

Western Washington University . . . . .	\$	446,418
State board for community college education . . . . .	\$	2,307,797
<u>Such transfer authority shall be in effect only for the fiscal biennium beginning July 1, 1983, and ending June 30, 1985.</u>		

NEW SECTION. Sec. 3. RCW 28B.15.825 is decodified.

NEW SECTION. Sec. 4. Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1983.

- Passed the House May 13, 1983.
- Passed the Senate May 18, 1983.
- Approved by the Governor June 13, 1983.
- Filed in Office of Secretary of State June 13, 1983.

CHAPTER 65

[Substitute House Bill No. 712]

HAZARDOUS WASTES—REGULATION—CONTROL—WASTE PRODUCERS—SITE OPERATORS ANNUAL FEE

AN ACT Relating to hazardous wastes; adding a new chapter to Title 70 RCW; creating a new section; prescribing penalties; making appropriations; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) It is the policy of the state of Washington to protect the public health and welfare of all its citizens against the dangers arising from the generation, transport, treatment, storage, and disposal of hazardous wastes and from releases of hazardous substances. In order to reach that policy objective, it is not only necessary to provide state government with broad powers of regulation, control, and removal of these hazardous wastes and substances, including the power to fashion and effectuate remedial directives, but it is imperative that adequate funds are also provided to carry out these powers in a vigorous manner. In the implementation of the provisions of this chapter, the state shall, when appropriate, cooperate with and support federal agencies in their implementation of counterpart federal hazardous waste and substances programs, while pursuing independent state actions whenever it appears they will provide more efficient or effective alternative programs to achieve the policies and purposes of this chapter.

(2) The purposes of this chapter are, among others: (a) To supplement the powers already vested in the department of ecology relating to hazardous wastes and to releases of substances which are hazardous to the environment or public health, (b) to provide moneys necessary for the full,

sufficient, and efficient implementation of the hazardous waste and substances regulation control and removal program of the state, (c) to encourage reduction of hazardous wastes through recycling and improvement of manufacturing processes, (d) to provide for the cleanup and restoration of those sites within the state at which improper disposal of hazardous waste has occurred, resulting in the potential for deleterious impacts on the health and welfare of the citizens of the state, as well as on the state's natural, environmental, and biological systems, (e) to provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of hazardous waste deposited improperly at sites located within the state, and (f) to provide funds for matching purposes for participation in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

NEW SECTION. Sec. 2. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall specifically include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW;

(2) "Department" means the department of ecology;

(3) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW;

(4) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes;

(5) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal organization;

(6) "Identified site" means the same or geographically contiguous property, which may be divided by a public or private right of way, provided that access between the properties occurs at an intersection and crosses, as opposed to goes along, the right of way. Noncontiguous properties owned by the same person but connected by a right of way will be considered a single identified site if the person controls the right of way and can prevent public access;

(7) "Fee" means the annual hazardous waste control and elimination assessment fee imposed under section 3 of this act and the fee for treatment, storage, and disposal facilities imposed under section 4 of this act;

(8) "Annual gross income" of a business means the value proceeding or accruing during a calendar year by reason of the transaction of the business or service engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees,

commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property 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; and

(9) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

**NEW SECTION.** Sec. 3. (1) In addition to all other fees and taxes, there is hereby imposed and the department of revenue shall collect an annual fee from every person identified by the department of ecology for the privilege of utilizing or operating an identified site, other than as described in section 4(1) of this act, in connection with any of the following business activities within this state:

(a) Exploring for, extracting, beneficiating, processing, or selling metallic or nonmetallic minerals;

(b) Exploring for, extracting, processing, or selling coal;

(c) Producing, distributing, or selling electricity;

(d) Industrial or nonresidential contracting or heavy construction;

(e) Painting or sandblasting;

(f) Producing, processing, or selling rubber or plastics;

(g) Producing, processing, or selling glass, cement, or concrete;

(h) Cutting, milling, producing, preparing, or selling lumber or wood products, including wooden furniture or fixtures;

(i) Producing, preparing, or selling paper or allied products;

(j) Printing or publishing;

(k) Synthesizing, producing, processing, preparing, or selling chemicals or allied products;

(l) Exploring for, extracting, producing, processing, distributing, or selling petroleum or gas;

(m) Fabricating rubber or plastic products;

(n) Beneficiating, processing, or selling primary or secondary metals;

(o) Fabricating metal products, including metal furniture or fixtures;

(p) Fabricating, constructing, preparing, installing, or selling machinery or supplies;

(q) Fabricating, constructing, installing, preparing, or selling electrical or electronic equipment, machinery, or supplies;

(r) Fabricating, producing, preparing, or selling transportation equipment;

(s) Transporting by railroad, motor vehicle, or water vessel;

(t) Telephone communication;

(u) Drycleaning, photofinishing, or furniture refinishing;

(v) Transferring, treating, storing, or disposing of solid, dangerous, or extremely hazardous wastes; and

(w) Repairing or servicing motor vehicles, railroad equipment, or water vessels.

When determining the particular business activity at an identified site, the department of ecology shall consider the major purpose of the activity or activities occurring at the identified site. Under this section, each identified site shall be required to pay only one fee annually, but no fee shall be assessed on any person at an identified site engaged solely in making retail sales as defined in RCW 82.04.050, except for those identified sites which generate hazardous waste.

(2) The fee imposed by this section shall be due and payable on June 30 of the year next succeeding the calendar year in which a person has engaged at any time in the business activities listed in subsection (1) of this section. The amount of the fee for an identified site shall be graduated by reference to the annual gross income of the business apportioned to the site as provided in subsection (3) of this section in accordance with the following schedule:

(a) For annual gross income not in excess of one million dollars, a fee of not more than one hundred fifty dollars;

(b) For annual gross income in excess of one million dollars but not exceeding ten million dollars, a fee of not more than seven hundred fifty dollars;

(c) For annual gross income in excess of ten million dollars, a fee of not more than seven thousand five hundred dollars.

The department of ecology shall further graduate the fees set forth in (a), (b), and (c) of this subsection in accordance with criteria including but not limited to the quantity of hazardous waste generated and the health and environmental risks associated with the waste. The department of ecology shall publish by rule a schedule of these graduated fees.

(3) For purposes of this section, annual gross income of the business shall mean gross proceeds of sales as defined in RCW 82.04.070 or gross income of the business as defined in RCW 82.04.080; and shall mean gross income, as defined in RCW 82.16.010(13). Annual gross income of the business of a person rendering services taxable under RCW 82.04.290 and maintaining places of business within and without this state shall be apportioned in accordance with the provisions of RCW 82.04.460. The total annual gross income of the business taxable in this state under chapters 82.04 and 82.16 RCW shall be apportioned equally by the department of ecology among the identified sites utilized by such business in this state without regard to the amount or nature of the use: PROVIDED, That the person subject to the fee may request, and the department of ecology shall grant, apportionment among identified sites utilized in this state according to each site's share of annual gross income of the business apportioned to this state.

The person subject to the fee shall bear the burden of supporting the allocation among sites with appropriate data as reasonably requested by the department of ecology.

(4) If an identified site does not generate hazardous wastes regulated by chapter 70.105 RCW, the person owning or controlling the site is exempt from the fee imposed by this section.

(5) Notwithstanding subsection (1) or (2) of this section or section 4 of this act, no person who owns or operates a combined identified site and hazardous waste treatment, storage or disposal site shall be required to pay more than seven thousand five hundred dollars annually to the hazardous waste control and elimination account.

(6) The fees imposed by this section and the limitation on total payment of subsection (5) of this section shall be adjusted by five percent whenever the consumer price index of the United States department of labor increases or decreases by a five percent increment from the index figure in existence on January 1, 1983, and such fee and limitation adjustments shall be published in rules by the department of ecology.

(7) Fees shall not be required under this section for solid wastes generated primarily from the combustion of coal or other fossil fuels, until at least six months after the date of submission of the study required by section 8002 of the federal resource conservation and recovery act.

(8) For purposes of this section "manufacturer," "wholesaler," "retailer," and "person engaging in service activities" shall have the meaning attributed to such terms in chapter 82.04 RCW. "Business activities" shall mean activities of any person subject to the fees imposed in subsection (1) of this section engaging in business as defined in chapters 82.04 and 82.16 RCW.

(9) In the administration of this section and in addition to other provisions in this chapter for the enforcement and collection of fees due and owing under this section, the department of revenue is authorized to apply the provisions of chapter 82.32 RCW, provided that the provisions of RCW 82.32.050 and 82.32.090 shall not be applied. If the annual gross income of the business of any person subject to the fee imposed under this section is finally determined to be greater or less than that reported to the department of revenue for the year in question, the department of revenue shall, if necessary, recompute the fee due and shall refund or assess the outstanding balance, as the case may be.

**NEW SECTION.** Sec. 4. (1) Every person who operates a facility for the purpose of treating, storing, or disposing of hazardous wastes, that is subject to a permit issued under authority of RCW 70.105.130 or section 6(4) of this act (including a permit issued in satisfaction of the requirements of 42 U.S.C. section 6925 of the federal Resource Conservation and Recovery Act, as amended) shall, on or before September 1, 1984, and on

or before May 15 of each year thereafter, pay to the state a fee relating to the operation of such treatment, storage, or disposal facilities.

In relation to these annual fees, the department is empowered to adopt rules relating to: (a) Establishment of classes of facilities subject to fees, taking into account the size and type of facility and the risks of detrimental impacts associated therewith; and (b) the setting of a fee schedule pertaining to these classes with those classes presenting a greater risk having a higher dollar amount than those classes presenting a lesser risk: PROVIDED, That the annual fee for any class shall not be greater than seven thousand five hundred dollars.

The department shall prepare a list of all such hazardous waste facilities and the fee for each such facility or type of facility and shall provide a statement to each operator of a facility specifying the fee that is owed and the basis for the fee.

(2) Notwithstanding the provisions of section 3 (1) through (5) of this act or this section, no person who operates a combined identified site and hazardous waste treatment, storage, or disposal site shall be required to pay more than seven thousand five hundred dollars annually to the hazardous waste control and elimination account.

(3) The department of ecology is required to increase or decrease the fees of subsection (1) of this section and the limitation on total payment of subsection (2) of this section, by five percent on each occasion when the consumer price index of the United States department of labor increases or decreases by a five percent increment from the index figure as it existed on January 1, 1983. Each such fee and limitation increase or decrease shall be set forth in rules adopted by the department of ecology.

NEW SECTION. Sec. 5. All fees paid to the state as provided in sections 3 and 4 of this act shall be placed in a hazardous waste control and elimination account of the general fund, and subject to legislative appropriation, be expended by the department of ecology solely to carry out the powers set forth in section 6 of this act.

NEW SECTION. Sec. 6. (1) The department of ecology may use funds in the hazardous waste control and elimination account in the implementation of the powers vested under RCW 70.105.020, 70.105.030, 70.105.080, 70.105.100, 70.105.120, and 70.105.130 and 70.105.\_\_\_\_ (SSB 4245, section 2 and 3) and subsections (3) and (4) of this section as well as the administrative costs relating to the implementation of subsection (2) of this section.

(2) The department is authorized to participate in and is empowered to carry out all programs of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 contemplated for state participation or administration under that act.

(3) In relation or addition to the powers set forth in this section and any other provisions of this code, the department is empowered, with regard to

the regulation, control, or removal of hazardous substances and wastes, as follows:

(a) To coordinate responses to hazardous substances accident and spill incidents;

(b) To respond to, direct, or initiate cleanup of hazardous substances, accidents and spills, and hazardous waste sites;

(c) To conduct or contract for professional technical data gathering and analysis and damage assessment; and

(d) To conduct or contract for the removal of hazardous substances and wastes where there has been or is a potential for release, regardless of quantity or concentration, which could pose a threat to public health or the environment.

(4) The department is empowered to participate in and carry out all programs of the federal Resource Conservation and Recovery Act, as amended, contemplated for implementation by a state under that act and may use funds in the hazardous waste control and elimination account in the implementation thereof.

(5) The attorney general, at the request of the department, is empowered to recover moneys expended by the department from the hazardous waste control and elimination account under authority of this section when these funds were utilized to respond to an unpermitted spill or discharge or to control the release or threatened release of hazardous substances or wastes. Recovery authorized by this section shall be from any person owning or controlling the material spilled or discharged. Actions to recover moneys may be initiated in the superior court of Thurston county or any county in which the hazardous waste site or activity is located. Moneys recovered under this section shall be paid into the hazardous waste control and elimination account.

NEW SECTION. Sec. 7. Any person aggrieved by a determination of the department of ecology pertaining to the fee imposed under section 3(1) of this act or to a specific fee contained in a statement issued under section 4(1) of this act may obtain review thereof by the pollution control hearings board in the same manner as review may be obtained of permits issued by the department pursuant to RCW 90.48.160, if a petition requesting review is filed with the board within thirty days of the day of service of the determination or of the statement of fees due. There shall be no increase in an amount set forth in a statement, as provided in section 8(1) of this act, during any period of time when a review proceeding is pending before the board or a reviewing court. This section shall have no applicability to the adoption of rules by the department pursuant to section 4(1) of this act.

NEW SECTION. Sec. 8. (1) The fees required by section 3(2) or 4(1) of this act, when due and payable, shall bear interest at the rate of nine percent per annum for each month (or portion thereof) that the fee is not paid.

(2) The department of ecology may levy civil penalties in the amount of up to five hundred dollars for each day fees and interest due and owing under section 4 or 8(1) of this act are unpaid. The procedures relating to levying and collection of penalties set forth in RCW 90.48.144 shall be applied to penalties levied under this section. Moneys collected under this subsection shall be placed in the hazardous waste control and elimination account.

(3) The attorney general is authorized to initiate such actions in the courts as are necessary and appropriate to insure compliance with the provisions of this chapter.

NEW SECTION. Sec. 9. (1) If any provision of this chapter or a portion thereof or its application to any person or legal entity or circumstances is held invalid, the remainder of the chapter, or the application of the provision or a portion thereof to other persons or legal entities or circumstances, shall not be affected.

(2) This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

(3) Nothing in this chapter relates to radioactive wastes, however characterized, and the department is precluded from using the funds of the hazardous waste control and elimination account for the regulation and control of such wastes.

(4) Consistent with subsection (2) of this section and taking into account the ambiguities of federal law relating to possible preemption of exercise of powers provided to the department in this chapter, the department shall implement this chapter, to the maximum extent reasonably attainable, to insure that no conflict with those preemptive aspects takes place.

NEW SECTION. Sec. 10. There is appropriated to the department of ecology from the hazardous waste control and elimination account in the general fund for the biennium ending June 30, 1985, the sum of one million four hundred sixty-four thousand dollars, or so much thereof as may be necessary, to administer the purposes of section 1(2)(a) through (c) of this act.

NEW SECTION. Sec. 11. There is appropriated to the department of revenue from the hazardous waste control and elimination account in the general fund for the biennium ending June 30, 1985, the sum of fifty-nine thousand eight hundred six dollars, or so much thereof as may be necessary, to administer the collection of fees as provided in this act.

NEW SECTION. Sec. 12. There is appropriated to the department of ecology from the general fund for the biennium ending June 30, 1985, the sum of four million three hundred thousand dollars, or so much thereof as may be necessary, to administer the purposes of section 1(2)(d) through (f) of this act.

NEW SECTION, Sec. 13. The state treasurer is authorized to use revenue collected pursuant to sections 1 through 9 of this act, to the extent this revenue exceeds any legislative appropriation of the revenue to the department of ecology for purposes of section 1(2)(a) through (c) of this act to reimburse general fund expenditures for cleanup and restoration of those sites pursuant to section 1(2)(d) through (f) of this act.

NEW SECTION, Sec. 14. Sections 1 through 9 of this act shall constitute a new chapter in Title 70 RCW.

NEW SECTION, Sec. 15. (1) This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:

(a) The powers provided to the department of ecology relating to the adoption of rules under sections 3(2) and 4(1) of this act shall take effect immediately; and

(b) The remainder of this act shall take effect on July 1, 1983.

(2) The annual fee due and payable under section 3 of this act on June 30, 1984, shall, following computation of the annual gross income of the business for the calendar year 1983, be prorated for the period July 1, 1983, through December 31, 1983.

Passed the House May 24, 1983.

Passed the Senate May 22, 1983.

Approved by the Governor June 13, 1983.

Filed in Office of Secretary of State June 13, 1983.

## CHAPTER 66

[Substitute Senate Bill No. 3244]

TAXES—BUSINESS AND OCCUPATION—DEDUCTIONS AND EXEMPTIONS—HEALTH OR SOCIAL WELFARE SERVICES—POLITICAL SUBDIVISIONS—SLAUGHTERERS—CERTAIN OUT-OF-STATE PERSONS

AN ACT Relating to business and occupation taxes; amending section 16, chapter 10, Laws of 1982 as amended by section 1, chapter 13, Laws of 1982 2nd ex. sess. and RCW 82.04-.260; amending section 6, chapter 196, Laws of 1979 ex. sess. as amended by section 80, chapter 37, Laws of 1980 and RCW 82.04.431; and adding new sections to chapter 82.04 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 6, chapter 196, Laws of 1979 ex. sess. as amended by section 80, chapter 37, Laws of 1980 and RCW 82.04.431 are each amended to read as follows:

(1) For the purposes of RCW 82.04.4297, the term "health or social welfare organization" means an organization, including any community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a not-for-profit corporation under