liias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Simpson,

Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Crouse, Hinkle, Kretz, McCune, Shea and Short.

SUBSTITUTE SENATE BILL NO. 5229, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5248, by Senate Committee on Ways & Means (originally sponsored by Senators Hobbs, King, McAuliffe, Brown, Kauffman, Holmquist, Tom, Shin, Hewitt, Brandland, McDermott, Jarrett, Kilmer, Haugen and Roach)**

**Enacting the interstate compact on educational opportunity for military children.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Education was adopted. (For committee amendment, see Journal, Day 75, March 27, 2009.)

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Rolfes and Priest spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5248, as amended by the House.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5248, as amended by the House, and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

SUBSTITUTE SENATE BILL NO. 5248, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5267, by Senate Committee on Government Operations & Elections (originally**

**sponsored by Senators Sheldon, Berkey, Morton, Kastama and Delvin)**

**Regarding the issuance of checks by joint operating agencies and public utility districts.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Simpson and Angel spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5267.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5267 and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

SUBSTITUTE SENATE BILL NO. 5267, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 5616, by Senate Committee on Economic Development, Trade & Innovation (originally sponsored by Senators Shin, Kastama and Kilmer)**

**Connecting business expansion and recruitment to customized training.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Education Appropriations was before the House for purpose of amendment. (For committee amendment, see Journal, Day 82, April 3, 2009.)

Representative Anderson moved the adoption of amendment (590) to the committee amendment:

On page 1, beginning on line 27 of the striking amendment, strike "During calendar years 2009 and 2010, participants may delay payments due under this section for up to eighteen months."

Representative Anderson spoke in favor of the adoption of the amendment to the committee amendment.

Representative Sells spoke against the adoption of the amendment to the committee amendment.

Amendment (590) to the committee amendment was not adopted.

Representative Bailey moved the adoption of amendment (589) to the committee amendment:

On page 4, beginning on line 4 of the amendment, strike all of section 4

Representatives Bailey and Sells spoke in favor of the adoption of the amendment to the committee amendment.

Amendment (589) to the committee amendment was adopted.

The committee amendment as amended was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Sells and Anderson spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5616, as amended by the House.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5616, as amended by the House, and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

SUBSTITUTE SENATE BILL NO. 5616, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SECOND SUBSTITUTE SENATE BILL NO. 5676, by Senate Committee on Ways & Means (originally sponsored by Senators McAuliffe, Rockefeller, Jarrett, Fairley, Hobbs, Schoesler and Shin)**

**Providing for career and technical education opportunities for middle school students.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Sullivan and Alexander spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Second Substitute Senate Bill No. 5676.

#### ROLL CALL

The Clerk called the roll on the final passage of Second Substitute Senate Bill No. 5676 and the bill passed the House by the following vote: Yeas, 69; Nays, 29; Absent, 0; Excused, 0.

Voting yea: Representatives Anderson, Appleton, Bailey, Blake, Campbell, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Hasegawa, Hudgins, Hunt, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Priest, Probst, Quall, Roberts, Rodne, Rolfes, Ross, Santos, Seaquist, Sells, Simpson, Smith, Springer, Sullivan, Takko, Upthegrove, Wallace, Walsh, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Angel, Armstrong, Chandler, Condotta, Cox, Crouse, Dammeier, DeBolt, Ericksen, Haler, Herrera, Hinkle, Hope, Hunter, Klippert, Kretz, Kristiansen, Moeller, Orcutt, Parker, Pearson, Roach, Schmick, Shea, Short, Taylor, Van De Wege and Warnick.

SECOND SUBSTITUTE SENATE BILL NO. 5676, having received the necessary constitutional majority, was declared passed.

**ENGROSSED SUBSTITUTE SENATE BILL NO. 5889, by Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Hobbs, McAuliffe, McDermott and Oemig)**

**Providing flexibility in the education system.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Education Appropriations was adopted. (For committee amendment, see Journal, Day 85, April 6, 2009.)

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Maxwell and Priest spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 5889, as amended by the House.

**ROLL CALL**

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 5889, as amended by the House, and the bill passed the House by the following vote: Yeas, 97; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh, Haler, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representative Hasegawa.

ENGROSSED SUBSTITUTE SENATE BILL NO. 5889, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SUBSTITUTE SENATE BILL NO. 6016, by Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Benton, McAuliffe, Swecker, McDermott, Roach, Delvin, Stevens, Honeyford, McCaslin, Morton and Shin)**

**Regarding educator training to enhance skills of students with dyslexia.**

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Education was adopted. (For committee amendment, see Journal, Day 75, March 27, 2009.)

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Probst and Priest spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 6016, as amended by the House.

**ROLL CALL**

The Clerk called the roll on the final passage of Substitute Senate Bill No. 6016, as amended by the House, and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Grant-Herriot, Green, Haigh,

Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

SUBSTITUTE SENATE BILL NO. 6016, as amended by the House, having received the necessary constitutional majority, was declared passed.

**SPEAKER'S PRIVILEGE**

The Speaker (Representative Morris presiding) introduced House intern Lona Watts, University of Washington and asked the Chamber to acknowledge her.

The Speaker (Representative Morris presiding) called upon Representative Moeller to preside.

**SECOND READING****HOUSE BILL NO. 2075, by Representative Hunter**

**Concerning the excise taxation of certain products and services provided or furnished electronically.**

The bill was read the second time.

There being no objection, Substitute House Bill No. 2075 was substituted for House Bill No. 2075 and the substitute bill was placed on the second reading calendar.

SUBSTITUTE HOUSE BILL NO. 2075 was read the second time.

Representative Orcutt moved the adoption of amendment (540):

Strike everything after page 3, line 3, and insert the following:

**"PART II****DIGITAL PRODUCTS DEFINITIONS**

**NEW SECTION. Sec. 201.** A new section is added to chapter 82.04 RCW to be codified between RCW 82.04.010 and 82.04.220 to read as follows:

(1) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

(2) "Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(3) "Digital books" means works that are generally recognized in the ordinary and usual sense as books.

(4) "Digital code" means a code that provides a purchaser with the right to obtain one or more digital products, if all of the digital products to be obtained through the use of the code have the same sales and use tax treatment. "Digital code" does not include a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser. "Digital code" also does not include a

code that represents a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value. A digital code may be obtained by any means, including e-mail or by tangible means regardless of its designation as song code, video code, book code, or some other term.

(5)(a) "Digital goods," except as provided in (b) of this subsection (5), means sounds, images, data, facts, or information, or any combination thereof, transferred electronically by download, including, but not limited to, digital audio works, digital audio-visual works, digital books, and standard information.

(b) The term "digital goods" does not include:

(i) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(ii) Computer software as defined in RCW 82.04.215;

(iii) Internet access as defined in RCW 82.04.297;

(iv) The representation of a professional service in electronic form, such as an electronic copy of an engineering report prepared by an engineer, that primarily involves the application of human effort, and the human effort originated after the customer requested the service; and

(v) Information services. For purposes of this subsection, "information services" means data, facts, or information, or any combination thereof, generated or compiled solely for the specific needs of a single client or customer.

(6) "Digital products" means digital goods and digital codes.

(7) "Electronically transferred" or "transferred electronically" means obtained by the purchaser by means other than tangible storage media. It is not necessary that a copy of the product be physically transferred to the purchaser. So long as the purchaser may access the product, it will be considered to have been electronically transferred to the purchaser.

(8) "Standard information" means works consisting primarily of data, facts, or information, or any combination thereof, not generated or compiled for a specific client or customer.

### PART III IMPOSITION OF SALES AND USE TAXES ON DIGITAL PRODUCTS

**Sec. 301.** RCW 82.04.050 and 2007 c 54 s 4 and 2007 c 6 s 1004 are each reenacted and amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary

purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" (~~shall include~~) includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but (~~shall~~) may not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it ~~((shall be))~~ is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital products for consumers:

(h) Persons taxable under (a), (b), (c), (d), (e), ~~((and))~~ (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section ~~((shall))~~ may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" ~~((shall include))~~ includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term ~~((shall))~~ also includes:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term ~~((shall))~~ does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term ~~((shall))~~ also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6) The term ~~((shall))~~ also includes the sale of prewritten computer software other than a sale to a person who presents a resale

certificate under RCW 82.04.470, regardless of the method of delivery to the end user ~~((but shall))~~.

The term "retail sale" does not include the sale of or charge made for:

(a) Custom software; or

(b) The customization of prewritten computer software.

(7) The term ~~((shall))~~ also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital products:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term ~~((shall))~~ does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

~~((9))~~ (10) The term ~~((shall))~~ also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor ~~((shall))~~ does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under Title 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

~~((10))~~ (11) The term ~~((shall))~~ does not include the sale of or charge made for labor and services rendered in respect to the

constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor ~~((shall))~~ does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor ~~((shall))~~ does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

~~((H))~~ (12) The term ~~((shall))~~ does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

**Sec. 302.** RCW 82.04.190 and 2007 c 6 s 1008 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon or (e) of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) any person who is an end user of software; and (f) any person who purchases or

acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development; ~~((and))~~

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10)(a) Any end user of a digital product.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital good for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital goods or digital codes for the purpose of giving away such goods or codes will not be considered to have engaged in the distribution or redistribution of such goods or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital good to which the digital code relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is redeemed, the underlying digital good to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code is an end user if that purchaser does not have the right to further redistribute, after the digital code is redeemed, the underlying digital good to which the digital code relates.

**Sec. 303.** RCW 82.08.010 and 2007 c 6 s 1302 are each amended to read as follows:

For the purposes of this chapter:

(1)(a) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital products, or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (i) The seller's cost of the property sold; (ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (iv) delivery charges; and (v) installation charges.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe;

(b) "Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, digital products, or services, if the amount is separately stated on the

invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(c) "Selling price" or "sales price" includes consideration received by the seller from a third party if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the criteria in this subsection (1)(c)(iv) is met:

(A) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(B) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount, however a "preferred customer" card that is available to any patron does not constitute membership in such a group; or

(C) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser;

(2)(a) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean:

(i) The state and its departments and institutions when making sales to the state and its departments and institutions; or

(ii) A professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale at retail that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the seller and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;



(5) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(6) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within this state" shall apply equally to the provisions of this chapter;

(7) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(9) The definitions in section 201 of this act apply to this chapter; and

(10) For the purposes of the taxes imposed under this chapter and chapter 82.12 RCW, whenever the terms "property" or "personal property" are used, those terms must be construed to include digital products unless:

(a) It is clear from the context that the term "personal property" is intended only to refer to tangible personal property;

(b) It is clear from the context that the term "property" is intended only to refer to tangible personal property, real property, or both; or

(c) To construe the term "property" or "personal property" as including digital products would yield unlikely, absurd, or strained consequences.

**Sec. 304.** RCW 82.12.010 and 2006 c 301 s 3 are each amended to read as follows:

For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010(-);

(2)(a) "Value of the article used" shall be the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to

become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used shall be determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

(3) "Value of the service used" means the purchase price for the service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used shall be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe;

(4) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used shall be determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe;

(5) "Value of the digital product used" means the purchase price for the digital product, the use of which is taxable under this chapter. If the digital product is acquired other than by purchase, the value of the digital product must be determined as nearly as possible according to the retail selling price at place of use of similar digital products of like quality and character under rules the department may prescribe;

(6) "Use," "used," "using," or "put to use" (~~(shall)~~) have their ordinary meaning, and (~~(shall)~~) mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state; (~~(and)~~)

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(d) With respect to a digital product, the first act within this state by which the taxpayer, as a consumer, downloads or otherwise possesses the digital product; and

(e) With respect to a service defined as a retail sale in RCW 82.04.050(2)(g), the first act within this state after the service has been performed by which the taxpayer, as a consumer, uses the digital product upon which the service was performed;

~~((6))~~ (7) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

~~((7))~~ (8)(a)(i) Except as provided in (a)(ii) of this subsection ~~((7))~~ (8), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, digital product, or a sale of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (g) or (3)(a) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

~~((8))~~ (9) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

~~((9))~~ (10) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the

sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection ~~((9))~~ (10), the use of the property shall be deemed to be by such consumer.

**Sec. 305.** RCW 82.12.020 and 2005 c 514 s 105 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) ~~(Any)~~ Article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7), including tangible personal property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state;

(b) ~~(any)~~ Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both; ((or))

(c) ~~(any)~~ Services defined as a retail sale in RCW 82.04.050 (2)(a) or (g) or (3)(a);

(d) Extended warranty; or

(e)(i) Digital product.

(ii) With respect to the use of digital products acquired by purchase, the tax imposed in this subsection (1)(e) applies in respect to:

(A) Sales in which the seller has granted the purchaser the right of permanent use;

(B) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(C) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(D) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(iii) With respect to the use of digital products acquired other than by purchase, the tax imposed in this subsection (1)(e) applies regardless of whether or not the consumer has a right of permanent use or is obligated to make continued payment as a condition of use.

~~(2) ((This tax shall apply to the use of every extended warranty, service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.~~

~~—(3))~~ The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital product, or service taxable under RCW 82.04.050 (2)(a) or (g) or (3)(a), ~~((purchased at retail or acquired by lease, gift, or bailment))~~ if the sale to, or the use by, the present user or ~~((his))~~ the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by ~~((his))~~ the present user's bailor or donor.

~~((4))~~ (3)(a) Except as provided in this section, payment of the tax imposed by this chapter or chapter 82.08 RCW by one purchaser or user of tangible personal property, extended warranty, digital product, or service ((of the tax imposed by chapter 82.08 or 82.12 RCW shall)) does not have the effect of exempting any other

purchaser or user of the same property, extended warranty, digital product, or service from the taxes imposed by such chapters.

(b) The tax imposed by this chapter does not apply:

(i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor; ~~((or))~~

(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use; ~~((or))~~

(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961 ~~((the tax imposed by this chapter does not apply)); or~~

(iv) To the use of digital goods, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

~~((5)) (4)(a) Except as provided in (b) of this subsection (4), the tax ~~((shall be))~~ is levied and must be collected in an amount equal to the value of the article used, value of the digital product used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020 ~~((, except)).~~~~

(b) In the case of a seller required to collect use tax from the purchaser, the tax ~~((shall))~~ must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020.

#### PART IV BUSINESS AND OCCUPATION TAX CHANGES

**NEW SECTION. Sec. 401.** A new section is added to chapter 82.04 RCW to be codified between RCW 82.04.250 and 82.04.310 to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail or wholesale of digital products, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent in the case of retail sales and by the rate of 0.484 percent in the case of wholesale sales.

(2) For purposes of this section, a person is considered to be engaging within this state in the business of making sales of digital products, if the person makes sales of digital products and the sales are sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

(3) A person subject to tax under this section must report the tax imposed in this chapter in an electronic format provided by the department.

**Sec. 402.** RCW 82.04.060 and 2007 c 6 s 1007 are each amended to read as follows:

"Sale at wholesale" or "wholesale sale" means:

(1) Any sale, which is not a sale at retail, of:

(a) Tangible personal property ~~((any sale of));~~

(b) Services defined as a retail sale in RCW 82.04.050(2)(a) ~~((any sale of));~~

(c) Amusement or recreation services as defined in RCW 82.04.050(3)(a) ~~((any sale of canned software, any sale of art));~~

(d) Prewritten computer software;

(e) Extended ~~((warranty))~~ warranties as defined in RCW 82.04.050(7) ~~((or any sale of));~~

(f) Competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065 ~~((, which is not a sale at retail));~~

(g) Digital products; or

(h) Services described in RCW 82.04.050(2)(g); and

(2) Any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers ~~((PROVIDED, That the term)). For the purposes of this subsection (2), "real or personal property" ~~((as used in this subsection shall))~~ does not include any natural products named in RCW 82.04.100.~~

**Sec. 403.** RCW 82.04.070 and 1961 c 15 s 82.04.070 are each amended to read as follows:

"Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital products, and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

**Sec. 404.** RCW 82.04.110 and 1997 c 453 s 1 are each amended to read as follows:

(1) Except as otherwise provided in this section, "manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his or her own materials or ingredients any articles, substances, or commodities.

(2)(a) When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, all or a portion of the materials that become a part or whole of the manufactured article, the department shall prescribe equitable rules for determining tax liability ~~((PROVIDED, That)).~~

(b) A person who produces aluminum master alloys is a processor for hire rather than a manufacturer, regardless of the portion of the aluminum provided by that person's customer ~~((PROVIDED FURTHER, That)). For the purposes of this subsection (2)(b), "aluminum master alloy" means an alloy registered with the aluminum association as a grain refiner or a hardener alloy using the American national standards institute designating system H35.3.~~

(3) A nonresident of this state who is the owner of materials processed for it in this state by a processor for hire shall not be deemed to be engaged in business in this state as a manufacturer because of the performance of such processing work for it in this state ~~((PROVIDED FURTHER, That)).~~

(4) The owner of materials from which a nuclear fuel assembly is made for it by a processor for hire shall not be subject to tax under this chapter as a manufacturer of the fuel assembly.

~~((For the purposes of this section, "aluminum master alloy" means an alloy registered with the Aluminum Association as a grain refiner or a hardener alloy using the American National Standards Institute designating system H35.3.))~~

(5) For purposes of this section, the terms "articles," "substances," "materials," "ingredients," and "commodities" do not include digital goods.

**Sec. 405.** RCW 82.04.120 and 2003 c 168 s 604 are each amended to read as follows:

"To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include: (1) The production or fabrication of special made or custom made articles; (2) the production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; (3) cutting, delimiting, and measuring of felled, cut, or taken trees; and (4) crushing and/or blending of rock, sand, stone, gravel, or ore.

"To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state; the growing, harvesting, or producing of agricultural products; packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage; the production of digital goods; or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

**Sec. 406.** RCW 82.04.2907 and 2001 c 320 s 3 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of receiving income from royalties or charges in the nature of royalties for the granting of intangible rights, such as copyrights, licenses, patents, or franchise fees, the amount of tax with respect to such business shall be equal to the gross income from royalties or charges in the nature of royalties from the business multiplied by the rate of 0.484 percent.

(2) For the purposes of this section, "royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. It does not include compensation for any natural resource ((or), the licensing of ((earned)) prewritten computer software to the end user, or the licensing or use of digital products.

**Sec. 407.** RCW 82.04.297 and 2000 c 103 s 5 are each amended to read as follows:

(1) The provision of internet ~~((services))~~ access is subject to tax under RCW 82.04.290(2).

(2) ~~"Internet" ((means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web)) and "internet access" have the same meaning as those terms are defined in the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as existing on July 1, 2009.~~

(3) ~~((("Internet service" means a service that includes computer processing applications, provides the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of internet electronic mail, access to the internet for information retrieval, and hosting of information for retrieval over the internet or the graphical subnetwork called the world wide web)) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.~~

**Sec. 408.** RCW 82.04.363 and 1997 c 388 s 1 are each amended to read as follows:

This chapter does not apply to amounts received by a nonprofit organization from the sale or furnishing of the following items at a camp or conference center conducted on property exempt from property tax under RCW 84.36.030 (1), (2), or (3):

(1) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;

(2) Food and meals;

(3) Books, tapes, and other products, including books and other products that are transferred electronically, that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large.

**Sec. 409.** RCW 82.04.4282 and 1994 c 124 s 3 are each amended to read as follows:

In computing tax there may be deducted from the measure of tax amounts derived from bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, (5) tuition fees, (6) charges made by a nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public, (7) charges made for operation of privately operated kindergartens, and (8) endowment funds. This section ~~((shall))~~ may not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property, digital products, or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section.

**Sec. 410.** RCW 82.04.470 and 2007 c 6 s 1201 are each amended to read as follows:

(1) Unless a seller has taken from the buyer a resale certificate, the burden of proving that a sale ~~((of tangible personal property, or of services, was not a sale at retail shall be))~~ is a wholesale sale rather than a retail sale is upon the person who made it.

(2) If a seller does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of sales tax.

(3) The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.

(4) As used in this section, "resale certificate" means documentation provided by a buyer to a seller stating that the purchase is for resale in the regular course of business, or that the buyer is exempt from retail sales tax, and containing the following information:

(a) The name and address of the buyer;

(b) The uniform business identifier or revenue registration number of the buyer, if the buyer is required to be registered;

(c) The type of business engaged in;

(d) The categories of items or services to be purchased for resale or that are exempt, unless the buyer presents a blanket resale certificate;

(e) The date on which the certificate was provided;

(f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are exempt from tax pursuant to statute;

(g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale or exemption privilege claimed on the certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law;

(h) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(i) The signature of the authorized individual; and

(j) The name of the seller.

(5) Subsection (4)(h), (i), and (j) of this section does not apply if the certificate is provided in a format other than paper. If the certificate is provided in a format other than paper, the name of the individual providing the certificate must be included in the certificate.

**Sec. 411.** RCW 82.04.480 and 1975 1st ex.s. c 278 s 44 are each amended to read as follows:

(1) Every consignee, bailee, factor, or auctioneer having either actual or constructive possession of (~~tangible~~) personal property, or having possession of the documents of title thereto, with power to sell such (~~tangible~~) personal property in (~~his or its~~) that person's own name and actually so selling, (~~shall be~~) is deemed the seller of such (~~tangible~~) personal property within the meaning of this chapter (~~and further~~). Furthermore, the consignor, bailor, principal, or owner (~~shall be~~) is deemed a seller of such property to the consignee, bailee, factor, or auctioneer.

(2) The burden (~~shall be upon~~) is on the taxpayer in every case to establish the fact that (~~he~~) the taxpayer is not engaged in the business of (~~selling tangible personal property~~) making retail sales or wholesale sales but is acting merely as broker or agent in promoting sales for a principal. Such claim will be allowed only when the taxpayer's accounting records are kept in such manner as required by rule by the department (~~of revenue shall by general regulation provide~~).

(3) For purposes of this section, "personal property" means tangible personal property, digital products, and extended warranties.

**Sec. 412.** RCW 82.04.065 and 2007 c 6 s 1003 are each amended to read as follows:

(1) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(2) "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services," including but not limited to "detailed telecommunications billing," "directory assistance," "vertical service," and "voice mail services."

(3) "Conference-bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference-bridging service" does not include the telecommunications services used to reach the conference bridge.

(4) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(5) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

(6) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference-bridging services.

(7) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to use the voice mail service.

(8) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. "Telecommunications service" does not include:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;

(d) Advertising, including but not limited to directory advertising;

(e) Billing and collection services provided to third parties;

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include but are not limited to cable service as defined in 47 U.S.C. Sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R.;

(h) Ancillary services; (~~or~~)

(i) Digital products delivered electronically, including but not limited to (~~software~~) music, video, reading materials, or ring tones; or

(j) Software delivered electronically.

(9) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.

(10) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: Collection services provided by the seller of the telecommunications services to the subscriber, or services or products sold by the subscriber to the subscriber's customer. The service is typically

marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

(11) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(12) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(13) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; these transmissions may include messages and/or sounds.

(14) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(15) "Prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(16) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

(17) "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(18) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, regardless of whether individual transmissions originate or terminate within the licensed service area of the mobile telecommunications service provider.

(19) "Customer" means: (a) The person or entity that contracts with the home service provider for mobile telecommunications services; or (b) the end user of the mobile telecommunications service, if the end user of mobile telecommunications services is not the contracting party, but this subsection (19)(b) applies only for the purpose of determining the place of primary use. The term does not include a reseller of mobile telecommunications service, or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(20) "Designated database provider" means a person representing all the political subdivisions of the state that is:

(a) Responsible for providing an electronic database prescribed in 4 U.S.C. Sec. 119(a) if the state has not provided an electronic database; and

(b) Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide a database prescribed by 4 U.S.C. Secs. 116 through 126.

(21) "Enhanced zip code" means a United States postal zip code of nine or more digits.

(22) "Home service provider" means the facilities-based carrier or reseller with whom the customer contracts for the provision of mobile telecommunications services.

(23) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(24) "Mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999.

(25) "Mobile telecommunications service provider" means a home service provider or a serving carrier.

(26) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) Within the licensed service area of the home service provider.

(27) "Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

(28) "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. "Reseller" does not include a serving carrier with whom a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(29) "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

(30) "Taxing jurisdiction" means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

## PART V SALES TAX EXEMPTIONS

**NEW SECTION. Sec. 501.** A new section is added to chapter 82.08 RCW to read as follows:

The tax imposed by RCW 82.08.020 does not apply to the sale of a digital code for one or more digital goods if the sale of the digital goods to which the digital code relates is exempt from the tax levied by RCW 82.08.020.

**NEW SECTION. Sec. 502.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to sales of audio or video programming by a radio or television broadcaster.

(2) For purposes of this section, "radio or television broadcaster" includes satellite radio providers, satellite television providers, cable television providers, and providers of subscription internet television.

**NEW SECTION. Sec. 503.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to sales of digital products for purposes of consuming the digital products in producing for sale a new product, where the digital products become an ingredient or component of the new product. A digital code becomes an ingredient or component of a new product if the digital good acquired through the use of the digital code becomes an ingredient or component of a new product.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

**NEW SECTION. Sec. 504.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to the sale to a business of standard digital information and services rendered in respect to standard digital information, where the standard digital information and services are purchased solely for business purposes.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

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

(a) "Business purposes" means any purpose relevant to the business needs of the taxpayer claiming an exemption under this section. Business purposes do not include any personal, family, or household purpose. The term also does not include any activity conducted by a government entity as that term is defined in RCW 7.25.005; and

(b) "Standard digital information" means a digital good consisting primarily of data, facts, or information, or any combination thereof, not generated or compiled for a specific client or customer.

**Sec. 505.** RCW 82.08.02525 and 1996 c 63 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to the sale of public records by state and local agencies, as the terms are defined in RCW 42.17.020, that are copied or transferred electronically under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts.

**Sec. 506.** RCW 82.08.0253 and 1980 c 37 s 21 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to:

(a) The distribution and newsstand sale of printed newspapers; and

(b) The sale of newspapers transferred electronically, provided that the electronic version of a printed newspaper:

(i) Shares content with the printed newspaper; and

(ii) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper.

(2) For purposes of this section, "printed newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper.

**Sec. 507.** RCW 82.08.02535 and 1995 2nd sp.s. c 8 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to ((the) subscription sales ((and distribution)) of magazines or periodicals ((by subscription)), including magazines and periodicals transferred electronically to the buyer, for the purposes of fundraising by (1) educational institutions as defined in RCW 82.04.170, or (2) nonprofit organizations engaged in activities primarily for the benefit of boys and girls nineteen years and younger.

**Sec. 508.** RCW 82.08.02537 and 1996 c 272 s 2 are each amended to read as follows:

The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to sales of academic transcripts by educational institutions, including academic transcripts transferred electronically.

**Sec. 509.** RCW 82.08.0256 and 1980 c 37 s 24 are each amended to read as follows:

The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to sales (including transfers of title through decree of appropriation) heretofore or hereafter made of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a political subdivision thereof for use in conducting any business defined in RCW 82.16.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11). For purposes of this section, "operating property" includes digital products.

**Sec. 510.** RCW 82.08.02565 and 1999 c 211 s 5 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to sales to a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment, but only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department by rule. The seller ((shall)) must retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation, testing operation, or research and development operation. "Machinery and equipment" also includes digital products.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a

building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or

(viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(e) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(f) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

(g) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(h) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

**Sec. 511.** RCW 82.08.0257 and 1980 c 37 s 25 are each amended to read as follows:

The tax levied by RCW 82.08.020 (~~shall~~) does not apply to auction sales made by or through auctioneers of (~~tangible~~) personal property (including household goods) (~~which have~~) that has been used in conducting a farm activity, when the seller thereof is a farmer and the sale is held or conducted upon a farm and not otherwise.

**Sec. 512.** RCW 82.08.0273 and 2007 c 135 s 2 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to sales to nonresidents of this state of tangible personal property and digital products, when such property is for use outside this state (~~when~~), and the purchaser (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no (~~separately~~) publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the requirements in subsections (1) and (3) through (6) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as provided in this section.

(b) Acceptable proof of a nonresident person's status (~~shall~~) includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(4) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, (~~shall be~~) is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.



(6)(a) Any vendor who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any vendor who fails to maintain records of sales to nonresidents as provided in this section, ~~((shall be))~~ is personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, ~~((shall be))~~ is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor ~~((shall be))~~ are liable for any penalties and interest assessable under chapter 82.32 RCW.

**Sec. 513.** RCW 82.08.805 and 2006 c 182 s 3 are each amended to read as follows:

(1) A person who has paid tax under RCW 82.08.020 for ~~((tangible))~~ personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or ~~((tangible))~~ personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2012.

**Sec. 514.** RCW 82.08.995 and 2007 c 381 s 2 are each amended to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to sales of ~~((tangible))~~ personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615.

**NEW SECTION. Sec. 515.** RCW 82.08.705 (Exemptions--Financial information delivered electronically) and 2007 c 182 s 1 are each repealed.

## PART VI USE TAX EXEMPTIONS

**NEW SECTION. Sec. 601.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply in respect to the use of a digital code for one or more digital goods, if the use of the digital goods to which the digital code relates is exempt from the tax levied by RCW 82.12.020.

**NEW SECTION. Sec. 602.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply to the use of audio or video programming provided by a radio or television broadcaster.

(2) For purposes of this section, "radio or television broadcaster" includes satellite radio providers, satellite television providers, cable television providers, providers of subscription internet television, and

persons who provide radio or television broadcasting to listeners or viewers for no charge.

**NEW SECTION. Sec. 603.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply to the use by students of digital products furnished by a public or private elementary or secondary school, or an institution of higher education as defined in sections 1001 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009.

**NEW SECTION. Sec. 604.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply to the use of digital products for purposes of consuming the digital products in producing for sale a new product, where the digital products become an ingredient or component of the new product. A digital code becomes an ingredient or component of a new product if the digital good acquired through the use of the digital code becomes an ingredient or component of a new product.

**NEW SECTION. Sec. 605.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply in respect to the use of digital products or digital codes obtained by the end user free of charge.

**NEW SECTION. Sec. 606.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply to the use by a business of standard digital information and services rendered in respect to standard digital information, where the standard digital information and services are used solely for business purposes.

(2) For purposes of this section, the definitions in section 504 of this act apply.

**NEW SECTION. Sec. 607.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of digital goods that are:

(a) Of a noncommercial nature, such as personal e-mail communications;

(b) Created solely for an internal audience; or

(c) Created solely for the business needs of the person who created the digital good and is not the type of digital good that is offered for sale, including business e-mail communications.

(2) This section does not apply to the use of any digital goods purchased by the user, the user's donor, or anybody on the user's behalf.

**Sec. 608.** RCW 82.12.0251 and 2005 c 514 s 106 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use:

(1) Of any article of tangible personal property, ~~((and))~~ or digital product, and any services that were rendered in respect to such property, brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington;

(2) By a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060, and services rendered outside the state of Washington in respect to such property;

(3) Of household goods, including digital products, personal effects, ~~((and))~~ private motor vehicles, and services rendered in respect to such property, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles and services were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington. For purposes of this subsection, private motor vehicles do not include motor homes;

(4) Of an extended warranty, to the extent that the property covered by the extended warranty is exempt under this section from the tax imposed under this chapter.

For purposes of this section, "state" means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, and "services" means services defined as retail sales in RCW 82.04.050(2) (a) or (g).

**Sec. 609.** RCW 82.12.02525 and 1996 c 63 s 2 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply with respect to the use of public records sold by state and local agencies, as the terms are defined in RCW 42.17.020, including public records transferred electronically that are obtained under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts.

**Sec. 610.** RCW 82.12.0255 and 2005 c 514 s 107 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of any article of tangible personal property, extended warranty, digital product, or service which the state is prohibited from taxing under the Constitution of the state or under the Constitution or laws of the United States.

**Sec. 611.** RCW 82.12.0257 and 1980 c 37 s 57 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of any article of ~~((tangible))~~ personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, by the state or a political subdivision thereof in conducting any business defined in RCW 82.16.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11). For the purposes of this section, "operating property" includes digital products.

**Sec. 612.** RCW 82.12.0258 and 1980 c 37 s 58 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of ~~((tangible))~~ personal property (including household goods) ~~((which have))~~ that has been used in conducting a farm activity, if such property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise.

**Sec. 613.** RCW 82.12.0259 and 2003 c 5 s 7 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of ~~((tangible))~~ personal property or the use of services defined in RCW 82.04.050(2) (a) or (g) by corporations ~~((which))~~ that have been incorporated under any act of the congress of the

United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, flood, and other national calamities and to devise and carry on measures for preventing the same.

**Sec. 614.** RCW 82.12.02595 and 2004 c 155 s 1 are each amended to read as follows:

(1) This chapter does not apply to the use by a nonprofit charitable organization or state or local governmental entity of ~~((any item of tangible))~~ personal property that has been donated to the nonprofit charitable organization or state or local governmental entity, or to the subsequent use of the property by a person to whom the property is donated or bailed in furtherance of the purpose for which the property was originally donated.

(2) This chapter does not apply to the donation of ~~((tangible))~~ personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge.

(3) This chapter does not apply to the use by a nonprofit charitable organization of labor and services rendered in respect to installing, repairing, cleaning, altering, imprinting, or improving personal property provided to the charitable organization at no charge, or to the donation of such services.

(4) This chapter does not apply to the donation of amusement and recreation services without intervening use to a nonprofit organization or state or local governmental entity, to the use by a nonprofit organization or state or local governmental entity of amusement and recreation services, or to the subsequent use of the services by a person to whom the services are donated or bailed in furtherance of the purpose for which the services were originally donated. As used in this subsection, "amusement and recreation services" has the meaning in RCW 82.04.050(3)(a).

**Sec. 615.** RCW 82.12.0272 and 1980 c 37 s 70 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of ~~((tangible))~~ personal property held for sale and displayed in single trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the sale of products or services.

**Sec. 616.** RCW 82.12.0284 and 2007 c 54 s 15 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of computers, computer components, computer accessories, ~~((or))~~ computer software, or digital products, irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW, in this state. For purposes of this section, "computer" and "computer software" have the same meaning as in RCW 82.04.215.

**Sec. 617.** RCW 82.12.0315 and 2003 c 5 s 10 are each amended to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of:

(a) Production equipment rented to a motion picture or video production business;

(b) Production equipment acquired and used by a motion picture or video production business in another state, if the acquisition and use occurred more than ninety days before the time the motion picture or video production business entered this state; and

(c) Production services that are within the scope of RCW 82.04.050(2) (a) or (g) and are sold to a motion picture or video production business.

(2) As used in this section, "production equipment," "production services," and "motion picture or video production business" have the meanings given in RCW 82.08.0315.

(3) The exemption provided for in this section shall not apply to the use of production equipment rented to, or production equipment or production services that are within the scope of RCW 82.04.050(2) (a) or (g) acquired and used by, a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050.

**Sec. 618.** RCW 82.12.0345 and 1994 c 124 s 11 are each amended to read as follows:

The tax imposed by RCW 82.12.020 ~~((shall))~~ does not apply in respect to the use of:

(1) Printed newspapers as defined in RCW 82.08.0253; and  
(2) Newspapers transferred electronically, provided that the electronic version of a printed newspaper:

(a) Shares content with the printed newspaper; and  
(b) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper.

**Sec. 619.** RCW 82.12.0347 and 1996 c 272 s 3 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of academic transcripts, including academic transcripts transferred electronically.

**Sec. 620.** RCW 82.12.805 and 2006 c 182 s 4 are each amended to read as follows:

(1) A person who is subject to tax under RCW 82.12.020 for ~~((tangible))~~ personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or ~~((tangible))~~ personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit shall be equal to the state share of use tax computed to be due under RCW 82.12.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2012.

**Sec. 621.** RCW 82.12.860 and 2006 c 11 s 1 are each amended to read as follows:

(1) This chapter does not apply to state credit unions with respect to the use of any article of tangible personal property, digital product, service defined as a retail sale in RCW 82.04.050 (2)(a) or (g) or (3)(a), or extended warranty, acquired from a federal credit union, foreign credit union, or out-of-state credit union as a result of a merger or conversion.

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

(a) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(b) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(c) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(d) "State credit union" means a credit union organized and operating under the laws of this state.

**Sec. 622.** RCW 82.12.995 and 2007 c 381 s 3 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of ~~((tangible))~~ personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615.

**NEW SECTION. Sec. 623.** RCW 82.12.705 (Exemptions--Financial information delivered electronically) and 2007 c 182 s 2 are each repealed.

## PART VII SOURCING AND SALES/USE TAX APPORTIONMENT

**Sec. 701.** RCW 82.32.730 and 2008 c 324 s 1 are each amended to read as follows:

(1) Except as provided in subsections (5) through (7) of this section, for purposes of collecting or paying sales or use taxes to the appropriate jurisdictions, all sales at retail shall be sourced in accordance with this subsection and subsections (2) through (4) of this section.

(a) When tangible personal property, an extended warranty, a digital product, or a service defined as a retail sale under RCW 82.04.050 is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When the tangible personal property, extended warranty, digital product, or a service defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(c) When (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(d) When (a), (b), and (c) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(e) When (a), (b), (c), or (d) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or digital code or the computer software delivered electronically was first available for transmission by the seller, or from which the extended warranty or service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in subsection (3) or (4) of this section, shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subsection (1) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection (2) does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location is not altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsection (1) of this section.

(5)(a) A purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information that shows the jurisdictions to which the direct mail is delivered to recipients.

(i) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(ii) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information as required by (a) of this subsection, the seller shall collect the tax according to subsection (1)(e) of this section. This subsection does not limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser is not required to provide a direct mail form or delivery information to the seller.

(6) The following are sourced to the location at or from which delivery is made to the consumer:

(a) A retail sale of watercraft;

(b) A retail sale of a modular home, manufactured home, or mobile home;

(c) A retail sale, excluding the lease and rental, of a motor vehicle, trailer, semitrailer, or aircraft, that do not qualify as transportation equipment; and

(d) Florist sales. In the case of a sale in which one florist takes an order from a customer and then communicates that order to another florist who delivers the items purchased to the place designated by the customer, the location at or from which the delivery is made to the consumer is deemed to be the location of the florist originally taking the order.

(7) A retail sale of the providing of telecommunications services or ancillary services, as those terms are defined in RCW 82.04.065, shall be sourced in accordance with RCW 82.32.520.

(8) The definitions in this subsection apply throughout this section.

(a) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(b) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(c) "Florist sales" means the retail sale of tangible personal property by a florist. For purposes of this subsection (8)(c), "florist" means a person whose primary business activity is the retail sale of fresh cut flowers, potted ornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products, used for decorative and not landscaping purposes.

(d) "Receive" and "receipt" mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods or digital codes, whichever comes first. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(e) "Transportation equipment" means:

(i) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce;

(ii) Trucks and truck tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) Registered through the international registration plan; and

(B) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(iii) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(iv) Containers designed for use on and component parts attached or secured on the items described in (e)(i) through (iii) of this subsection.

(9) In those instances where there is no obligation on the part of a seller to collect or remit this state's sales or use tax, the use of tangible personal property, digital product, or of a service, subject to use tax, is sourced to the place of first use in this state. The definition of use in RCW 82.12.010 applies to this subsection.

## PART VIII MISCELLANEOUS AMENDMENTS

**Sec. 801.** RCW 35.21.717 and 2004 c 154 s 1 are each amended to read as follows:

~~((Until July 1, 2006, a city or town may not impose any new taxes or fees specific to internet service providers.))~~ A city or town may tax internet ~~((service))~~ access providers under generally applicable business taxes or fees, at a rate not to exceed the rate applied to a general service classification. For the purposes of this section, "internet ~~((service))~~ access" has the same meaning as in RCW 82.04.297.

**Sec. 802.** RCW 48.14.080 and 2006 c 278 s 2 are each amended to read as follows:

(1) As to insurers, other than title insurers and taxpayers under RCW 48.14.0201, the taxes imposed by this title shall be in lieu of all other taxes, except as otherwise provided in this section.

(2) Subsection (1) of this section does not apply with respect to:

(a) Taxes on real and tangible personal property;

(b) Excise taxes on the sale, purchase, use, or possession of (i) real property; (ii) tangible personal property; (iii) extended warranties; ~~((and))~~ (iv) services; and (v) digital products as defined in section 201 of this act; and

(c) The tax imposed in RCW 82.04.260(10), regarding public and nonprofit hospitals.

(3) For the purposes of this section, the term "taxes" includes taxes imposed by the state or any county, city, town, municipal corporation, quasi-municipal corporation, or other political subdivision.

**Sec. 803.** RCW 82.02.020 and 2008 c 113 s 2 are each amended to read as follows:

Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon ~~((retail sales of tangible personal property, the use of tangible personal property.))~~ parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted

transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges ~~((PROVIDED, That))~~. However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged ~~((PROVIDED FURTHER, That))~~. Furthermore, these provisions ~~((shall))~~ may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Title ~~((s))~~ 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

**Sec. 804.** RCW 82.04.44525 and 2008 c 81 s 9 are each amended to read as follows:

(1) Subject to the limits in this section, an eligible person is allowed a credit against the tax due under this chapter. The credit is based on qualified employment positions in eligible areas. The credit is available to persons who are engaged in international services as defined in this section. In order to receive the credit, the international

service activities must take place at a business within the eligible area.

(2)(a) The credit shall equal three thousand dollars for each qualified employment position created after July 1, 1998, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position, plus the four subsequent consecutive years, if the position is maintained for those four years.

(b) Credit may not be taken for hiring of persons into positions that exist on July 1, 1998. Credit is authorized for new employees hired for new positions created after July 1, 1998. New positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire.

(c) When a position is newly created, if it is filled before July 1st, this position is eligible for the full yearly credit. If it is filled after June 30th, this position is eligible for half of the credit.

(d) Credit may be accrued and carried over until it is used. No refunds may be granted for credits under this section.

(3) For the purposes of this section:

(a) "Eligible area" means: (i) A community empowerment zone under RCW 43.31C.020; or (ii) a contiguous group of census tracts that meets the unemployment and poverty criteria of RCW 43.31C.030 and is designated under subsection (4) of this section;

(b) "Eligible person" means a person, as defined in RCW 82.04.030, who in an eligible area at a specific location is engaged in the business of providing international services;

(c)(i) "International services" means the provision of a service, as defined under (c)(iii) of this subsection, that is subject to tax under RCW 82.04.290 (2) or (3), and either:

(A) Is for a person domiciled outside the United States; or

(B) The service itself is for use primarily outside of the United States.

(ii) "International services" excludes any service taxable under RCW 82.04.290(1).

(iii) Eligible services are: Computer; data processing; information; legal; accounting and tax preparation; engineering; architectural; business consulting; business management; public relations and advertising; surveying; geological consulting; real estate appraisal; or financial services. For the purposes of this section these services mean the following:

(A) "Computer services" are services such as computer programming, custom software modification, customization of canned software, custom software installation, custom software maintenance, custom software repair, training in the use of software, computer systems design, and custom software update services;

(B) "Data processing services" are services such as word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service;

(C) "Information services" are services such as electronic data retrieval or research that entails furnishing financial or legal information, data or research, internet ((service)) access as defined in RCW 82.04.297, general or specialized news, or current information;

(D) "Legal services" are services such as representation by an attorney, or other person when permitted, in an administrative or legal proceeding, legal drafting, paralegal services, legal research services, and court reporting services, arbitration, and mediation services;

(E) "Accounting and tax preparation services" are services such as accounting, auditing, actuarial, bookkeeping, or tax preparation services;

(F) "Engineering services" are services such as civil, electrical, mechanical, petroleum, marine, nuclear, and design engineering, machine designing, machine tool designing, and sewage disposal system designing services;

(G) "Architectural services" are services such as structural or landscape design or architecture, interior design, building design, building program management, and space planning services;

(H) "Business consulting services" are services such as primarily providing operating counsel, advice, or assistance to the management or owner of any business, private, nonprofit, or public organization, including but not limited to those in the following areas: Administrative management consulting; general management consulting; human resource consulting or training; management engineering consulting; management information systems consulting; manufacturing management consulting; marketing consulting; operations research consulting; personnel management consulting; physical distribution consulting; site location consulting; economic consulting; motel, hotel, and resort consulting; restaurant consulting; government affairs consulting; and lobbying;

(I) "Business management services" are services such as administrative management, business management, and office management. "Business management services" does not include property management or property leasing, motel, hotel, and resort management, or automobile parking management;

(J) "Public relations and advertising services" are services such as layout, art direction, graphic design, copy writing, mechanical preparation, opinion research, marketing research, marketing, or production supervision;

(K) "Surveying services" are services such as land surveying;

(L) "Geological consulting services" are services rendered for the oil, gas, and mining industry and other earth resource industries, and other services such as soil testing;

(M) "Real estate appraisal services" are services such as market appraisal and other real estate valuation; and

(N) "Financial services" are services such as banking, loan, security, investment management, investment advisory, mortgage servicing, contract collection, and finance leasing services, engaged in by financial businesses, or businesses similar to or in competition with financial businesses; and

(d) "Qualified employment position" means a permanent full-time position to provide international services. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee.

(4) By ordinance, the legislative authority of a city, or legislative authorities of contiguous cities by ordinance of each city's legislative authority, with population greater than eighty thousand, located in a county containing no community empowerment zones as designated under RCW 43.31C.020, may designate a contiguous group of census tracts within the city or cities as an eligible area under this section. Each of the census tracts must meet the unemployment and poverty criteria of RCW 43.31C.030. Upon making the designation, the city or cities shall transmit to the department of revenue a certification letter and a map, each explicitly describing the boundaries of the census tract. This designation must be made by December 31, 1998.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes:

(a) Employment records for the previous six years;

(b) Information relating to description of international service activity engaged in at the eligible location by the person; and

(c) Information relating to customers of international service activity engaged in at that location by the person.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used shall be immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The employment security department shall provide to the department of revenue such information needed by the department of revenue to verify eligibility under this section.

**Sec. 805.** RCW 82.08.040 and 1975 1st ex.s. c 278 s 46 are each amended to read as follows:

(1) Every consignee, bailee, factor, or auctioneer (~~((authorized, engaged, or employed to sell or call))~~) selling or calling for bids on ~~((tangible))~~ personal property belonging to another, ~~((and so selling or calling, shall be))~~ is deemed the seller of such ~~((tangible))~~ personal property within the meaning of this chapter ~~((and))~~. All sales made by such persons are subject to ~~((its))~~ the provisions of this chapter even though the sale would have been exempt from the tax ~~((hereunder))~~ imposed in this chapter had it been made directly by the owner of the property sold.

(2)(a) Except as provided in (b) of this subsection (2), every consignee, bailee, factor, or auctioneer ~~((shall))~~ must collect and remit the amount of tax due under this chapter with respect to sales made or called by ~~((him: PROVIDED;))~~ that seller.

~~((b))~~ If the owner of the property sold is engaged in the business of ~~((selling tangible personal property))~~ making sales at retail in this state, the tax imposed under this chapter may be remitted by such owner under such rules ~~((and regulations))~~ as the department ~~((of revenue shall prescribe))~~ may adopt.

**Sec. 806.** RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each amended to read as follows:

(1) If a buyer normally is engaged in both consuming and reselling certain types of ~~((articles of tangible))~~ personal property, the retail sale of which is taxable under this chapter, and the buyer is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a resale certificate for the entire purchase if the buyer principally resells the articles according to the general nature of the buyer's business. The buyer shall account for the value of any articles purchased with a resale certificate that are used by the buyer and remit the sales tax on the articles to the department.

(2) A buyer who pays a tax on all purchases and subsequently resells an article at retail, without intervening use by the buyer, shall collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the property resold upon which retail sales tax has been paid. The deduction is allowed only if the taxpayer keeps and preserves records that show the names of the persons from whom the articles were purchased, the date of the purchase, the type of articles, the amount of the purchase, and the tax that was paid. The department shall provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later sold at wholesale without intervening use by the buyer.

**Sec. 807.** RCW 82.12.035 and 2007 c 6 s 1203 are each amended to read as follows:

A credit ~~((shall be))~~ is allowed against the taxes imposed by this chapter upon the use in this state of tangible personal property, extended warranty, digital product, or services ~~((taxable under))~~ defined as a retail sale in RCW 82.04.050 (2)(a) or (g) or (3)(a), in the ~~((state of Washington in the))~~ amount that the present user thereof or his or her bailor or donor has paid a legally imposed retail sales or use tax with respect to such property, extended warranty, digital product, or service defined as a retail sale in RCW 82.04.050 (2)(a) or (g) or (3)(a) to any other state, possession, territory, or commonwealth of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof ~~((, prior to the use of such property, extended warranty, or service in Washington))~~.

**Sec. 808.** RCW 82.12.040 and 2005 c 514 s 109 are each amended to read as follows:

(1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales of tangible personal property, digital products, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (g) or (3)(a), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section ~~((shall))~~ must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department ~~((shall))~~ must in rules specify activities which constitute engaging in business activity within this state, and ~~((shall))~~ must keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital products, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (g) or (3)(a), of his or her principals for use in this state, ~~((shall))~~ must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

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

such tax, unless the seller has taken from the buyer in good faith a copy of a direct pay permit issued under RCW 82.32.087.

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

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

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

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

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

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

**Sec. 809.** RCW 82.14.465 and 2007 c 266 s 7 are each amended to read as follows:

(1) A city, town, or county that creates a benefit zone and finances public improvements pursuant to chapter 39.100 RCW may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city, town, or county. The rate of tax shall not exceed the rate provided in RCW 82.08.020(1) in the case of a sales tax or (~~the rate provided in RCW 82.12.020(5) in the case of~~) a use tax, less the aggregate rates of any other taxes imposed on the same events that are credited against the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax rate shall be no higher than what is reasonably necessary for the local government to receive its entire annual state contribution in a ten- month period of time.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the city, town, or county at no cost to the city, town, or county.

(3) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the city, town, or county shall first have received tax allocation revenues during the preceding calendar year. The tax imposed under this section shall expire on the earlier of the date: (a) The tax allocation revenues are no longer used for public improvements and public improvement costs; (b) the bonds issued under the authority of chapter 39.100 RCW are retired, if the bonds are issued; or (c) that is thirty years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a city, town, or county imposing a tax under this section shall provide that:

- (a) The tax shall first be imposed on the first day of a fiscal year;
- (b) The amount of tax received by the local government in any fiscal year shall not exceed the amount of the state contribution;

(c) The tax shall cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax distributions totals the amount of the state contribution;

(ii) The amount of tax distributions totals the amount of local public sources, dedicated in the previous calendar year to finance public improvements authorized under chapter 39.100 RCW, expended in the previous year for public improvement costs or used to pay for other bonds issued to pay for public improvements; or

(iii) The amount of revenue from taxes imposed under this section by all cities, towns, and counties totals the annual state credit limit as provided in RCW 82.32.700(3);

(d) The tax shall be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) Any revenue generated by the tax in excess of the amounts specified in (b) and (c) of this subsection shall belong to the state of Washington.

(5) If both a county and a city or town impose a tax under this section, the tax imposed by the city, town, or county shall be credited as follows:

(a) If the county has created a benefit zone before the city or town, the tax imposed by the county shall be credited against the tax imposed by the city or town, the purpose of such credit is to give priority to the county tax; and

(b) If the city or town has created a benefit zone before the county, the tax imposed by the city or town shall be credited against the tax imposed by the county, the purpose of such credit is to give priority to the city or town tax.

(6) The department shall determine the amount of tax distributions attributable to each city, town, and county imposing a sales and use tax under this section and shall advise a city, town, or county when the tax will cease to be distributed for the remainder of the fiscal year as provided in subsection (4)(c) of this section. Determinations by the department of the amount of taxes attributable to a city, town, or county are final and shall not be used to challenge the validity of any tax imposed under this section. The department shall remit any tax revenues in excess of the amounts specified in subsection (4)(b) and (c) of this section to the state treasurer who shall deposit the moneys in the general fund.

(7) The definitions in this subsection apply throughout this section and RCW 82.14.470 unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Benefit zone" has the same meaning as provided in RCW 39.100.010.

(c) "Excess local excise taxes" has the same meaning as provided in RCW 39.100.050.

(d) "Excess state excise taxes" means the amount of excise taxes received by the state during the measurement year from taxable activity within the benefit zone over and above the amount of excise taxes received by the state during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess state excise taxes" means the entire amount of state excise taxes the state receives during a calendar year period beginning with the calendar



year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(e) "State excise taxes" means revenues derived from state retail sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount of tax distributions from all local retail sales and use taxes imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW except for the local tax authorized in this section.

(f) "Fiscal year" has the same meaning as provided in RCW 39.100.030.

(g) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess state excise taxes and excess local excise taxes.

(h) "State contribution" means the lesser of two million dollars or an amount equal to excess state excise taxes received by the state during the preceding calendar year.

(i) "Tax allocation revenues" has the same meaning as provided in RCW 39.100.010.

(j) "Public improvements" and "public improvement costs" have the same meanings as provided in RCW 39.100.010.

(k) "Local public sources" includes, but is not limited to, private monetary contributions, assessments, dedicated local government funds, and tax allocation revenues. "Local public sources" does not include local government funds derived from any state loan or state grant, any local tax that is credited against the state sales and use taxes, or any other state funds.

**Sec. 810.** RCW 82.16.010 and 2007 c 6 s 1023 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor

propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010 (~~(-PROVIDED, That)~~). However, "motor transportation business" ((~~shall~~)) does not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (3), (4), (5), (6), (7), (8), and (9) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (10)(b) apply throughout this subsection (10).

(i) "Competitive telephone service" has the same meaning as in RCW 82.04.065.

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet ((service)) access as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the

commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

**Sec. 811.** RCW 82.32.020 and 2007 c 6 s 101 are each amended to read as follows:

For the purposes of this chapter:

(1) The meaning attributed in chapters 82.01 through 82.27 RCW to the words and phrases "tax year," "taxable year," "person," "company," "gross proceeds of sales," "gross income of the business," "business," "engaging in business," "successor," "gross operating revenue," "gross income," "taxpayer," "retail sale," "seller," "buyer," "purchaser," "extended warranty," and "value of products" shall apply equally to the provisions of this chapter.

(2) Whenever "property" or "personal property" is used, those terms must be construed to include digital products unless: (a) It is clear from the context that the term "personal property" is intended only to refer to tangible personal property; (b) it is clear from the context that the term "property" is intended only to refer to tangible personal property, real property, or both; or (c) to construe the term "property" or "personal property" as including digital products would yield unlikely, absurd, or strained consequences.

(3) The definitions in this subsection apply throughout this chapter, unless the context clearly requires otherwise.

(a) "Agreement" means the streamlined sales and use tax agreement.

(b) "Associate member" means a petitioning state that is found to be in compliance with the agreement and changes to its laws, rules, or other authorities necessary to bring it into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008. The petitioning states, by majority vote, may also grant associate member status to a petitioning state that does not receive an affirmative vote of three-fourths of the petitioning states upon a finding that the state has achieved substantial compliance with the terms of the agreement as a whole, but not necessarily each required provision, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008.

(c) "Certified automated system" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) "Certified service provider" means an agent certified under the agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(e)(i) "Member state" means a state that:

(A) Has petitioned for membership in the agreement and submitted a certificate of compliance; and

(B) Before the effective date of the agreement, has been found to be in compliance with the requirements of the agreement by an affirmative vote of three-fourths of the other petitioning states; or

(C) After the effective date of the agreement, has been found to be in compliance with the agreement by a three-fourths vote of the entire governing board of the agreement.

(ii) Membership by reason of (e)(i)(A) and (B) of this subsection is effective on the first day of a calendar quarter at least sixty days after at least ten states comprising at least twenty percent of the total

population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have either been found in compliance with the agreement or have been found to be an associate member under section 704 of the agreement.

(iii) Membership by reason of (e)(i)(A) and (C) of this subsection is effective on the state's proposed date of entry or the first day of the calendar quarter after its petition is approved by the governing board, whichever is later, and is at least sixty days after its petition is approved.

(f) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(g) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(h) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subsection ((2)) (3)(h), a seller includes an affiliated group of sellers using the same proprietary system.

(i) "Source" means the location in which the sale or use of tangible personal property, a digital product, an extended warranty, or a service, subject to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to occur.

**Sec. 812.** RCW 82.32.023 and 2007 c 6 s 104 are each amended to read as follows:

For purposes of ~~((compliance with the requirements of the agreement only))~~ construing those provisions of the streamlined sales and use tax agreement that have been incorporated into this title, and unless the context requires otherwise, the terms "product" and "products" refer to tangible personal property, digital products, services, extended warranties, and anything else that can be sold or used.

## PART IX AMNESTY

**NEW SECTION. Sec. 901.** (1) Except as provided in subsection (2) of this section, no person may be held liable for the failure to collect or pay state and local sales and use taxes accrued before the effective date of this act on the sale or use of digital goods.

(2) Subsection (1) of this section does not relieve any person from liability for:

(a) State and local sales and use taxes assessed by the department of revenue, if the assessment was originally issued before January 1, 2009; and

(b) State and local sales taxes that the person collected from buyers but did not remit to the department of revenue.

(3) Nothing in this section may be construed as authorizing the refund of state and local sales and use taxes properly paid on the sale or use of digital goods before the effective date of this act.

(4) For purposes of this section, "digital goods" has the same meaning as in section 201 of this act.

## PART X MISCELLANEOUS

**NEW SECTION. Sec. 1001.** This act does not have any impact whatsoever on the characterization of digital products, as defined in section 201 of this act, as tangible or intangible personal property for purposes of property taxation and may not be used in any way in construing any provision of Title 84 RCW.

**NEW SECTION. Sec. 1002.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 1003.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009.

**NEW SECTION. Sec. 1004.** Part headings used in this act are not any part of the law."

Correct the title.

Representative Orcutt spoke in favor of the adoption of the amendment.

Representative Hunter spoke against the adoption of the amendment.

Amendment (540) was not adopted.

Representative Hunter moved the adoption of amendment (349):

Strike everything after the enacting clause and insert the following:

#### **"PART I BACKGROUND AND FINDINGS**

**NEW SECTION. Sec. 101.** (1) In 2007, the legislature directed the department of revenue (department) to conduct a study of the taxation of electronically delivered products (digital products). In conducting the study, the department was assisted by a committee comprised of legislators, academics, and individuals representing different segments of government and industry (the "study committee").

(2) At the conclusion of the study, the department issued its final report December 5, 2008. The final report noted that any recommendations to the legislature should promote the following goals: (a) Simplicity and fairness; (b) conformity with the streamlined sales and use tax agreement; (c) neutrality regardless of industry, content, and delivery method while taking the purchaser's underlying property rights into account; (d) consideration given to the revenue impact of potential changes to the tax base; (e) consideration given to the impact caused by the pyramiding of business inputs; (f) maintaining or enhancing the competitiveness of businesses located in Washington; and (g) maintaining certainty, consistency, durability, and equity despite changes in technology and business models.

(3) While the department's final report did not contain recommendations for the legislature, the report's conclusion notes that the study committee found that legislation implementing digital products tax policy is necessary in 2009 to: (a) Protect the sales and use tax base; (b) establish certainty in our tax code; (c) maintain conformity with the streamlined sales and use tax agreement; and (d) encourage economic development.

(4) This act is the outgrowth of the work of the department and the study committee. The purpose of this act is to implement those findings of the study committee noted in subsection (3) of this section. This act also takes into account the goals noted in subsection

(2) of this section. Moreover, this act contains specific provisions to: (a) Provide protections for taxpayers who failed to pay or collect tax on digital products for periods before the effective date of this act; and (b) promote the location of server farms and data centers in this state by preventing the department from considering a person's ownership of, or rights in, digital goods or digital codes residing on servers located in this state in determining whether the person has nexus with this state for purposes of the taxes imposed in Title 82 RCW.

#### **PART II DIGITAL PRODUCTS DEFINITIONS**

**NEW SECTION. Sec. 201.** A new section is added to chapter 82.04 RCW to be codified between RCW 82.04.010 and 82.04.220 to read as follows:

(1) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

(2) "Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(3) "Digital books" means works that are generally recognized in the ordinary and usual sense as books.

(4) "Digital code" means a code that provides a purchaser with the right to obtain one or more digital products, if all of the digital products to be obtained through the use of the code have the same sales and use tax treatment. "Digital code" does not include a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser. "Digital code" also does not include a code that represents a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value. A digital code may be obtained by any means, including e-mail or by tangible means regardless of its designation as song code, video code, book code, or some other term.

(5)(a) "Digital automated service," except as provided in (b) of this subsection (5), means any service transferred electronically that uses one or more software applications.

(b) "Digital automated service" does not include:

(i) Any service that primarily involves the application of human effort, and the human effort originated after the customer requested the service;

(ii) The loaning or transferring of money or the purchase, sale, or transfer of financial instruments. For purposes of this subsection (5)(b)(ii), "financial instruments" include cash, accounts receivable and payable, loans and notes receivable and payable, debt securities, equity securities, as well as derivative contracts such as forward contracts, swap contracts, and options;

(iii) Dispensing cash or other physical items from a machine;

(iv) Payment processing services;

(v) Parimutuel wagering and handicapping contests as authorized by chapter 67.16 RCW;

(vi) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(vii) The internet and internet access as those terms are defined in RCW 82.04.297;

(viii) The service described in RCW 82.04.050(6)(b);

(ix) Online educational programs provided by a:

(A) Public or private elementary or secondary school; or

(B) An institution of higher education as defined in sections 1001 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. For

purposes of this subsection (5)(b)(ix)(B), an online educational program must be encompassed within the institution's accreditation;

(x) Travel agent services, including online travel services, and automated systems used by travel agents to book reservations;

(xi) A service that allows the person receiving the service to make online sales of products or services, digital or otherwise, using the service provider's web site. The service described in this subsection (5)(b)(xi) does not include the underlying sale of the products or services, digital or otherwise, by the person receiving the service; and

(xii) Online classified advertising services.

(6)(a) "Digital goods," except as provided in (b) of this subsection (6), means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, including, but not limited to, specified digital products and other products transferred electronically not included within the definition of specified digital products.

(b) The term "digital goods" does not include:

(i) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(ii) Computer software as defined in RCW 82.04.215;

(iii) Internet access as defined in RCW 82.04.297;

(iv) The representation of a personal service in electronic form, such as an electronic copy of an engineering report prepared by an engineer, that primarily involves the application of human effort, and the human effort originated after the customer requested the service; and

(v) Digital automated services and services and activities excluded from the definition of digital automated services in subsection (5)(b) of this section.

(7) "Digital products" means digital goods and digital automated services.

(8) "Electronically transferred" or "transferred electronically" means obtained by the purchaser by means other than tangible storage media. It is not necessary that a copy of the product be physically transferred to the purchaser. So long as the purchaser may access the product, it will be considered to have been electronically transferred to the purchaser.

(9) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works, and digital books.

### PART III IMPOSITION OF SALES AND USE TAXES ON DIGITAL PRODUCTS

**Sec. 301.** RCW 82.04.050 and 2007 c 54 s 4 and 2007 c 6 s 1004 are each reenacted and amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or

component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" (~~shall include~~) includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but (~~shall~~) may not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and

upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it (~~shall be~~) is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (~~and~~) (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section (~~shall~~) may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" (~~shall include~~) includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term (~~shall~~) also includes:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term (~~shall~~) does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term (~~shall~~) also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term (~~shall~~) also includes the sale of prewritten computer software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user(~~, but shall~~). For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten computer software.

(b) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(7) The term (~~shall~~) also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term (~~shall~~) does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility,

bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

~~((9))~~ (10) The term ~~((shaff))~~ also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor ~~((shaff))~~ does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under Title 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

~~((10))~~ (11) The term ~~((shaff))~~ does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor ~~((shaff))~~ does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor ~~((shaff))~~ does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

~~((11))~~ (12) The term ~~((shaff))~~ does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

**Sec. 302.** RCW 82.04.190 and 2007 c 6 s 1008 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) of

consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon or (e) of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) ~~((any person who is an end user of software; and (f)))~~ any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business; and (f) any person who is an end user of software. For purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who purchases or otherwise acquires prewritten computer software, who provides services described in RCW 82.04.050(6)(b) and who will charge consumers for the right to access and use the prewritten computer software, is not an end user of the prewritten computer software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development; ~~((and))~~

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10) Any person who purchases, acquires, or uses services described in RCW 82.04.050(6)(b) other than for resale in the regular course of business; and

(11)(a) Any end user of a digital product or digital code.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital products or digital codes for the purpose of giving away such products or codes will not be considered to have engaged in the distribution or redistribution of such products or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code is an end user if that purchaser does not have the right to further redistribute,

after the digital code is redeemed, the underlying digital product to which the digital code relates.

**Sec. 303.** RCW 82.08.010 and 2007 c 6 s 1302 are each amended to read as follows:

For the purposes of this chapter:

(1)(a) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (i) The seller's cost of the property sold; (ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (iv) delivery charges; and (v) installation charges.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe;

(b) "Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(c) "Selling price" or "sales price" includes consideration received by the seller from a third party if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the criteria in this subsection (1)(c)(iv) is met:

(A) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(B) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount, however a "preferred customer" card that is available to any patron does not constitute membership in such a group; or

(C) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser;

(2)(a) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean:

(i) The state and its departments and institutions when making sales to the state and its departments and institutions; or

(ii) A professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale at retail that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the seller and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(6) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within this state" shall apply equally to the provisions of this chapter;

(7) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(9) The definitions in section 201 of this act apply to this chapter; and

(10) For the purposes of the taxes imposed under this chapter and chapter 82.12 RCW, whenever the terms "property" or "personal property" are used, those terms must be construed to include digital goods and digital codes unless:

(a) It is clear from the context that the term "personal property" is intended only to refer to tangible personal property;

(b) It is clear from the context that the term "property" is intended only to refer to tangible personal property, real property, or both; or

(c) To construe the term "property" or "personal property" as including digital goods and digital codes would yield unlikely, absurd, or strained consequences.

**Sec. 304.** RCW 82.12.010 and 2006 c 301 s 3 are each amended to read as follows:

For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010(-);

(2)(a) "Value of the article used" shall be the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or



improved product, the value of the article used shall be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used shall be determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

(3) "Value of the service used" means the purchase price for the digital automated service or other service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used shall be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe;

(4) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used shall be determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe;

(5) "Value of the digital good or digital code used" means the purchase price for the digital good or digital code, the use of which is taxable under this chapter. If the digital good or digital code is acquired other than by purchase, the value of the digital good or digital code must be determined as nearly as possible according to the retail selling price at place of use of similar digital goods or digital codes of like quality and character under rules the department may prescribe;

(6) "Use," "used," "using," or "put to use" ((shall)) have their ordinary meaning, and ((shall)) mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state; ((and))

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(d) With respect to a digital good or digital code, the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code;

(e) With respect to a digital automated service, the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service;

(f) With respect to a service defined as a retail sale in RCW 82.04.050(6)(b), the first act within this state by which the taxpayer, as a consumer, accesses the prewritten computer software; and

(g) With respect to a service defined as a retail sale in RCW 82.04.050(2)(g), the first act within this state after the service has been performed by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good upon which the service was performed;

((6)) (7) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

((7)) (8)(a)(i) Except as provided in (a)(ii) of this subsection ((7)) (8), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, digital good, digital code, or a sale of any digital automated service or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

((8)) (9) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

((9)) (10) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection ((9)) (10), the use of the property shall be deemed to be by such consumer.

**Sec. 305.** RCW 82.12.020 and 2005 c 514 s 105 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) ((Any)) Article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7), including tangible personal property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar

articles are manufactured or are available for purchase within this state;

(b) ~~((any))~~ Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both; ~~((or))~~

(c) ~~((any))~~ Services defined as a retail sale in RCW 82.04.050(2) (a) or (g), (3)(a), or (6)(b), excluding services defined as a retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

~~(d) Extended warranty; or~~

~~(e)(i) Digital good, digital code, or digital automated service, including the use of any services provided by a seller exclusively in connection with digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.~~

~~(ii) With respect to the use of digital goods, digital automated services, and digital codes acquired by purchase, the tax imposed in this subsection (1)(e) applies in respect to:~~

~~(A) Sales in which the seller has granted the purchaser the right of permanent use;~~

~~(B) Sales in which the seller has granted the purchaser a right of use that is less than permanent;~~

~~(C) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and~~

~~(D) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.~~

~~(iii) With respect to digital goods, digital automated services, and digital codes acquired other than by purchase, the tax imposed in this subsection (1)(e) applies regardless of whether or not the consumer has a right of permanent use or is obligated to make continued payment as a condition of use.~~

~~(2) ((This tax shall apply to the use of every extended warranty, service defined as a retail sale in RCW 82.04.050(2)(a) or (3)(a), and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.~~

~~((3))~~ The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or service taxable under RCW 82.04.050(2) (a) or (g), (3)(a), ~~((purchased at retail or acquired by lease, gift, or bailment))~~ or (6)(b), if the sale to, or the use by, the present user or ~~((his))~~ the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by ~~((his))~~ the present user's bailor or donor.

~~((4))~~ (3)(a) Except as provided in this section, payment of the tax imposed by this chapter or chapter 82.08 RCW by one purchaser or user of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service ~~((of the tax imposed by chapter 82.08 or 82.12 RCW shall))~~ does not have the effect of exempting any other purchaser or user of the same property, extended warranty, digital good, digital code, digital automated service, or other service from the taxes imposed by such chapters.

~~(b) The tax imposed by this chapter does not apply:~~

~~(i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor; ~~((or))~~~~

~~(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by~~

the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use; ~~((or))~~

~~(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961 ~~((the tax imposed by this chapter does not apply)); or~~~~

~~(iv) To the use of digital goods or digital automated services, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.~~

~~((5))~~ (4)(a) Except as provided in (b) of this subsection (4), the tax ~~((shall be))~~ is levied and must be collected in an amount equal to the value of the article used, value of the digital good or digital code used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020 ~~((except)).~~

~~(b) In the case of a seller required to collect use tax from the purchaser, the tax ~~((shall))~~ must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020.~~

## PART IV

### BUSINESS AND OCCUPATION TAX CHANGES

**NEW SECTION. Sec. 401.** A new section is added to chapter 82.04 RCW to be codified between RCW 82.04.250 and 82.04.310 to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail or wholesale of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b), as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent in the case of retail sales and by the rate of 0.484 percent in the case of wholesale sales.

(2) For purposes of this section, a person is considered to be engaging within this state in the business of making sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b), if the person makes sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b) and the sales are sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

(3) A person subject to tax under this section must report the tax imposed in this chapter in an electronic format provided by the department.

**NEW SECTION. Sec. 402.** A new section is added to chapter 82.04 RCW to read as follows:

(1)(a) Any person subject to tax under section 401 of this act engaging both within and outside this state in the business of making sales at retail or wholesale of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b), must apportion to this state that portion of apportionable income derived from activity performed within this state as provided in subsection (2) of this section.

(b) For purposes of this subsection, a person is considered to be engaging outside this state in the business of making sales of digital goods, digital codes, digital automated services, or services described

in RCW 82.04.050 (2)(g) or (6)(b) if the person makes any sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b) that are sourced to a jurisdiction other than Washington under RCW 82.32.730 for sales tax purposes or would have been sourced to a jurisdiction other than Washington under RCW 82.32.730 if the sale had been a retail sale.

(2) Apportionable income must be apportioned to Washington by multiplying the apportionable income by the sales factor.

(3)(a) The sales factor is a fraction, the numerator of which is the total receipts of the taxpayer from making sales of digital goods, digital codes, digital automated services, and services described in RCW 82.04.050 (2)(g) or (6)(b) in this state during the tax period, and the denominator of which is the total receipts of the taxpayer derived from such activity everywhere during the tax period.

(b) For purposes of computing the sales factor, sales are considered in this state if the sale was sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

(4) For purposes of this section, "apportionable income" means the gross income of the business taxable under section 401 of this act, including income received from activities outside this state if the income would be taxable under section 401 of this act if received from activities in this state.

**Sec. 403.** RCW 82.04.060 and 2007 c 6 s 1007 are each amended to read as follows:

"Sale at wholesale" or "wholesale sale" means:

(1) Any sale, which is not a sale at retail, of:

(a) Tangible personal property(~~(- any sale of)~~);

(b) Services defined as a retail sale in RCW 82.04.050(2) (a)(~~(- any sale of)~~) or (g);

(c) Amusement or recreation services as defined in RCW 82.04.050(3)(a)(~~(- any sale of canned software, any sale of an)~~);

(d) Prewritten computer software;

(e) Services described in RCW 82.04.050(6)(b);

(f) Extended (~~(warranty)~~) warranties as defined in RCW 82.04.050(7)(~~(- or any sale of)~~);

(g) Competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065(~~(- which is not a sale at retail)~~); or

(h) Digital goods, digital codes, or digital automated services; and

(2) Any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers(~~(- PROVIDED, That the term)~~). For the purposes of this subsection (2), "real or personal property" (~~(as used in this subsection shall)~~) does not include any natural products named in RCW 82.04.100.

**Sec. 404.** RCW 82.04.070 and 1961 c 15 s 82.04.070 are each amended to read as follows:

"Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services, and/or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

**Sec. 405.** RCW 82.04.110 and 1997 c 453 s 1 are each amended to read as follows:

(1) Except as otherwise provided in this section, "manufacturer" means every person who, either directly or by contracting with others

for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his or her own materials or ingredients any articles, substances, or commodities.

(2)(a) When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, all or a portion of the materials that become a part or whole of the manufactured article, the department shall prescribe equitable rules for determining tax liability(~~(- PROVIDED, That)~~).

(b) A person who produces aluminum master alloys is a processor for hire rather than a manufacturer, regardless of the portion of the aluminum provided by that person's customer(~~(- PROVIDED FURTHER, That)~~). For the purposes of this subsection (2)(b), "aluminum master alloy" means an alloy registered with the aluminum association as a grain refiner or a hardener alloy using the American national standards institute designating system H35.3.

(3) A nonresident of this state who is the owner of materials processed for it in this state by a processor for hire shall not be deemed to be engaged in business in this state as a manufacturer because of the performance of such processing work for it in this state(~~(- PROVIDED FURTHER, That)~~).

(4) The owner of materials from which a nuclear fuel assembly is made for it by a processor for hire shall not be subject to tax under this chapter as a manufacturer of the fuel assembly.

(~~For the purposes of this section, "aluminum master alloy" means an alloy registered with the Aluminum Association as a grain refiner or a hardener alloy using the American National Standards Institute designating system H35.3.~~)

(5) For purposes of this section, the terms "articles," "substances," "materials," "ingredients," and "commodities" do not include digital goods.

**Sec. 406.** RCW 82.04.120 and 2003 c 168 s 604 are each amended to read as follows:

"To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include: (1) The production or fabrication of special made or custom made articles; (2) the production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; (3) cutting, delimiting, and measuring of felled, cut, or taken trees; and (4) crushing and/or blending of rock, sand, stone, gravel, or ore.

"To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state; the growing, harvesting, or producing of agricultural products; packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage; the production of digital goods; or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

**Sec. 407.** RCW 82.04.2907 and 2001 c 320 s 3 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of receiving income from royalties or charges in the nature of royalties for the granting of intangible rights, such as copyrights, licenses, patents, or franchise fees, the amount of tax with respect to such business shall be equal to the gross income from royalties or

charges in the nature of royalties from the business multiplied by the rate of 0.484 percent.

(2) For the purposes of this section, "royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. It does not include compensation for any natural resource ~~((or)), the licensing of ((earned))~~ prewritten computer software to the end user, or the licensing or use of digital goods, digital codes, or digital automated services.

**Sec. 408.** RCW 82.04.297 and 2000 c 103 s 5 are each amended to read as follows:

(1) The provision of internet ~~((services))~~ access is subject to tax under RCW 82.04.290(2).

(2) "Internet" ~~((means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web))~~ and "internet access" have the same meaning as those terms are defined in the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as existing on July 1, 2009.

(3) ~~(( "Internet service" means a service that includes computer processing applications, provides the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of internet electronic mail, access to the internet for information retrieval, and hosting of information for retrieval over the internet or the graphical subnetwork called the world wide web))~~ Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

**Sec. 409.** RCW 82.04.363 and 1997 c 388 s 1 are each amended to read as follows:

This chapter does not apply to amounts received by a nonprofit organization from the sale or furnishing of the following items at a camp or conference center conducted on property exempt from property tax under RCW 84.36.030 (1), (2), or (3):

(1) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;

(2) Food and meals;

(3) Books, tapes, and other products, including books and other products that are transferred electronically, that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large.

**Sec. 410.** RCW 82.04.4282 and 1994 c 124 s 3 are each amended to read as follows:

In computing tax there may be deducted from the measure of tax amounts derived from bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, (5) tuition fees, (6) charges made by a nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public, (7) charges made for operation of privately operated kindergartens, and (8) endowment funds. This section ~~((shall))~~ may not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property, digital goods, digital codes, or digital automated services, or upon providing facilities or other services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the

value of such goods or services shall not be considered as a deduction under this section.

**Sec. 411.** RCW 82.04.470 and 2007 c 6 s 1201 are each amended to read as follows:

(1) Unless a seller has taken from the buyer a resale certificate, the burden of proving that a sale ~~((of tangible personal property, or of services, was not a sale at retail shall be))~~ is a wholesale sale rather than a retail sale is upon the person who made it.

(2) If a seller does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of sales tax.

(3) The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.

(4) As used in this section, "resale certificate" means documentation provided by a buyer to a seller stating that the purchase is for resale in the regular course of business, or that the buyer is exempt from retail sales tax, and containing the following information:

(a) The name and address of the buyer;

(b) The uniform business identifier or revenue registration number of the buyer, if the buyer is required to be registered;

(c) The type of business engaged in;

(d) The categories of items or services to be purchased for resale or that are exempt, unless the buyer presents a blanket resale certificate;

(e) The date on which the certificate was provided;

(f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are exempt from tax pursuant to statute;

(g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale or exemption privilege claimed on the certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law;

(h) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(i) The signature of the authorized individual; and

(j) The name of the seller.

(5) Subsection (4)(h), (i), and (j) of this section does not apply if the certificate is provided in a format other than paper. If the certificate is provided in a format other than paper, the name of the individual providing the certificate must be included in the certificate.

**Sec. 412.** RCW 82.04.480 and 1975 1st ex.s. c 278 s 44 are each amended to read as follows:

(1) Every consignee, bailee, factor, or auctioneer having either actual or constructive possession of ~~((tangible))~~ personal property, or having possession of the documents of title thereto, with power to sell such ~~((tangible))~~ personal property in ~~((his or its))~~ that person's own name and actually so selling, ((shall be)) is deemed the seller of such ~~((tangible))~~ personal property within the meaning of this chapter ~~((; and further,)).~~ Furthermore, the consignor, bailor, principal, or

owner (~~(shall be)~~) is deemed a seller of such property to the consignee, bailee, factor, or auctioneer.

(2) The burden (~~(shall be upon)~~) is on the taxpayer in every case to establish the fact that (~~(he)~~) the taxpayer is not engaged in the business of (~~(selling tangible personal property)~~) making retail sales or wholesale sales but is acting merely as broker or agent in promoting sales for a principal. Such claim will be allowed only when the taxpayer's accounting records are kept in such manner as required by rule by the department (~~(of revenue shall by general regulation provide)~~).

(3) For purposes of this section, "personal property" means tangible personal property, digital goods, digital codes, and extended warranties.

**Sec. 413.** RCW 82.04.065 and 2007 c 6 s 1003 are each amended to read as follows:

(1) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(2) "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services," including but not limited to "detailed telecommunications billing," "directory assistance," "vertical service," and "voice mail services."

(3) "Conference-bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference-bridging service" does not include the telecommunications services used to reach the conference bridge.

(4) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(5) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

(6) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference-bridging services.

(7) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to use the voice mail service.

(8) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. "Telecommunications service" does not include:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;

(d) Advertising, including but not limited to directory advertising;

(e) Billing and collection services provided to third parties;

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include but are not limited to cable service as defined in 47 U.S.C. Sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R.;

(h) Ancillary services; (~~(or)~~)

(i) Digital products delivered electronically, including but not limited to (~~(software,)~~) music, video, reading materials, or ring tones; or

(j) Software delivered electronically.

(9) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.

(10) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: Collection services provided by the seller of the telecommunications services to the subscriber, or services or products sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

(11) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(12) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(13) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; these transmissions may include messages and/or sounds.

(14) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(15) "Prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(16) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels

between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

(17) "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(18) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, regardless of whether individual transmissions originate or terminate within the licensed service area of the mobile telecommunications service provider.

(19) "Customer" means: (a) The person or entity that contracts with the home service provider for mobile telecommunications services; or (b) the end user of the mobile telecommunications service, if the end user of mobile telecommunications services is not the contracting party, but this subsection (19)(b) applies only for the purpose of determining the place of primary use. The term does not include a reseller of mobile telecommunications service, or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(20) "Designated database provider" means a person representing all the political subdivisions of the state that is:

(a) Responsible for providing an electronic database prescribed in 4 U.S.C. Sec. 119(a) if the state has not provided an electronic database; and

(b) Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide a database prescribed by 4 U.S.C. Secs. 116 through 126.

(21) "Enhanced zip code" means a United States postal zip code of nine or more digits.

(22) "Home service provider" means the facilities-based carrier or reseller with whom the customer contracts for the provision of mobile telecommunications services.

(23) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(24) "Mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999.

(25) "Mobile telecommunications service provider" means a home service provider or a serving carrier.

(26) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) Within the licensed service area of the home service provider.

(27) "Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

(28) "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. "Reseller" does not include a serving carrier with whom a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(29) "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

(30) "Taxing jurisdiction" means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

## PART V SALES TAX EXEMPTIONS

**NEW SECTION. Sec. 501.** A new section is added to chapter 82.08 RCW to read as follows:

The tax imposed by RCW 82.08.020 does not apply to the sale of a digital code for one or more digital products if the sale of the digital products to which the digital code relates is exempt from the tax levied by RCW 82.08.020.

**NEW SECTION. Sec. 502.** A new section is added to chapter 82.08 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, the tax imposed by RCW 82.08.020 does not apply to sales of audio or video programming by a radio or television broadcaster.

(2)(a) Except as provided in (b) of this subsection, the exemption provided in subsection (1) of this section does not apply in respect to programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service.

(b) Notwithstanding (a) of this subsection, the exemption provided in this section applies to the sale of programming described in (a) of this subsection if the seller is subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived from the sale.

(3) For purposes of this section, "radio or television broadcaster" includes satellite radio providers, satellite television providers, cable television providers, and providers of subscription internet television.

**NEW SECTION. Sec. 503.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to sales of digital goods, digital codes, digital automated services, or services defined as a retail sale in RCW 82.04.050(6)(b) for purposes of:

(a) Consuming the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) in producing for sale a new product, where the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) becomes an ingredient or component of the new product. A digital code becomes an ingredient or component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes an ingredient or component of a new product; or

(b) Making the digital good or digital automated service, including a digital good or digital automated service acquired through the use of a digital code, or service defined as a retail sale in RCW

82.04.050(6)(b) available free of charge for the use or enjoyment of others.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

**NEW SECTION. Sec. 504.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to the sale to a business of standard digital information and services rendered in respect to standard digital information, where the standard digital information and services are purchased solely for business purposes.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

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

(a) "Business purposes" means any purpose relevant to the business needs of the taxpayer claiming an exemption under this section. Business purposes do not include any personal, family, or household purpose. The term also does not include any activity conducted by a government entity as that term is defined in RCW 7.25.005; and

(b) "Standard digital information" means a digital good consisting primarily of data, facts, or information, or any combination thereof, not generated or compiled for a specific client or customer.

**Sec. 505.** RCW 82.08.02525 and 1996 c 63 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to the sale of public records by state and local agencies, as the terms are defined in RCW 42.17.020, that are copied or transferred electronically under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts.

**Sec. 506.** RCW 82.08.0253 and 1980 c 37 s 21 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to:

(a) The distribution and newsstand sale of printed newspapers; and

(b) The sale of newspapers transferred electronically, provided that the electronic version of a printed newspaper:

(i) Shares content with the printed newspaper; and

(ii) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper.

(2) For purposes of this section, "printed newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper.

**Sec. 507.** RCW 82.08.02535 and 1995 2nd sp.s. c 8 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to ((the)) subscription sales ((and distribution)) of magazines or periodicals ((by subscription)), including magazines and periodicals transferred electronically to the buyer, for the purposes of fund-

raising by (1) educational institutions as defined in RCW 82.04.170, or (2) nonprofit organizations engaged in activities primarily for the benefit of boys and girls nineteen years and younger.

**Sec. 508.** RCW 82.08.02537 and 1996 c 272 s 2 are each amended to read as follows:

The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to sales of academic transcripts by educational institutions, including academic transcripts transferred electronically.

**Sec. 509.** RCW 82.08.0256 and 1980 c 37 s 24 are each amended to read as follows:

The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to sales (including transfers of title through decree of appropriation) heretofore or hereafter made of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a political subdivision thereof for use in conducting any business defined in RCW 82.16.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11). For purposes of this section, "operating property" includes digital goods and digital codes.

**Sec. 510.** RCW 82.08.02565 and 1999 c 211 s 5 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to sales to a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment, but only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department by rule. The seller ~~((shall))~~ must retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation, testing operation, or research and development operation. "Machinery and equipment" also includes digital goods.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or

(viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(e) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(f) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

(g) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(h) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

**Sec. 511.** RCW 82.08.0257 and 1980 c 37 s 25 are each amended to read as follows:

The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to auction sales made by or through auctioneers of ~~((tangible))~~ personal property (including household goods) ~~((which have))~~ that has been used in conducting a farm activity, when the seller thereof is a farmer and the sale is held or conducted upon a farm and not otherwise.

**Sec. 512.** RCW 82.08.0273 and 2007 c 135 s 2 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to sales to nonresidents of this state of tangible personal property, digital goods, and digital codes, when such property is for use outside this state ~~((when)), and~~ the purchaser (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence

to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no ~~((separately))~~ publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the requirements in subsections (1) and (3) through (6) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as provided in this section.

(b) Acceptable proof of a nonresident person's status ~~((shall))~~ includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(4) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, ~~((shall be))~~ is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6)(a) Any vendor who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any vendor who fails to maintain records of sales to nonresidents as provided in this section, ~~((shall be))~~ is personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, ~~((shall be))~~ is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the



purchaser and the vendor (~~shall be~~) are liable for any penalties and interest assessable under chapter 82.32 RCW.

**Sec. 513.** RCW 82.08.805 and 2006 c 182 s 3 are each amended to read as follows:

(1) A person who has paid tax under RCW 82.08.020 for (~~tangible~~) personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or (~~tangible~~) personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2012.

**Sec. 514.** RCW 82.08.995 and 2007 c 381 s 2 are each amended to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to sales of (~~tangible~~) personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615.

**NEW SECTION. Sec. 515.** RCW 82.08.705 (Exemptions--Financial information delivered electronically) and 2007 c 182 s 1 are each repealed.

## PART VI USE TAX EXEMPTIONS

**NEW SECTION. Sec. 601.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply in respect to the use of a digital code for one or more digital products, if the use of the digital products to which the digital code relates is exempt from the tax levied by RCW 82.12.020.

**NEW SECTION. Sec. 602.** A new section is added to chapter 82.12 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, the provisions of this chapter do not apply to the use of audio or video programming provided by a radio or television broadcaster.

(2)(a) Except as provided in (b) of this subsection, the exemption provided in subsection (1) of this section does not apply in respect to programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service.

(b) Notwithstanding (a) of this subsection, the exemption provided in this section applies to the sale of programming described in (a) of this subsection if the seller is subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived from the sale.

(3) For purposes of this section, "radio or television broadcaster" includes satellite radio providers, satellite television providers, cable television providers, providers of subscription internet television, and

persons who provide radio or television broadcasting to listeners or viewers for no charge.

**NEW SECTION. Sec. 603.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply to the use of digital goods, digital codes, digital automated services, or services defined as a retail sale in RCW 82.04.050(6)(b) for purposes of:

(1) Consuming the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) in producing for sale a new product, where the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) becomes an ingredient or component of the new product. A digital code becomes an ingredient or component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes an ingredient or component of a new product; or

(2) Making the digital good or digital automated service, including a digital good or digital automated service acquired through the use of a digital code, or service defined as a retail sale in RCW 82.04.050(6)(b) available free of charge for the use or enjoyment of others.

**NEW SECTION. Sec. 604.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply to the use by students of digital goods furnished by a public or private elementary or secondary school, or an institution of higher education as defined in sections 1001 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009.

**NEW SECTION. Sec. 605.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of digital goods that are:

(a) Of a noncommercial nature, such as personal e-mail communications;

(b) Created solely for an internal audience; or

(c) Created solely for the business needs of the person who created the digital good and is not the type of digital good that is offered for sale, including business e-mail communications.

(2) This section does not apply to the use of any digital goods purchased by the user, the user's donor, or anybody on the user's behalf.

**NEW SECTION. Sec. 606.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply in respect to the use of digital products or digital codes obtained by the end user free of charge.

**NEW SECTION. Sec. 607.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply to the use by a business of standard digital information and services rendered in respect to standard digital information, where the standard digital information and services are used solely for business purposes.

(2) For purposes of this section, the definitions in section 504 of this act apply.

**Sec. 608.** RCW 82.12.0251 and 2005 c 514 s 106 are each amended to read as follows:

The provisions of this chapter (~~shall~~) do not apply in respect to the use:

(1) Of any article of tangible personal property or any digital good or digital code, and any services that were rendered in respect to such property, brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily

within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington;

(2) By a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060, and services rendered outside the state of Washington in respect to such property;

(3) Of household goods, including digital goods, and digital codes, personal effects, ~~((and))~~ private motor vehicles, and services rendered in respect to such property, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles and services were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington. For purposes of this subsection, private motor vehicles do not include motor homes;

(4) Of an extended warranty, to the extent that the property covered by the extended warranty is exempt under this section from the tax imposed under this chapter.

For purposes of this section, "state" means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, and "services" means services defined as retail sales in RCW 82.04.050(2) (a) or (g).

**Sec. 609.** RCW 82.12.02525 and 1996 c 63 s 2 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply with respect to the use of public records sold by state and local agencies, as the terms are defined in RCW 42.17.020, including public records transferred electronically that are obtained under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts.

**Sec. 610.** RCW 82.12.0255 and 2005 c 514 s 107 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service which the state is prohibited from taxing under the Constitution of the state or under the Constitution or laws of the United States.

**Sec. 611.** RCW 82.12.0257 and 1980 c 37 s 57 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of any article of ~~((tangible))~~ personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, by the state or a political subdivision thereof in conducting any business defined in RCW 82.16.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11). For the purposes of this section, "operating property" includes digital goods and digital codes.

**Sec. 612.** RCW 82.12.0258 and 1980 c 37 s 58 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of ~~((tangible))~~ personal property (including household goods) ~~((which have))~~ that has been used in conducting a farm activity, if such property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise.

**Sec. 613.** RCW 82.12.0259 and 2003 c 5 s 7 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of ~~((tangible))~~ personal property or the use of digital automated services or services defined in RCW 82.04.050 (2)(a) or (6)(b) by corporations ~~((which))~~ that have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, flood, and other national calamities and to devise and carry on measures for preventing the same.

**Sec. 614.** RCW 82.12.0315 and 2003 c 5 s 10 are each amended to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of:

(a) Production equipment rented to a motion picture or video production business;

(b) Production equipment acquired and used by a motion picture or video production business in another state, if the acquisition and use occurred more than ninety days before the time the motion picture or video production business entered this state; and

(c) Production services that are within the scope of RCW 82.04.050(2) (a) or (g) and are sold to a motion picture or video production business.

(2) As used in this section, "production equipment," "production services," and "motion picture or video production business" have the meanings given in RCW 82.08.0315.

(3) The exemption provided for in this section shall not apply to the use of production equipment rented to, or production equipment or production services that are within the scope of RCW 82.04.050(2) (a) or (g) acquired and used by, a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050.

**Sec. 615.** RCW 82.12.02595 and 2004 c 155 s 1 are each amended to read as follows:

(1) This chapter does not apply to the use by a nonprofit charitable organization or state or local governmental entity of ~~((any item of tangible))~~ personal property that has been donated to the nonprofit charitable organization or state or local governmental entity, or to the subsequent use of the property by a person to whom the property is donated or bailed in furtherance of the purpose for which the property was originally donated.

(2) This chapter does not apply to the donation of ~~((tangible))~~ personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge.

(3) This chapter does not apply to the use by a nonprofit charitable organization of labor and services rendered in respect to installing, repairing, cleaning, altering, imprinting, or improving personal property provided to the charitable organization at no charge, or to the donation of such services.

(4) This chapter does not apply to the donation of amusement and recreation services without intervening use to a nonprofit organization or state or local governmental entity, to the use by a nonprofit organization or state or local governmental entity of amusement and recreation services, or to the subsequent use of the services by a person to whom the services are donated or bailed in furtherance of the purpose for which the services were originally donated. As used in this subsection, "amusement and recreation services" has the meaning in RCW 82.04.050(3)(a).

**Sec. 616.** RCW 82.12.0272 and 1980 c 37 s 70 are each amended to read as follows:

The provisions of this chapter (~~(shall)~~) do not apply in respect to the use of (~~(tangible)~~) personal property held for sale and displayed in single trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the sale of products or services.

**Sec. 617.** RCW 82.12.0284 and 2007 c 54 s 15 are each amended to read as follows:

The provisions of this chapter (~~(shall)~~) do not apply in respect to the use of computers, computer components, computer accessories, (~~(or)~~) computer software, digital goods, or digital codes, irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW, in this state. For purposes of this section, "computer" and "computer software" have the same meaning as in RCW 82.04.215.

**Sec. 618.** RCW 82.12.0345 and 1994 c 124 s 11 are each amended to read as follows:

The tax imposed by RCW 82.12.020 (~~(shall)~~) does not apply in respect to the use of:

(1) Printed newspapers as defined in RCW 82.08.0253; and

(2) Newspapers transferred electronically, provided that the electronic version of a printed newspaper:

(a) Shares content with the printed newspaper; and

(b) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper.

**Sec. 619.** RCW 82.12.0347 and 1996 c 272 s 3 are each amended to read as follows:

The provisions of this chapter (~~(shall)~~) do not apply in respect to the use of academic transcripts, including academic transcripts transferred electronically.

**Sec. 620.** RCW 82.12.805 and 2006 c 182 s 4 are each amended to read as follows:

(1) A person who is subject to tax under RCW 82.12.020 for (~~(tangible)~~) personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or (~~(tangible)~~) personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit shall be equal to the state share of use tax computed to be due under RCW 82.12.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2012.

**Sec. 621.** RCW 82.12.860 and 2006 c 11 s 1 are each amended to read as follows:

(1) This chapter does not apply to state credit unions with respect to the use of any article of tangible personal property, digital good, digital code, digital automated service, service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or extended warranty, acquired from a federal credit union, foreign credit union, or out-of-state credit union as a result of a merger or conversion.

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

(a) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(b) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(c) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(d) "State credit union" means a credit union organized and operating under the laws of this state.

**Sec. 622.** RCW 82.12.995 and 2007 c 381 s 3 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of (~~(tangible)~~) personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615.

**NEW SECTION. Sec. 623.** RCW 82.12.705 (Exemptions--Financial information delivered electronically) and 2007 c 182 s 2 are each repealed.

## PART VII

### SOURCING AND SALES/USE TAX APPORTIONMENT

**NEW SECTION. Sec. 701.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to the sale of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) to a buyer that provides the seller with an exemption certificate claiming multiple points of use. An exemption certificate claiming multiple points of use must be in a form and contain such information as required by the department.

(2) A buyer is entitled to use an exemption certificate claiming multiple points of use only if the buyer is a business or other organization and the digital goods or digital automated services purchased, or the digital goods or digital automated services to be obtained by the digital code purchased, or the prewritten computer software or services defined as a retail sale in RCW 82.04.050(6)(b) purchased will be concurrently available for use within and outside this state. A buyer is not entitled to use an exemption certificate claiming multiple points of use for digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) purchased for personal use.

(3) A buyer claiming an exemption under this section must report and pay the tax imposed in RCW 82.12.020 and any local use taxes imposed under the authority of chapter 82.14 RCW and RCW 81.104.170 directly to the department in accordance with sections 702 and 703 of this act.

(4) For purposes of this section, "concurrently available for use within and outside this state" means that employees or other agents of the buyer may use the digital goods, digital automated services,

prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) simultaneously from one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the buyer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state.

**NEW SECTION. Sec. 702.** A new section is added to chapter 82.12 RCW to read as follows:

(1) A business or other organization subject to the tax imposed in RCW 82.12.020 on the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) that are concurrently available for use within and outside this state is entitled to apportion the amount of tax due this state based on users in this state compared to users everywhere. The department may authorize or require an alternative method of apportionment supported by the taxpayer's records that fairly reflects the proportion of in-state to out-of-state use by the taxpayer of the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b).

(2) No apportionment under this section is allowed unless the apportionment method is supported by the taxpayer's records kept in the ordinary course of business.

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

(a) "Concurrently available for use within and outside this state" means that employees or other agents of the taxpayer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) simultaneously at one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the taxpayer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state.

(b) "User" means an employee or agent of the taxpayer who is authorized by the taxpayer to use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) in the performance of his or her duties as an employee or other agent of the taxpayer.

**NEW SECTION. Sec. 703.** A new section is added to chapter 82.14 RCW to read as follows:

(1) A business or other organization that is entitled under section 702 of this act to apportion the amount of state use tax on the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) is also entitled to apportion the amount of local use taxes imposed under the authority of this chapter and RCW 81.104.170 on the use of such products or services.

(2) To ensure that the tax base for state and local use taxes is identical, the measure of local use taxes apportioned under this section must be the same as the measure of state use tax apportioned under section 702 of this act.

(3) This section does not affect the sourcing of local use taxes.

**Sec. 704.** RCW 82.32.730 and 2008 c 324 s 1 are each amended to read as follows:

(1) Except as provided in subsections (5) through (7) of this section, for purposes of collecting or paying sales or use taxes to the appropriate jurisdictions, all sales at retail shall be sourced in

accordance with this subsection and subsections (2) through (4) of this section.

(a) When tangible personal property, an extended warranty, a digital good, digital code, digital automated service, or ((~~an~~)) other service defined as a retail sale under RCW 82.04.050 is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When the tangible personal property, extended warranty, digital good, digital code, digital automated service, or ((~~an~~)) other service defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(c) When (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(d) When (a), (b), and (c) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(e) When (a), (b), (c), or (d) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or digital code or the computer software delivered electronically was first available for transmission by the seller, or from which the extended warranty or digital automated service or other service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in subsection (3) or (4) of this section, shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subsection (1) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection (2) does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is as indicated by an address

for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location is not altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsection (1) of this section.

(5)(a) A purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information that shows the jurisdictions to which the direct mail is delivered to recipients.

(i) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(ii) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information as required by (a) of this subsection, the seller shall collect the tax according to subsection (1)(e) of this section. This subsection does not limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser is not required to provide a direct mail form or delivery information to the seller.

(6) The following are sourced to the location at or from which delivery is made to the consumer:

(a) A retail sale of watercraft;

(b) A retail sale of a modular home, manufactured home, or mobile home;

(c) A retail sale, excluding the lease and rental, of a motor vehicle, trailer, semitrailer, or aircraft, that do not qualify as transportation equipment; and

(d) Florist sales. In the case of a sale in which one florist takes an order from a customer and then communicates that order to another florist who delivers the items purchased to the place designated by the customer, the location at or from which the delivery is made to the consumer is deemed to be the location of the florist originally taking the order.

(7) A retail sale of the providing of telecommunications services or ancillary services, as those terms are defined in RCW 82.04.065, shall be sourced in accordance with RCW 82.32.520.

(8) The definitions in this subsection apply throughout this section.

(a) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(b) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or

to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(c) "Florist sales" means the retail sale of tangible personal property by a florist. For purposes of this subsection (8)(c), "florist" means a person whose primary business activity is the retail sale of fresh cut flowers, potted ornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products, used for decorative and not landscaping purposes.

(d) "Receive" and "receipt" mean taking possession of tangible personal property, making first use of digital automated services or other services, or taking possession or making first use of digital goods or digital codes, whichever comes first. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(e) "Transportation equipment" means:

(i) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce;

(ii) Trucks and truck tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) Registered through the international registration plan; and

(B) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(iii) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(iv) Containers designed for use on and component parts attached or secured on the items described in (e)(i) through (iii) of this subsection.

(9) In those instances where there is no obligation on the part of a seller to collect or remit this state's sales or use tax, the use of tangible personal property, digital good, digital code, or of a digital automated service or other service, subject to use tax, is sourced to the place of first use in this state. The definition of use in RCW 82.12.010 applies to this subsection.

**PART VIII  
BUNDLING OF DIGITAL PRODUCTS  
TO BE OBTAINED THROUGH THE  
USE OF A CODE THAT DOES NOT  
MEET THE DEFINITION OF DIGITAL CODE**

**Sec. 801.** RCW 82.08.195 and 2007 c 6 s 1402 are each amended to read as follows:

(1) A bundled transaction is subject to the tax imposed by RCW 82.08.020 if the retail sale of any of its component products would be subject to the tax imposed by RCW 82.08.020.

(2) The transactions described in RCW 82.08.190(4) (a) and (b) are subject to the tax imposed by RCW 82.08.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.08.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.08.020, the transaction is not subject to the tax imposed by RCW 82.08.020.

(3) The transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.08.020.

(4) The transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.08.020.

(5) In the case of a bundled transaction that includes any of the following: Telecommunications service, ancillary service, internet access, or audio or video programming service:

(a) If the price is attributable to products that are taxable and products that are not taxable, the portion of the price attributable to the nontaxable products are subject to the tax imposed by RCW 82.08.020 unless the seller can identify by reasonable and verifiable standards the portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes;

(b) If the price is attributable to products that are subject to tax at different tax rates, the total price is attributable to the products subject to the tax at the highest tax rate unless the seller can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to the tax imposed by RCW 82.08.020 at the lower rate from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes.

(6) In the case of the sale of a code that provides a purchaser with the right to obtain more than one digital product, and which may also include the right to obtain other products or services, and all of the products and services, digital or otherwise, to be obtained through the use of the code do not have the same sales and use tax treatment, for purposes of the tax imposed by RCW 82.08.020:

(a) The transaction is deemed to be the sale of the products and services to be obtained through the use of the code; and

(b)(i) The tax imposed by RCW 82.08.020 applies to the entire selling price of the code, except as provided in (b)(ii) of this subsection (6).

(ii) If the seller can identify by reasonable and verifiable standards the portion of the selling price attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020 from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes, the tax imposed by RCW 82.08.020 does not apply to that portion of the selling price of the code attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020.

#### PART IX NEXUS

**NEW SECTION. Sec. 901.** A new section is added to chapter 82.32 RCW to read as follows:

For purposes of the taxes imposed in this title, the department of revenue may not consider a person's ownership of, or rights in, digital goods or digital codes residing on servers located in this state in determining whether the person has substantial nexus with this state. For purposes of this section, "substantial nexus" means the requisite connection that a person has with a state to allow the state to subject the person to the state's taxing authority, consistent with the commerce clause of the United States Constitution.

#### PART X AMNESTY

**NEW SECTION. Sec. 1001.** (1) Except as provided in subsection (2) of this section, no person may be held liable for the

failure to collect or pay state and local sales and use taxes accrued before the effective date of this act on the sale or use of digital goods.

(2) Subsection (1) of this section does not relieve any person from liability for state and local sales taxes that the person collected from buyers but did not remit to the department of revenue.

(3) Nothing in this section may be construed as authorizing the refund of state and local sales and use taxes properly paid on the sale or use of digital goods before the effective date of this act.

(4) For purposes of this section, "digital goods" has the same meaning as in section 201 of this act.

#### PART XI MISCELLANEOUS AMENDMENTS

**Sec. 1101.** RCW 35.21.717 and 2004 c 154 s 1 are each amended to read as follows:

~~(Until July 1, 2006, a city or town may not impose any new taxes or fees specific to internet service providers.)~~ A city or town may tax internet ~~((service))~~ access providers under generally applicable business taxes or fees, at a rate not to exceed the rate applied to a general service classification. For the purposes of this section, "internet ~~((service))~~ access" has the same meaning as in RCW 82.04.297.

**Sec. 1102.** RCW 48.14.080 and 2006 c 278 s 2 are each amended to read as follows:

(1) As to insurers, other than title insurers and taxpayers under RCW 48.14.0201, the taxes imposed by this title shall be in lieu of all other taxes, except as otherwise provided in this section.

(2) Subsection (1) of this section does not apply with respect to:

(a) Taxes on real and tangible personal property;

(b) Excise taxes on the sale, purchase, use, or possession of (i) real property; (ii) tangible personal property; (iii) extended warranties; ~~((and))~~ (iv) services, including digital automated services as defined in section 201 of this act; and (v) digital goods and digital codes as those terms are defined in section 201 of this act; and

(c) The tax imposed in RCW 82.04.260(10), regarding public and nonprofit hospitals.

(3) For the purposes of this section, the term "taxes" includes taxes imposed by the state or any county, city, town, municipal corporation, quasi-municipal corporation, or other political subdivision.

**Sec. 1103.** RCW 82.02.020 and 2008 c 113 s 2 are each amended to read as follows:

Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon ~~((retail sales of tangible personal property, the use of tangible personal property;))~~ parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges(~~(: PROVIDED, That)~~). However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged(~~(: PROVIDED FURTHER, That)~~). Furthermore, these provisions (~~(shall)~~) may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Title(~~s~~) 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

**Sec. 1104.** RCW 82.04.44525 and 2008 c 81 s 9 are each amended to read as follows:

(1) Subject to the limits in this section, an eligible person is allowed a credit against the tax due under this chapter. The credit is based on qualified employment positions in eligible areas. The credit is available to persons who are engaged in international services as defined in this section. In order to receive the credit, the international service activities must take place at a business within the eligible area.

(2)(a) The credit shall equal three thousand dollars for each qualified employment position created after July 1, 1998, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position, plus the four subsequent consecutive years, if the position is maintained for those four years.

(b) Credit may not be taken for hiring of persons into positions that exist on July 1, 1998. Credit is authorized for new employees hired for new positions created after July 1, 1998. New positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire.

(c) When a position is newly created, if it is filled before July 1st, this position is eligible for the full yearly credit. If it is filled after June 30th, this position is eligible for half of the credit.

(d) Credit may be accrued and carried over until it is used. No refunds may be granted for credits under this section.

(3) For the purposes of this section:

(a) "Eligible area" means: (i) A community empowerment zone under RCW 43.31C.020; or (ii) a contiguous group of census tracts that meets the unemployment and poverty criteria of RCW 43.31C.030 and is designated under subsection (4) of this section;

(b) "Eligible person" means a person, as defined in RCW 82.04.030, who in an eligible area at a specific location is engaged in the business of providing international services;

(c)(i) "International services" means the provision of a service, as defined under (c)(iii) of this subsection, that is subject to tax under RCW 82.04.290 (2) or (3), and either:

(A) Is for a person domiciled outside the United States; or

(B) The service itself is for use primarily outside of the United States.

(ii) "International services" excludes any service taxable under RCW 82.04.290(1).

(iii) Eligible services are: Computer; data processing; information; legal; accounting and tax preparation; engineering; architectural; business consulting; business management; public relations and advertising; surveying; geological consulting; real estate appraisal; or financial services. For the purposes of this section these services mean the following:

(A) "Computer services" are services such as computer programming, custom software modification, customization of canned software, custom software installation, custom software maintenance, custom software repair, training in the use of software, computer systems design, and custom software update services;

(B) "Data processing services" are services such as word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service;

(C) "Information services" are services such as electronic data retrieval or research that entails furnishing financial or legal

information, data or research, internet ~~((service))~~ access as defined in RCW 82.04.297, general or specialized news, or current information;

(D) "Legal services" are services such as representation by an attorney, or other person when permitted, in an administrative or legal proceeding, legal drafting, paralegal services, legal research services, and court reporting services, arbitration, and mediation services;

(E) "Accounting and tax preparation services" are services such as accounting, auditing, actuarial, bookkeeping, or tax preparation services;

(F) "Engineering services" are services such as civil, electrical, mechanical, petroleum, marine, nuclear, and design engineering, machine designing, machine tool designing, and sewage disposal system designing services;

(G) "Architectural services" are services such as structural or landscape design or architecture, interior design, building design, building program management, and space planning services;

(H) "Business consulting services" are services such as primarily providing operating counsel, advice, or assistance to the management or owner of any business, private, nonprofit, or public organization, including but not limited to those in the following areas: Administrative management consulting; general management consulting; human resource consulting or training; management engineering consulting; management information systems consulting; manufacturing management consulting; marketing consulting; operations research consulting; personnel management consulting; physical distribution consulting; site location consulting; economic consulting; motel, hotel, and resort consulting; restaurant consulting; government affairs consulting; and lobbying;

(I) "Business management services" are services such as administrative management, business management, and office management. "Business management services" does not include property management or property leasing, motel, hotel, and resort management, or automobile parking management;

(J) "Public relations and advertising services" are services such as layout, art direction, graphic design, copy writing, mechanical preparation, opinion research, marketing research, marketing, or production supervision;

(K) "Surveying services" are services such as land surveying;

(L) "Geological consulting services" are services rendered for the oil, gas, and mining industry and other earth resource industries, and other services such as soil testing;

(M) "Real estate appraisal services" are services such as market appraisal and other real estate valuation; and

(N) "Financial services" are services such as banking, loan, security, investment management, investment advisory, mortgage servicing, contract collection, and finance leasing services, engaged in by financial businesses, or businesses similar to or in competition with financial businesses; and

(d) "Qualified employment position" means a permanent full-time position to provide international services. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee.

(4) By ordinance, the legislative authority of a city, or legislative authorities of contiguous cities by ordinance of each city's legislative authority, with population greater than eighty thousand, located in a county containing no community empowerment zones as designated under RCW 43.31C.020, may designate a contiguous group of census tracts within the city or cities as an eligible area under this section. Each of the census tracts must meet the unemployment and poverty

criteria of RCW 43.31C.030. Upon making the designation, the city or cities shall transmit to the department of revenue a certification letter and a map, each explicitly describing the boundaries of the census tract. This designation must be made by December 31, 1998.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes:

(a) Employment records for the previous six years;

(b) Information relating to description of international service activity engaged in at the eligible location by the person; and

(c) Information relating to customers of international service activity engaged in at that location by the person.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used shall be immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The employment security department shall provide to the department of revenue such information needed by the department of revenue to verify eligibility under this section.

**Sec. 1105.** RCW 82.08.040 and 1975 1st ex.s. c 278 s 46 are each amended to read as follows:

(1) Every consignee, bailee, factor, or auctioneer ~~((authorized, engaged, or employed to sell or call))~~ selling or calling for bids on ~~((tangible))~~ personal property belonging to another, ~~((and so selling or calling, shall be))~~ is deemed the seller of such ~~((tangible))~~ personal property within the meaning of this chapter ~~((and))~~. All sales made by such persons are subject to ~~((its))~~ the provisions of this chapter even though the sale would have been exempt from the tax ~~((hereunder))~~ imposed in this chapter had it been made directly by the owner of the property sold.

(2)(a) Except as provided in (b) of this subsection (2), every consignee, bailee, factor, or auctioneer ~~((shall))~~ must collect and remit the amount of tax due under this chapter with respect to sales made or called by ~~((him: PROVIDED;))~~ that seller.

(b) If the owner of the property sold is engaged in the business of ~~((selling tangible personal property))~~ making sales at retail in this state, the tax imposed under this chapter may be remitted by such owner under such rules ~~((and regulations))~~ as the department ~~((of revenue shall prescribe))~~ may adopt.

**Sec. 1106.** RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each amended to read as follows:

(1) If a buyer normally is engaged in both consuming and reselling certain types of ~~((articles of tangible))~~ personal property, the retail sale of which is taxable under this chapter, and the buyer is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a resale certificate for the entire purchase if the buyer principally resells the articles according to the general nature of the buyer's business. The buyer shall account for the value of any articles purchased with a resale certificate that are used by the buyer and remit the sales tax on the articles to the department.

(2) A buyer who pays a tax on all purchases and subsequently resells an article at retail, without intervening use by the buyer, shall collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the property resold upon which retail sales tax has been paid. The deduction is allowed only if the taxpayer keeps and



preserves records that show the names of the persons from whom the articles were purchased, the date of the purchase, the type of articles, the amount of the purchase, and the tax that was paid. The department shall provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later sold at wholesale without intervening use by the buyer.

**Sec. 1107.** RCW 82.12.035 and 2007 c 6 s 1203 are each amended to read as follows:

A credit ~~((shall be))~~ is allowed against the taxes imposed by this chapter upon the use in this state of tangible personal property, extended warranty, digital good, digital code, digital automated service, or services ~~((taxable under))~~ defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), in the ~~((state of Washington in the))~~ amount that the present user thereof or his or her bailor or donor has paid a legally imposed retail sales or use tax with respect to such property, extended warranty, digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b) to any other state, possession, territory, or commonwealth of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof ~~((prior to the use of such property, extended warranty, or service in Washington))~~.

**Sec. 1108.** RCW 82.12.040 and 2005 c 514 s 109 are each amended to read as follows:

(1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section ~~((shall))~~ must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department ~~((shall))~~ must in rules specify activities which constitute engaging in business activity within this state, and ~~((shall))~~ must keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), of his or her principals for use in this state, ~~((shall))~~ must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter ~~((shall be))~~ is deemed to be held in trust by the retailer until paid to the department, and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date

as prescribed ~~((shall be))~~ is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller ~~((shall))~~ is nevertheless ~~((be))~~ personally liable to the state for the amount of such tax, unless the seller has taken from the buyer in good faith a copy of a direct pay permit issued under RCW 82.32.087.

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

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

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

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

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

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

**Sec. 1109.** RCW 82.14.465 and 2007 c 266 s 7 are each amended to read as follows:

(1) A city, town, or county that creates a benefit zone and finances public improvements pursuant to chapter 39.100 RCW may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city, town, or county. The rate of tax shall not exceed the rate provided in RCW 82.08.020(1) in the case of a sales tax or ~~((the rate provided in RCW 82.12.020(5) in the case of))~~ a use tax, less the aggregate rates of any other taxes imposed on the same events that are credited against the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax rate shall be no higher than what is reasonably necessary for the local government to receive its entire annual state contribution in a ten-month period of time.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the city, town, or county at no cost to the city, town, or county.

(3) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the city, town, or county shall first have received tax allocation revenues during the preceding calendar year. The tax imposed under this section shall expire on the earlier of the date: (a) The tax allocation revenues are no longer used for public improvements and public improvement costs; (b) the bonds issued under the authority of chapter 39.100

RCW are retired, if the bonds are issued; or (c) that is thirty years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a city, town, or county imposing a tax under this section shall provide that:

(a) The tax shall first be imposed on the first day of a fiscal year;

(b) The amount of tax received by the local government in any fiscal year shall not exceed the amount of the state contribution;

(c) The tax shall cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax distributions totals the amount of the state contribution;

(ii) The amount of tax distributions totals the amount of local public sources, dedicated in the previous calendar year to finance public improvements authorized under chapter 39.100 RCW, expended in the previous year for public improvement costs or used to pay for other bonds issued to pay for public improvements; or

(iii) The amount of revenue from taxes imposed under this section by all cities, towns, and counties totals the annual state credit limit as provided in RCW 82.32.700(3);

(d) The tax shall be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) Any revenue generated by the tax in excess of the amounts specified in (b) and (c) of this subsection shall belong to the state of Washington.

(5) If both a county and a city or town impose a tax under this section, the tax imposed by the city, town, or county shall be credited as follows:

(a) If the county has created a benefit zone before the city or town, the tax imposed by the county shall be credited against the tax imposed by the city or town, the purpose of such credit is to give priority to the county tax; and

(b) If the city or town has created a benefit zone before the county, the tax imposed by the city or town shall be credited against the tax imposed by the county, the purpose of such credit is to give priority to the city or town tax.

(6) The department shall determine the amount of tax distributions attributable to each city, town, and county imposing a sales and use tax under this section and shall advise a city, town, or county when the tax will cease to be distributed for the remainder of the fiscal year as provided in subsection (4)(c) of this section. Determinations by the department of the amount of taxes attributable to a city, town, or county are final and shall not be used to challenge the validity of any tax imposed under this section. The department shall remit any tax revenues in excess of the amounts specified in subsection (4)(b) and (c) of this section to the state treasurer who shall deposit the moneys in the general fund.

(7) The definitions in this subsection apply throughout this section and RCW 82.14.470 unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Benefit zone" has the same meaning as provided in RCW 39.100.010.

(c) "Excess local excise taxes" has the same meaning as provided in RCW 39.100.050.

(d) "Excess state excise taxes" means the amount of excise taxes received by the state during the measurement year from taxable activity within the benefit zone over and above the amount of excise taxes received by the state during the base year from taxable activity within the benefit zone. However, if a local government creates the

benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess state excise taxes" means the entire amount of state excise taxes the state receives during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(e) "State excise taxes" means revenues derived from state retail sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount of tax distributions from all local retail sales and use taxes imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW except for the local tax authorized in this section.

(f) "Fiscal year" has the same meaning as provided in RCW 39.100.030.

(g) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess state excise taxes and excess local excise taxes.

(h) "State contribution" means the lesser of two million dollars or an amount equal to excess state excise taxes received by the state during the preceding calendar year.

(i) "Tax allocation revenues" has the same meaning as provided in RCW 39.100.010.

(j) "Public improvements" and "public improvement costs" have the same meanings as provided in RCW 39.100.010.

(k) "Local public sources" includes, but is not limited to, private monetary contributions, assessments, dedicated local government funds, and tax allocation revenues. "Local public sources" does not include local government funds derived from any state loan or state grant, any local tax that is credited against the state sales and use taxes, or any other state funds.

**Sec. 1110.** RCW 82.16.010 and 2007 c 6 s 1023 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010(~~(- PROVIDED, That)~~). However, "motor transportation business" ((shall)) does not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (3), (4), (5), (6), (7), (8), and (9) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (10)(b) apply throughout this subsection (10).

(i) "Competitive telephone service" has the same meaning as in RCW 82.04.065.

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet ((service)) access as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

**Sec. 1111.** RCW 82.32.020 and 2007 c 6 s 101 are each amended to read as follows:

For the purposes of this chapter:

(1) The meaning attributed in chapters 82.01 through 82.27 RCW to the words and phrases "tax year," "taxable year," "person," "company," "gross proceeds of sales," "gross income of the business," "business," "engaging in business," "successor," "gross operating revenue," "gross income," "taxpayer," "retail sale," "seller," "buyer," "purchaser," "extended warranty," and "value of products" shall apply equally to the provisions of this chapter.

(2) Whenever "property" or "personal property" is used, those terms must be construed to include digital goods and digital codes unless: (a) It is clear from the context that the term "personal property" is intended only to refer to tangible personal property; (b) it is clear from the context that the term "property" is intended only to refer to tangible personal property, real property, or both; or (c) to construe the term "property" or "personal property" as including digital goods and digital codes would yield unlikely, absurd, or strained consequences.

(3) The definitions in this subsection apply throughout this chapter, unless the context clearly requires otherwise.

(a) "Agreement" means the streamlined sales and use tax agreement.

(b) "Associate member" means a petitioning state that is found to be in compliance with the agreement and changes to its laws, rules, or other authorities necessary to bring it into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008. The petitioning states, by majority vote, may also grant associate member status to a petitioning state that does not receive an affirmative vote of three-fourths of the petitioning states upon a finding that the state has achieved substantial compliance with the terms of the agreement as a whole, but not necessarily each required provision, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008.

(c) "Certified automated system" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) "Certified service provider" means an agent certified under the agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(e)(i) "Member state" means a state that:

(A) Has petitioned for membership in the agreement and submitted a certificate of compliance; and

(B) Before the effective date of the agreement, has been found to be in compliance with the requirements of the agreement by an affirmative vote of three-fourths of the other petitioning states; or

(C) After the effective date of the agreement, has been found to be in compliance with the agreement by a three-fourths vote of the entire governing board of the agreement.

(ii) Membership by reason of (e)(i)(A) and (B) of this subsection is effective on the first day of a calendar quarter at least sixty days after at least ten states comprising at least twenty percent of the total population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have either been found in compliance with the agreement or have been found to be an associate member under section 704 of the agreement.

(iii) Membership by reason of (e)(i)(A) and (C) of this subsection is effective on the state's proposed date of entry or the first day of the calendar quarter after its petition is approved by the governing board, whichever is later, and is at least sixty days after its petition is approved.

(f) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(g) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(h) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subsection ((2)) (3)(h), a seller includes an affiliated group of sellers using the same proprietary system.

(i) "Source" means the location in which the sale or use of tangible personal property, a digital good or digital code, an extended warranty, or a digital automated service or other service, subject to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to occur.

**Sec. 1112.** RCW 82.32.023 and 2007 c 6 s 104 are each amended to read as follows:

For purposes of ~~((compliance with the requirements of the agreement only))~~ construing those provisions of the streamlined sales and use tax agreement that have been incorporated into this title, and unless the context requires otherwise, the terms "product" and "products" refer to tangible personal property, digital goods, digital codes, digital automated services, other services, extended warranties, and anything else that can be sold or used.

## PART XII MISCELLANEOUS

**NEW SECTION. Sec. 1201.** This act does not have any impact whatsoever on the characterization of digital goods and digital codes as tangible or intangible personal property for purposes of property taxation and may not be used in any way in construing any provision of Title 84 RCW.

**NEW SECTION. Sec. 1202.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 1203.** The repeals in sections 515 and 623 of this act do not affect any existing right acquired or liability or

obligation incurred under the statutes repealed or under any rule or order adopted under those statutes nor do they affect any proceedings instituted under them.

**NEW SECTION. Sec. 1204.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009.

**NEW SECTION. Sec. 1205.** Part headings used in this act are not any part of the law."

Correct the title.

Representative Bailey moved the adoption of amendment (379) to amendment (349):

On page 85, beginning on line 8 of the amendment, strike all of section 1204

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

Representatives Bailey and Hunter spoke in favor of the adoption of the amendment to the amendment.

Amendment (379) to amendment (349) was adopted.

Amendment (349) as amended was adopted. The bill was ordered engrossed.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Hunter, Carlyle and Morris spoke in favor of the passage of the bill.

Representatives Orcutt, Shea, Ericksen and Anderson spoke against the passage of the bill.

### POINT OF PARLIAMENTARY INQUIRY

Representative Ericksen: "Mr. Speaker, Engrossed Substitute House Bill No. 2075 has elements that raise tax revenues for certain activities. Under the provisions of Initiative 960, does Engrossed Substitute House Bill No. 2075 require a two-thirds vote for passage under Initiative 960? Thank you."

### SPEAKER'S RULING

Mr. Speaker (Representative Morris presiding): "Engrossed Substitute House Bill 2075

- Conforms the sales and use taxation of downloaded digital goods to the streamlined sales and use tax agreement. •Imposes sales and use taxes on certain streamed or remotely accessed digital services, goods, and prewritten computer software.

- Provides certain exemptions for electronically transferred digital goods and digital services.

- Applies the traditional retailing and wholesaling business and occupation tax rates to electronically transferred digital goods and digital services.

- Prohibits the state from extending its taxing authority to a business by considering a business's use of Washington based servers to store digital goods.

- Makes a number of technical amendments.

Engrossed Substitute House Bill No. 2075 both expands the sales and use tax base and reduces or eliminates business and occupation tax rates. The question presented is whether these changes in taxation fall within the definition of "raising taxes" under Initiative 960, thereby requiring a 2/3 vote for final passage.

The Speaker acknowledges that former Speaker Ballard interpreted Initiative 601, the predecessor to 960, to require a 2/3 vote in analogous situations. It is important to note, however, that I-601 did not contain a specific definition as to what constituted "raising taxes." Initiative 960 does. Section 5, subsection 6 of the initiative, codified in RCW 43.135.035, provides:

'For the purposes of this act, 'raises taxes' means any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account, regardless of whether the revenues are deposited into the general fund.'

The preliminary fiscal note for Engrossed Substitute House Bill No. 2075 projects that the net effect of the tax changes in the bill is to reduce state tax revenue deposited in the general fund for six years, with a projected increase beginning thereafter. The increase projected in later years is based on assumptions about changes in the economy, not any change to any tax rate or tax base. The Speaker would find that any change projected that far into the future, especially in the rapidly changing world of technology, is at best an educated guess.

The Speaker therefore finds and rules that Engrossed Substitute House Bill No. 2075 does not "raise taxes" as defined in Initiative 960, and that 50 votes are required for final passage."

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2075.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2075 and the bill passed the House by the following vote: Yeas, 52; Nays, 46; Absent, 0; Excused, 0.

Voting yea: Representatives Appleton, Blake, Carlyle, Chase, Clibborn, Cody, Condotta, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Finn, Flannigan, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Jacks, Kagi, Kenney, Kessler, Kirby, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Seaquist, Sells, Simpson, Sullivan, Takko, Upthegrove, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Campbell, Chandler, Cox, Crouse, Dammeier, DeBolt, Driscoll, Ericksen, Goodman, Grant-Herriot, Green, Haler, Herrera, Hinkle, Hope, Hurst, Johnson, Kelley, Klippert, Kretz, Kristiansen, Lias, McCune, Orcutt, Parker, Pearson, Priest, Probst, Roach, Rodne, Ross, Schmick, Shea, Short, Smith, Springer, Taylor, Van De Wege, Wallace, Walsh and Warnick.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2075, having received the necessary constitutional majority, was declared passed.

There being no objection, the House advanced to the eighth order of business.

There being no objection, the Committee on Rules was relieved of the following bills, and the bills were added to the second reading calendar.

HOUSE BILL NO. 2211  
HOUSE BILL NO. 2326  
SUBSTITUTE SENATE BILL NO. 5001  
ENGROSSED SENATE NO. 5013  
SENATE BILL NO. 5120  
SUBSTITUTE SENATE BILL NO. 5172  
SUBSTITUTE SENATE BILL NO. 5199  
SUBSTITUTE SENATE BILL NO. 5285  
SUBSTITUTE SENATE BILL NO. 5410  
SENATE BILL NO. 5453  
SUBSTITUTE SENATE BILL NO. 5501  
SENATE BILL NO. 5540  
ENGROSSED SUBSTITUTE SENATE BILL NO. 5601  
SENATE BILL NO. 5642  
ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5688  
SUBSTITUTE SENATE BILL NO. 5732  
ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5735  
SUBSTITUTE SENATE BILL NO. 5777  
SENATE BILL NO. 5804  
ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5809  
ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5854  
SUBSTITUTE SENATE BILL NO. 5881

The House reverted to the fourth order of business.

### SUPPLEMENTAL INTRODUCTION AND FIRST READING

HB 2350 by Representatives Chase, Green, Nelson, Kagi and Darneille

AN ACT Relating to the taxation of intangible property to provide additional funding for public schools; amending RCW 28A.150.210, 84.36.070, and 84.36.110; adding a new chapter to Title 84 RCW; creating new sections; and providing for submission of this act to a vote of the people.

Referred to Committee on Finance.

HB 2351 by Representatives Ericks, Morris, McCoy, Seaquist, Green, Hunt, Van De Wege, Appleton, White, Williams, Kenney and Nelson

AN ACT Relating to funding enhanced 911 emergency communication systems; amending RCW 82.14B.010, 82.14B.040, 82.14B.042, 82.14B.050, 82.14B.060, 82.14B.061, 82.14B.150, 82.14B.160, 82.14B.200, 38.52.510, 38.52.520, 38.52.532, 38.52.545, 38.52.550, and 38.52.561; reenacting and amending RCW 82.14B.020, 82.14B.030, 38.52.540, and 43.79A.040; adding new sections to chapter 82.14B RCW; creating a new section; repealing RCW 82.14B.070, 82.14B.090, and 82.14B.100; prescribing penalties; providing effective dates; and providing for submission of this act to a vote of the people.

Referred to Committee on Rules.

There being no objection, the bills listed on the day's supplemental introduction sheet under the fourth order of business were referred to the committees so designated.

### SUPPLEMENTAL REPORTS OF STANDING COMMITTEES

April 13, 2009

HB 2308 Prime Sponsor, Representative Morris: Relating to aerospace competitiveness. Reported by Committee on Community & Economic Development & Trade

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Kenney, Chair; Maxwell, Vice Chair; Smith, Ranking Minority Member; Chase; Lias; Probst and Sullivan.

MINORITY recommendation: Do not pass. Signed by Representatives Orcutt and Parker.

Referred to Committee on Ways & Means.

There being no objection, the bill listed on the day's supplement committee reports sheet under the fifth order of business was referred to the committee so designated.

There being no objection, the House advanced to the eleventh order of business.

There being no objection, the House adjourned until 1:30 p.m., April 14, 2009, the 93rd Day of the Regular Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk